IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5972 OF 2023

M/s. Highland International,
Through Proprietor Shambhu Sabran ...Petitioner
Versus
Union Of India,
Through Sec. Dept.
Of Revenue & Ors. ...Respondents

* * * * * * * *

Mr. R. K. Tomar a/w. Mr. Ashish Goswami for the Petitioner.
Mr. Subir Kumar a/w. Mr. Kashish Rehan for the Respondents.

* * * * * * * *

CORAM : G. S. KULKARNI,
JITENDRA JAIN, J.J.

DATE : 27th JUNE, 2023.

P.C.

1. We have heard learned counsel for the Petitioner and learned counsel for the Respondents. We have also perused record.

2. This petition under Article 226 of the Constitution of India is filed praying for a limited relief which is in terms of prayer clause (a) which reads thus:-

> *"(a) That the Hon'ble Court be pleased to issue a Writ of Certiorari or a Writ of the nature of Certiorari or a Writ of Mandamus or a Writ of the nature of Mandamus or*

> *any other appropriate writ, order or direction to the Respondents to release the said goods which are free from any seizure/investigations and permit the same to be re-exported unconditionally."*

3. The case of the Petitioner is that the Petitioner has imported consignment of Dried Areca Nuts Split and Black Pepper for the purpose of re-export and had filed Warehousing Bills of Entry. It is the case of the Petitioner that part of the said goods were warehoused in a custom bonded warehouse and partly were taken at one Navkar Container Trade Station after clearance from the warehouse.

4. The Petitioner has contended that the Petitioner had approached the customs authorities for release of the said goods for re-export, but no reply was received. Petitioner has also contended that the goods are suffering retention and pilferage and which is causing huge losses to the Petitioner if the goods are not immediately released to be re-exported. Learned counsel for the Petitioner has drawn our attention to the record and more particularly to a seizure memo dated 3rd January 2023 issued by the Directorate of Revenue Intelligence, NHAVA SHEVA-I, Mumbai Zone Unit, which is a seizure memo in relation to the goods described in a table as set out in the said seizure memo which reads thus:-

TABLE – 1

Sr. No.	Goods Description	Appearance of the bags in which the goods are stuffed	Total No. of Bags
1.	Brown Colored Powder	Brown colored jute bags	1073
2.	Greyish-White Powder	White colored gunny bags	1101

5. It is the Petitioner's contention that the goods are imported in November 2022 and in the first week of December 2022, they were required to be re-exported. The Petitioner would contend that the seizure of the goods, if at all, is only of 1073 and 1101 bags of such goods as described in the seizure memo. It is his contention that insofar as the goods which are not subject matter of the seizure, they ought to be released and cannot be detained in such arbitrary manner by the Respondents. The Petitioner has also contended that insofar as the seizure of the goods is concerned, there is no clarity as to whether, it is the Petitioner's goods which are seized or otherwise. The learned counsel for the Petitioner would submit that in this context, the Petitioner has addressed repeated letters dated 6th January 2023, 10th January 2023, 23rd January 2023 and 6th February 2023, requesting the segregation, release and permission to re-export the goods lying in the customs bonded warehouse of M/s. Allsam Shipping and Logistics Pvt. Ltd. It is submitted that however, no reply was received from the Respondents, and no action has been taken to release and permit re-export of the goods, hence the present petition was required to be filed.

6. Having heard learned counsel for the parties and having perused the record, we are of the opinion that the Respondents cannot detain the goods endlessly and more particularly considering the nature of the goods which are perishable. Although, the petition was filed on 16th March 2023 and the same was immediately served on the Respondents, as also seen from the record. On 3rd May 2023, a Co-ordinate Bench of this Court had heard the learned counsel for the parties and at the request of Mr. Subir Kumar, learned counsel for the Respondents, a request for adjournment was granted to file a reply, no reply till date has been placed on record.

7. When we observed that no reply was filed in the midst of dictating this order, Mr.Subir Kumar has removed from his brief, a reply affidavit of Shri. D. S. Garbyal, Commissioner of Customs dated 15th June 2023 and has tendered the same. Such practice of getting the affidavit affirmed and not being placed on record is unknown. This is not fair even to the deponent of the affidavit as although, the reply was affirmed on 15th June 2023, the same was not placed on record, when certainly the deponent i.e. the

Commissioner of Customs who affirmed the affidavit on 15th June 2023 was made to believe that the reply is meant to be filed before the Court, and that too in compliance of the order dated 3rd May 2023. Be that as it may, when we ask Mr. Kumar to make a submission as to what is the nature of the reply and what are the contents therein, he would draw our attention to paragraph 23 of the reply to point out that there are two Bills of Entry being Bill of Entry No.3344092 dated 17th November 2022 and 3343242 dated 17th November 2022 which are being investigated by the DRI/MZU and the goods covered under Bill of Entry No.3555569 dated 1st December 2022 is being investigated by Central Intelligence Unit (CIU) / JNCH. In paragraph 23, the deponent has stated that as the Bills of Entry are under investigation, the goods were not permitted to be released till participation of the Petitioner in the ongoing investigation takes place. Paragraph 23 of the reply reads thus:-

> *"23. With reference to Para 25 of the Petition, the contents are denied. It is submitted that the status of the IEC holder/Importer was found to be dubious, the goods covered under Bill of Entry No.3555569 dated 01.12.2022 filed by M/s. Highland International (IEC-AAMFH8931M) at Navkar CFS, filed through authorized Customs Broker M/s. Peejaycee and Company (AAFFP5032QCH004) were seized vide Seizure Memo dated 12.05.2023 vide DIN*

No.20230578NU000000A0D3. Further, it is submitted that the Bills of Entry No.3344092 dated 17.11.2022 & 3343242 dated 17.11.2022 are being investigated by DRI/MZU and the goods covered under Bill of Entry No.3555569 dated 01.12.2022 is being investigated by CIU/JNCH. Therefore, all the Bills of Entry are under investigation and hence no cargo is free of investigations as claimed by the Petitioner. Since, the outcome of the investigation carried out by the DRI/MZU may have cascading effects, the goods covered under Bill of Entry No.3555569 dated 01.12.2022 should not be permitted to be released till the participation of Importer/IEC holder in the ongoing investigation to ensure the safeguard of the interest of law, especially when fictitious nature of importer & alleged interest to divert the goods to Domestic Tariff Area (DTA) are established. The department has not denied the re-export of the imported goods however; the facts may also be taken into account that the Importer/IEC holder never adduced any supportive documents for claiming re-export."

8. On such stand of the Respondents, learned counsel for the Petitioner would submit that the Petitioner would co-operate with the department and the representative of the Petitioner would approach the Deputy Commissioner of Customs (General), Central Intelligence Unit, Jawaharlal Nehru Custom House, NHAVA SHEVA. Let the representative of the Petitioner approach the said officer on or before 4th July 2023 and, thereafter, co-operate with the said officer in the course of investigation. The

Petitioner shall also intimate in writing the name and address of its representatives who would represent the Petitioner before the concerned department and receive all the communications from the Respondents as also, the email address, telephone number, mobile number, etc. Such intimation shall be made by the Petitioner on or before 4th July 2023. In the event, the correspondence intimation, notices are issued by the Respondents to the Petitioner on such address, email ID, telephone and mobile phone and the same are not responded by the Petitioner, it shall be presumed by the Respondents that the Petitioner is not co-operating in the investigation process and in that event, the concerned officer of the Respondents would take further appropriate steps as may be permissible in law.

9. Insofar as the goods which are not subject matter of investigation and/or which are otherwise not the subject matter of the Bills of Entry as set out in paragraph 23 of the reply filed on behalf of the Respondents, the same cannot be kept detained. The Respondents need to take an appropriate decision in that regard as expeditiously as possible, intimating the Petitioner either the decision to release the said goods for the purpose of re-export or otherwise as may be permissible in law. Let such decision be taken within a period of three weeks from today, after hearing the petitioner. In the light of the above discussion, further adjudication of this petition is not called for.

10. All contentions of the parties are expressly kept open.

11. Petition is disposed of in the above terms. No costs.

12. Parties to act on an authenticated copy of this order.

[JITENDRA JAIN, J.] **[G. S. KULKARNI, J.]**