

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 3425 OF 2021

Anu Products Ltd.	}	Petitioner
Versus		
Union of India and Ors.	}	Respondents

Mr. Anupam Dighe i/b. India Law Alliance for the petitioner.

Mr. J. B. Mishra with Mr. Ashutosh Mishra for respondent nos. 1 and 4.

Mr. Vijay H. Kantharia with Mr. Ram Ochani for respondent nos. 2 and 3.

**CORAM :- DIPANKAR DATTA, CJ &
M. S. KARNIK, J.**

DATE :- DECEMBER 3, 2021

PC :-

1. The petitioner had imported "Paraquat Dichloride". On the ground that the petitioner made such import without the requisite import permit and mandatory registration with the Central Insecticide Board as required by sections 9 and 17 of the Insecticide Act, 1968, the imported goods were seized vide seizure memo dated January 25, 2021 of the Senior Intelligence Officer, Special Investigation and Intelligence Branch (Import), Jawaharlal Nehru Customs House, Nhava Sheva. Immediately thereafter, the petitioner vide representation dated January 28, 2021 contended that the imports have not been made in violation of any statutory

provision and consequently, prayed for its release. Since the application for release was not considered, this writ petition dated February 14, 2021 was presented seeking, *inter alia*, the following relief: -

"a. That this Hon'ble Court be please to issue a Writ of Certiorari or Writ in the nature of Certiorari or any other appropriate Writ, Order or Direction calling for the records and proceedings dealing with the Impugned Memo dated 25th January, 2021 (Exhibit S hereto) in the Petitioner's case and after going into the legality, propriety and validity thereof to quash and set aside the same.

b. That this Hon'ble Court be pleased to issue a Writ of Mandamus or Writ in the nature of Mandamus or any other appropriate Writ, Order or Direction directing Respondents, their servant, subordinates and agents

i) withdraw the said Impugned Memo dated 25th January, 2021 passed by Respondent Nos. 2 and 3 (Exhibit S hereto)

ii) to allow unconditional release of the Petitioner's import covered under Bills of Entry Nos. 8580862 dated 25.08.20, 8712875 dated 05.09.20 (Ex-bond Bill of Entry No. 9213357 dated 17.10.20) and 8712079 dated 05.09.20 (Ex-bond Bill of Entry No. 9214917 dated 17.10.20)."

2. In course of hearing, Mr. Kantharia, learned advocate for the respondents 2 and 3, has submitted that a show-cause notice dated October 22, 2021 under section 124 read with section 5(2) of the Customs Act, 1962 has been issued by the Joint Commissioner of Customs, Group 2CF, JNCH and in view of such notice, the writ petition has been rendered infructuous.

3. Mr. Dighe, learned advocate for the petitioner, referring to a coordinate Bench decision of this Court as well as a

decision of the Gujarat High Court has, however, submitted that since no provision of law was violated by the petitioner while making import of "Paraquat Dichloride", the relief claimed by the petitioner ought to be granted.

4. In our opinion, whether any statutory provision was violated must be examined at the first instance by the officer who has issued the show-cause notice. If indeed there has been a violation, confiscation would follow in accordance with law. Should the petitioner be able to persuade such officer that there has been no violation, the notice would be required to be withdrawn and the proceedings dropped. However, at this stage, it would be inappropriate for us to examine the question of alleged violation and make an order one way or the other.

5. We, therefore, dispose of this writ petition with a direction upon the Joint Commissioner of Customs to decide the show-cause notice in accordance with law as early as possible but not later than 4 (four) months from date of receipt of the reply to the show-cause notice from the petitioner. However, such Joint Commissioner shall, within a fortnight from date, decide the petitioner's prayer for provisional release of the imported goods. No costs.

6. All contentions are left open.

SALUNKE
J V

Digitally signed
by SALUNKE J V
Date: 2021.12.03
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(M. S. KARNIK, J.)

(CHIEF JUSTICE)