IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1580 OF 2024

Anu Products Ltd. … Petitioner

Versus

1. Union of India, through its Secretary,
Ministry of Law and Justice, Department
of Legal Affairs, Bench Secretariat, Aaykar
Bhavan Axxexe, 2^{nd} Floor, New
Marine Lines, Mumbai – 400 020.

2. Assistant Commissioner of Customs (NS-I), … Respondents
Import Bond Section C-304,
JNCH, Nhava Sheva, Uran, Raigad – 400 707

3. Commissioner of Customs, NS-I,
Import Board Section, Bond Department,
C-304, JNCH, Nhava Sheva, Uran,
Raigad- 400 707

Mr. Anupam Dighe a/w Ms. Chandni Tanna, Mr. Prathamesh Chavan i/b India Law Alliance, for the Petitioner.
Mr. Karan Adik a/w Mr Dhananjay B. Deshmukh, for Respondents.

CORAM: G. S. KULKARNI & FIRDOSH P. POONIWALLA, JJ.
DATED: 13 March 2024

Oral Judgment :- (Per G. S. Kulkarni, J.)

1. Rule. Rule made returnable forthwith. Respondents waive service. By consent of the parties, heard finally.

2. The petitioner has invoked the jurisdiction of this Court under Article 226 of the Constitution being aggrieved by a recovery being initiated against the petitioner by the respondents, in seeking to enforce a demand notice dated 8 August 2013 issued under Section 72(1) of the Customs Act, 1962 (for short 'the Customs Act') in respect of four Bills of Entries. For almost five years from the date of issuance of the said notice, no concrete measures were adopted by the respondents as per the provisions of Section 72(1) read with 61 of the Customs Act. However, in the year 2018 in relation to the alleged recoveries an alert being Alert No. 20663 dated 23 March, 2018 was inserted which was to the following effect:-

> *"existing warehousing bond is pending for closure even after expiry for want of payment of duty or furnishing of Bank Guarantee for compliance".*

3. The case of the petitioners is that the demand notice dated 8 August 2013 was rendered unenforceable, as also the bond which was furnished by the petitioner to the respondents, for warehousing purposes, itself had expired and accordingly was unenforceable, as per the provisions of Section 59 of the Customs Act. It is contended that for such reason the demand notice dated 8 August 2013 and the impugned Alert could not have been foisted on the petitioner, so as to give effect to the old demand, which even otherwise had become redundant.

4. It is on the above premise, the present petition is filed praying for the following reliefs:

> *"a) That this Hon'ble Court may issue a Writ of Certiorari or an appropriate direction or order calling for the records of the Petitioners' case to go into the legality and propriety thereof and thereafter to quash and set aside the Impugned Demand Notices, Notices under section 72(2) of the Act, Notice dated 24.01.2024 and the said Alert. (Exhibit "B,I2" hereto)*
>
> *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 Respondent No.2, their servants, subordinates and agents to:*
>
> > *(i) withdraw the Impugned Demand Notices, Notices under Section 72(2) of the Act, Notice dated 24.01.2024 and the said Alert;*
> >
> > *(ii) To issue detention cum demurrage waiver certificate in respect to the live consignments lying at Nhava Sheva Port imported by the Petitioner.*
>
> *c) That this Hon'ble Court may be pleased to stay the operation of the Alert and injunct the Respondents from taking steps in furtherance thereof by way of seeking recovery of the duty and interest demanded thereby or any part of the aforesaid;*
>
> *d) Pending the hearing and final disposal of the present Writ Petition, Respondent Nos.2 and 3 be directed to grant an extension of the NOC for the clearance of consignments imported and subsequent imports by the Petitioner under IEC No.0592050921.*
>
> *e) For interim and ad-interim reliefs in terms of prayer clause (c) and (d) above;*
>
> *f) For costs;*
>
> *g) That such further and other reliefs in the nature and circumstances as the case may require."*

5. The relevant facts can be noted: Between the year 2005 and 2010 four warehouse Bills of Entry were filed by the petitioner, out of which in respect of

Bill of Entry No.926172 dated 29 July 2005, goods namely Pesticides and Agrochemicals ("Goods") were fully cleared. Insofar as the remaining three Bills of Entries were concerned, goods were partially cleared.

6. It is also the petitioner's case that between the period of 2010 to 2018, petitioner had imported similar goods, which came to be cleared and no alert was inserted, although the said goods under the bills of entry which pertained to the prior period had partially remained to be cleared.

7. On such backdrop, on 23 March 2018 in regard to the uncleared goods (subject matter of the Bills of entry for the period 2005 and 2010) in respect of which the respondents have raised the demand notice dated 8 August 2013, an Alert No.2063 came to be inserted, with the noting as referred by us hereinabove. After such alert was issued, the petitioner by its letter dated 12 November 2019 informed the respondents that in respect of the goods which had remained to be cleared being subject matter of the three bills of entries, the petitioner had relinquished its title over such goods. It is the petitioner's case that after such letter was received by the respondent, subsequent imports from the petitioner were allowed to be cleared. However, in December 2022 when the petitioner again imported same goods although such goods for some period were put on hold, on the petitioner pointing out the relevant facts in relation to the pending demand, the petitioner's request for clearance of the goods was accepted thereby the goods subject matter of five fresh Bills of entries were permitted to be cleared on 18 May 2023.

8. It is on the above backdrop to resolve the issues on the alert so inserted, the petitioner made a representation to the respondents requesting that a NOC be granted for clearance of the live consignments which were sought to be imported. Such representation came to be granted and an NOC was received on 25 July 2023 as also the clearance of the goods was granted till 24 October 2023.

9. It is the petitioners case that on 23 October 2022 and 9 January 2024, when the earlier request for removal of the Alert was pending consideration of the respondents, further request came to be made by the petitioner for a no-objection to be granted in relation to the petitioner's imports.

10. By the impugned letter dated 25 January 2024 issued by the Assistant Commissioner, the petitioner was informed that the petitioner's request for removal of the alert cannot be considered, since duty was not paid on the old uncleared consignments and that further NOC shall not be granted to the petitioner. The said letter is required to be noted, which reads thus:

> *"To,*
> *M/s. Anu Products Ltd.*
> *23/B Amco House, Ansari Road*
> *New Delhi, 110020*
> *Sir,*

> ***Subject: Request for Personal Hearing to M/s Anu Products (IEC N. 0592050921) vide B/E no's dtd. 29.07.2005 and 714827 dtd. 29.06.2010 in respect of the Application dated 22.06.2023 for removal of alert placed on IEC.***
>
> *Please refer to your letter dated 09.01.2024 on the subject mentioned above.*
>
> *It is informed that before the expiry of Bond Period you have not approached for relinquishment for the above goods. Even after expiry of Bond Period you have not applied for extension of Bond Period.*
>
> *In the instant case the bond period has already been expired and you have not sought extension from the competent authority. Thus, it appears that contravention/offence under section 59(1) and section 61 of CA, 1962 has been committed by you.*
>
> *Under section 68 of CA, 1962 it is mentioned that owner of warehoused goods is not allowed to relinquish its title to such goods reading which an offence appears to have been committed under this Act or any other law for time being in force. The demand notice were also issued to you way back in 2013 for time expired bonds, hence you are liable to pay applicable duty and interest.*
>
> ***Further request for removal of alert shall not be considered since demand notice has already been issued for contravention of the section 59(1) and section 61 of CA, 1962 and till date no duty and applicable interest has been paid by you.***
>
> *As you have already taken two times NOC dt.18.05.2023 and 25.07.2023 for clearing live consignments. The competent authority has not granted further NOC for clearing live consignments and directed you to comply the warehouse regulations and pay as per notices issued to you (copy enclosed).*
>
> (emphasis supplied)

11. Thereafter, on 29 January 2024, the respondents by an e-mail addressed to the petitioner, served a further demand notice under Section 72(2) which was dated 11 December 2023, this, although the earlier demand notice dated 8 August 2013 itself was not pursued and / or according to the petitioner, such notice had lapsed. It is in these circumstances, the petitioner had approached this Court praying for the reliefs as noted by us hereinabove.

12. We had heard the proceedings on 8 February 2024, when the petitioner contended that a fresh live consignment was sought to be imported by the petitioner, and it is in such context, it was the petitioner's case that the impugned order would be pressed against the petitioner and a no-objection would not being issued. However, respondent Nos.2 and 3 on instructions made a statement before the Court that the department would issue a No-objection certificate to the petitioner for clearance of the live consignment. Such consignment was accordingly cleared. Our order dated 8 February 2024 reads thus:

> *"1. Learned counsel for respondent nos.2 and 3, on instructions, makes a statement that the department would issue a No Objection Certificate to the petitioner for clearance of the live consignment subject matter of the petition. We accept the statement.*
>
> *2. Insofar as the issue of alert and other connected issues in that regard, the parties would be heard on the adjourned date of hearing.*
>
> *3. Stand over to **13 February, 2024**."*

13. Reply affidavit of Mr. G.V.S.S. Sharma, Assistant Commissioner of Customs opposing the petition is placed on record. The primary contention urged in the reply affidavit is in regard to the demand as raised by the department dated 8 August 2013 which was pending against the petitioner and for such reason applying the provisions of Section 59 read with Section 72, the action of the respondents in inserting an Alert is sought to be justified.

14. It is on the above backdrop, we have heard learned counsel for the parties.

15. The primary issue which falls for our consideration is as to whether in the facts and circumstances of the case, the respondents are justified in foisting on the petitioner a recovery under the demand notices dated 8 August 2013 and the reiteration of the impugned demand by a further notice issued under Section 72(2) of the Customs Act dated 11 December 2023, and in such context, whether the action of the respondents to insert the impugned "Alert" would be justified.

16. To appreciate the rival contentions, it would be necessary to note the relevant provisions of the Customs Act, namely the provisions of Section 59, 60, 61, 72. The said provisions reads thus:

> ***"Section 59. Warehousing bond.***
>
> *(1) The importer of any goods in respect of which a bill of entry for warehousing has been presented under section 46 and assessed to duty under section 17 or section 18 shall execute a bond in a sum equal to thrice the amount of the duty assessed on such goods, binding himself–*
>
> *(a) to comply with all the provisions of the Act and the rules and regulations made thereunder in respect of such goods;*
> *(b) to pay, on or before the date specified in the notice of demand, all duties and interest payable under sub-section (2) of section 61; and*

(c) to pay all penalties and fines incurred for the contravention of the provisions of this Act or the rules or regulations, in respect of such goods.

(2) For the purposes of sub-section (1), the Assistant Commissioner of Customs or Deputy Commissioner of Customs may permit an importer to execute a general bond in such amount as the Assistant Commissioner of Customs or Deputy Commissioner of Customs may approve in respect of the warehousing of goods to be imported by him within a specified period.

(3) The importer shall, in addition to the execution of a bond under sub-section (1) or sub-section (2), furnish such security as may be prescribed.

(4) Any bond executed under this section by an importer in respect of any goods shall continue to be in force notwithstanding the transfer of the goods to another warehouse.

(5) Where the whole of the goods or any part thereof are transferred to another person, the transferee shall execute a bond in the manner specified in sub-section (1) or sub-section (2) and furnish security as specified under sub-section (3).]

Section 60. Permission for removal of goods for deposit in warehouse

(1) When the provisions of section 59 have been complied with in respect of any goods, the proper officer may make an order permitting removal of the goods from a customs station for the purpose of deposit in a warehouse:

[PROVIDED that such order may also be made electronically through the customs automated system on the basis of risk evaluation through appropriate selection criteria.]

(2) Where an order is made under sub-section (1), the goods shall be deposited in a warehouse in such manner as may be prescribed.]

Section 61. Period for which goods may remain warehoused

(1) Any warehoused goods may remain in the warehouse in which they are deposited or in any warehouse to which they may be removed,—

(a) in the case of capital goods intended for use in any hundred per cent. export oriented undertaking or electronic hardware technology park unit or software technology park unit or any

warehouse wherein manufacture or other operations have been permitted under section 65, till their clearance from the warehouse;

(b) in the case of goods other than capital goods intended for use in any hundred per cent. export oriented undertaking or electronic hardware technology park unit or software technology park unit or any warehouse wherein manufacture or other operations have been permitted under section 65, till their consumption or clearance from the warehouse; and

(c) in the case of any other goods, till the expiry of one year from the date on which the proper officer has made an order under sub-section (1) of section 60:

PROVIDED that in the case of any goods referred to in this clause, the Principal Commissioner of Customs or Commissioner of Customs may, on sufficient cause being shown, extend the period for which the goods may remain in the warehouse, by not more than one year at a time:

PROVIDED FURTHER that where such goods are likely to deteriorate, the period referred to in the first proviso may be reduced by the Principal Commissioner of Customs or Commissioner of Customs to such shorter period as he may deem fit.

(2) Where any warehoused goods specified in clause (c) of sub-section (1) remain in a warehouse beyond a period of ninety days from the date on which the proper officer has made an order under sub-section (1) of section 60, interest shall be payable at such rate as may be fixed by the Central Government under section 47, on the amount of duty payable at the time of clearance of the goods, for the period from the expiry of the said ninety days till the date of payment of duty on the warehoused goods:

PROVIDED that if the Board considers it necessary so to do, in the public interest, it may,—

(a) by order, and under the circumstances of an exceptional nature, to be specified in such order, waive the whole or any part of the interest payable under this section in respect of any warehoused goods;

(b) by notification in the Official Gazette, specify the class of goods in respect of which no interest shall be charged under this section;

(c) by notification in the Official Gazette, specify the class of goods in respect of which the interest shall be chargeable from the date on which the proper officer has made an order under sub-section (1) of section 60.

Explanation.—For the purposes of this section,—

(i) "electronic hardware technology park unit" means a unit established under the Electronic Hardware Technology Park Scheme notified by the Government of India;

(ii) "hundred per cent. export oriented undertaking" has the same meaning as in clause (ii) of Explanation 2 to sub-section (1) of section 3 of the Central Excise Act, 1944; and

(iii) "software technology park unit" means a unit established under the Software Technology Park Scheme notified by the Government of India.]

Section 72. Goods improperly removed from warehouse, etc.

(1) In any of the following cases, that is to say,—

(a) where any warehoused goods are removed from a warehouse in contravention of section 71;
(b) where any warehoused goods have not been removed from a warehouse at the expiration of the period during which such goods are permitted under section 61 to remain in a warehouse;
[(c) where any warehoused goods have been taken under section 64 as samples without payment of duty;]

(d) where any goods in respect of which a bond has been executed under [section 59 [x x x]] and which have not been cleared for home consumption or [export] are not duly `
counted for to the satisfaction of the proper officer,

the proper officer may demand, and the owner of such goods shall forthwith pay, the full amount of duty chargeable on account of such goods together with [interest, fine and penalties] payable in respect of such goods.

(2) If any owner fails to pay any amount demanded under sub-section (1), the proper officer may, without prejudice to any other remedy, cause to be detained and sold, after notice to the owner (any transfer of the goods notwithstanding) such sufficient portion of his goods, if any, in the warehouse, as the said officer may [deem fit]."

(emphasis supplied)

17. Section 59 falls under Chapter IX which makes provisions for "Warehousing of the goods". Section 59 provides for a "Warehousing bond" to be furnished by the importer. Section 61 provides for "Period for which goods may remain warehoused" and inter alia ordain that any warehoused goods may remain in the warehouse, in which they are deposited or in any warehouse to which they may be removed *inter alia* in respect of category of goods as specified in clauses (a) to (c) of sub-section (1). Clause (c) provides that in the case of goods other than those falling under clause (a) & (b) of sub-section (1) till the expiry of "one year" from the date on which the proper officer has made an order under sub-section (1) of Section 60, being the order / permission for removal of the goods, for deposit in the warehouse. Section 72 is the provision as relied by the respondents, which provides for "Goods improperly removed from warehouse". It provides that in any of the cases as specified in clauses (a) to (d) of sub-section (1), the proper officer may demand, and the owner of such goods shall forthwith pay, the full amount of duty chargeable on account of such goods, together with interest, fine and penalties payable in respect of such goods.

18. Insofar as the present proceedings are concerned, clause (b) of sub-section (1) of Section 72 is being applied by the Revenue, which pertains to the warehoused goods which have not been removed from the warehouse, at the expiration of the period during which such goods are permitted under section 61 to remain in a warehouse. In fact, the demand notice dated 8 August 2013 was issued under sub-section (1) of Section 72 and the demand notice dated 11 December 2023 as impugned is also issued under Section 72 (2) of the Customs Act. The other provision as sought to be relied on behalf of the respondents is Section 142 of the the Customs Act, which provides for "Recovery of sums due to Government". It is a general provision falling under Chapter XVII (Chapter providing for 'Miscellaneous' provisions).

19. Having noted the statutory scheme in regard to the recovery of the amounts in respect of goods warehoused and as relevant in the present context, we may observe that it is not in dispute that there were four bills of entries of the year 2005 and 2010 in respect of which goods were partially cleared and some / balance goods part of the said bills of entry had remained to be cleared and were warehoused. The case of the petitioner is that for certain reasons the goods could not be cleared and removed from the warehouse. In such circumstances, the petitioner has contended that although the demand notice dated 8 March 2013 was issued to the petitioner, the same was not acted upon for a substantial period of time, and what was sought to be done by the respondents was to insert a alert after about five years that is on 23 March 2018, which was certainly not a step to execute the demand notice issued under

Section 72(1). Having not executed the demand notice dated 8 August 2013 after almost 10 years, a fresh notice under Section 72(2) of the Customs Act, being the impugned notice, came to be issued on 11 December 2023.

20. It is thus not in dispute that the bill of entry qua the uncleared goods is dated 14 June, 2010. The bond Number and date has also been provided, which is dated 23 March, 2010. The expiry date of the bond is 22 March, 2011. It would be appropriate to note the impugned notice issued under Section 72(2), which reads thus:

"Date-11.12.2023

Notice under Section 72(2) of The Customs Act, 1962

"To,
M/s. Anu Products Ltd.
23/B Amco House, Ansari Road
New Delhi, 110020

Ref: Demand Notice u/s 72(1) of Customs Act, 1962 dated 08.08.2023.

Description of Goods	:-	DIMETHORR 98 %
Quantity	:-	94
Bill of Entry No. & Date	:-	688691/14.06.2010
Bond No. & Date	:-	MS01-661248/23.03.2010
Bond Expiry Date	:-	22.03.2011

Whereas demand notice of even no. dated 08.08.2013 calling upon you to pay within 15 days duty amount Rs.658640/- and interest accrued thereon, was issued to you on 08.08.2013 (Copy attached).

That the above said demand notice was acknowledged by you in person/through your agent/dispatched by registered post.

That the demand made under section 72(1) of the Customs Act, 1962 in the aforesaid demand notice has not been discharged by you nor any communication received in this regard from you till date.

> Now in exercise of powers conferred upon me under section 72(2) of the customs Act, 1962. I here by call upon you to pay the duty of Rs. 658640/- accrued thereon as demanded vide above mentioned demand notice within 15 days. In this regard, you are directed to pay the above duty within 15 days of issuing the notice falling to comply with the above notice your alert against IES 0592050921 would not be removed. As you have already taken two times NOC dt. 18-05-2023 & 25.07.2023 for clearing live consignment. The competent authority has not granted further NOC for clearing live consignment and has directed you to comply the warehouse regulations & pay as per notices issued to you.
>
> The receipt of this notice may be acknowledged."

21. From a bare perusal of the aforesaid notice, it is clearly seen that after issuance of the demand notice dated 8 August 2013, which were four demand notices, in respect of four bills of entries, only in respect of one bill of entry, the impugned notice under Section 72(2) has been issued without any action being taken to recover any duty as subject matter of the earlier demand notices. There is no explanation whatsoever coming forth, in regard to the inaction on the part of the Customs officers in enforcing the earlier notice during the period 2013 to 2023, for any recovery that is under the demand notice dated 8 August 2013. We may thus observe that a fresh notice under Section 72(2) could not have been issued, when the earlier notice dated 8 August 2013 itself was not acted upon and/or was given up. This would be for more than one reason. In the present facts the petitioner had categorically informed the concerned officer of the respondents, by its letter dated 12 November 2019 that the petitioner had relinquished its title over the remaining goods and subject matter of the demand notice. Once such a position was taken by the petitioner and made clear to the department, it was clearly open to the respondents to proceed in accordance with law and deal with the goods, although, such course of action was immediately and always available with the customs officers immediately after the demand notices dated 8 August 2013 was issued to the petitioner under Section 72(1) of the Customs Act, on which the officers did nothing.

22. It is also evident from the contents of the demand notice dated 8 August 2013 when it categorically recorded that the consequence of failure to comply with the directions to pay the amounts would render the goods liable "to detention and sale", in terms of the provisions of Section 72(2) of the Customs Act. There was definitely a failure on the part of the petitioner to make the payment as directed by the such notice, being the payment which was required to be made within three days from the date of receipt of the said notice from the respondent dated 8 August 2013. It was thus available for the respondents to proceed in accordance with law and dispose of the goods.

23. It is thus difficult to accept that in such situation the law would permit the respondents to issue a fresh notice, when the earlier demand notice dated 8 August 2013 itself was not acted upon and/or had stood lapsed, as no action was taken for a period of 10 years. Such a course of action would also not to be permissible from the reading of the provisions of Section 72(2) and more particularly from a cumulative reading of Sections 59, 61 and 72 of the Customs Act, which we have noted hereinabove.

24. There is another issue and more fundamental, which is required to be addressed, namely, that a bond as per the provisions of Section 59 of the Customs Act which was furnished by the petitioner which according to the petitioner was valid for a period upto 22 March 2011. Hence during the subsistence of the bond, it was permissible for the respondents to foist the impugned recovery against the petitioner. However, after the same had lapsed, it was not permissible for the respondents to impose a recovery which would be alien to the provisions of the Customs Act, when the respondents had resorted to take recourse to the provisions of Section 72. In our opinion, the bond had clearly become unenforceable not only by considering the terms of the bond but also for the future period, as the law would make the unenforceable, as no recovery could be resorted under such bond after a period of three years from its execution, considering the provisions of Section 29 of the Limitation Act, 1963, which reads thus:

Description of suit	Period of limitation	Time from which period begins to run
On a single bond, where no such day is specified.	Three years.	The date of executing the bond.

25. Thus, any action to recover the amounts under a bond even otherwise would be within the period of three years from the date of execution of the bond. The bond in question was a single bond executed on a specified date wherein according to the Customs date was not specified in regard to making any payment under the said bond to the respondent. On such count also, although the provision of Section 59 was available to be appropriately considered and complied at the appropriate time by the Customs officers, after the petitioner furnished such a bond, however as the concerned Customs officials having failed to take action to execute the bond, within its prescribed limitation, by operation of law the bond had became un-executable and no action could have been taken thereunder. Certainly any claim under the bond even otherwise would be a deadwood and not enforceable.

26. The above discussion would lead us to conclude that once the recovery under the demand notices dated 8 August 2013 issued under Section 72(1)(b) itself, was rendered redundant, a recovery under the impugned notice dated 11 December 2023 would not have been foisted upon the petitioner. Consequently, any attempt on the part of the respondents to recover such amounts by the impugned Alert notice dated 23 August 2018, and which was reiterated in the impugned communication dated 24 January 2018 would also be required to be held to be illegal and invalid.

27. Further, in our considered opinion, even under the provisions of Section 142 which is a provision for recovery of sums due to Government, in the facts of the present case, the impugned Alert could not have been issued and / or foisted on the petitioner when the respondents intend to justify the same under the said provision.

28. As a result of the above discussion, the petition needs to succeed. It is accordingly allowed in terms of prayer clause (a).

29. Rule is made absolute in the above terms. No costs.

(FIRDOSH P. POONIWALLA, J.) **(G. S. KULKARNI , J.)**