IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 87 OF 2024

Calpro Specialities Pvt. Ltd. ...Petitioner
Vs.
Union of India & Ors. ...Respondents

AND
WRIT PETITION NO. 713 OF 2024

Nutarno Foods LLP ...Petitioner
Vs.
Union of India & Ors. ...Respondents

AND
WRIT PETITION NO. 15702 OF 2023

Ankush Enterprise ...Petitioner
Vs.
Union of India & Ors. ...Respondents

Mr. Prakash Shah with Mr. Jas Sanghavi i/b. PDS Legal for Petitioners.
Ms. Sangeeta Yadav for Respondents.

CORAM: G. S. KULKARNI & FIRDOSH P. POONIWALLA, JJ.

DATE: 17 APRIL, 2024.

P.C.

1. We have heard learned counsel for the parties.

2. These are three petitions wherein the reliefs, which are prayed for, are similar. For convenience, we note the prayers as made in Writ Petition No. 87

of 2024 (Calpro Specialities Pvt. Ltd. Vs. Union of India & Ors.) which read thus:-

> "a. that this Hon'ble Court be pleased to issue a Writ of Mandamus or a writ in the nature of Mandamus or any other writ, order or direction under Article 226 of the Constitution of India ordering and directing the Respondent no.3 to forthwith (i) finalize provisional assessment of the 11 Bills of Entry (detailed in Exhibit "A1"); (ii) return the Bank Guarantees furnished by the Petitioner at the time of provisional assessment, duly discharged and cancelled (detailed in Exhibit "A1") and (iii) finally assess the cocoa powder to be imported by the Petitioner;
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> b. Pending the hearing and final disposal of the above petition, this Hon'ble Court be pleased direct by an interim order and injunction to forthwith (i) return Bank Guarantees provided by the Petitioner at the time of provisional assessment duly discharged and cancelled and (ii) permit provisional assessment for future imports against the Bond of the Petitioner without any security.
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> c. pass such order or further orders as may be deemed just and proper by this Hon'ble Court in the facts and circumstances of the case."

3. It is not in dispute that the petitioners are regularly importing alkalized cocoa powder from Indonesia. The present petition concerns the bills of entries the details of which are set out in Exhibit A-1 of each of these petitions. The suppliers are unrelated parties. In so far as the first petition is concerned, the goods in question had reached Jawaharlal Nehru Port Trust at Nhava Sheva between July 2023 to November, 2023 when the bills of entries in question were presented. In so far as the other petitions are concerned, the details of the bills of entries are also set out in Exhibit A-1 of these petitions. The goods covered under the said bills of entry were provisionally assessed by the respondents on the condition of the petitioner submitting a bond and bank guarantees of 100% of differential duty. According to the petitioners in all the petitions, they had submitted relevant documents along with certificates of origin of the goods. The petitioners also submitted the bank guarantee of 100% of differential duty of customs for provisional clearance of the goods. However, despite satisfying all the requirements, the contention of the petitioners is that the respondent is not undertaking the exercise of finalizing the provisional assessments of the bills of entry in question and to thereafter return the bank guarantees, as furnished by the petitioners at the time of provisional release of the goods. It is submitted that such inaction on the part of respondent no.3 is causing serious prejudice to the petitioners, as for an indefinite period the bank guarantees cannot be retained and on such imports. It is also the petitioners contention that a demand of bank guarantees cannot be a routine affair and the assessment needs to be finalized. It is submitted that the impugned action on the part of the respondents is in violation of Article 19(1) (g) and Article 300A of the Constitution of India.

4. A reply affidavit has been filed on behalf of the respondents opposing the petitions. The primary contention as urged by Ms. Yadav, learned counsel for the respondents by drawing our attention to the reply affidavit, is as to what has been set out in paragraph 10 of the reply affidavit, which is to the effect that respondent no.3 has not yet received the verification report from the issuing country and that the matter is being pursued with the country of origin issuing authority in the exporting country through Directorate of International

Customs, CBIC. It is stated that once the verification request has been sent, the bills of entries could be finalized only after receipt of the verification report, as these are matters which are under Section 28DA of the Customs Act, 1962 and circular no. 38 of 2020 dated 21 August, 2020 as amended by circular no. 42 of 2020 dated 29 September, 2020, there are other contentions as urged in the reply affidavit.

5. Having heard learned counsel for the parties and having perused the record, we may observe that although such stand has been taken by the respondents in the reply affidavit, however, a deficit memo of any nature was furnished to the petitioners. The internal processes which have been undertaken by respondent no.3 cannot take indefinite time. They are required to be concluded as expeditiously as possible and more particularly when the petitioner has complied all the conditions in regard to the provisional release of the goods.

6. Thus, in the facts and circumstances of the case once all the documents as called upon by the designated officer were submitted by the petitioners including the submission of the certificates of the country of origin (in some of the cases), and if any further compliances were required to be fulfilled by the petitioner, in that case, respondent no.3 ought to have issued a specific communication calling upon the petitioner to submit such documents/compliances. In absence of any such action being taken coupled by a decision not being taken to finalize the bills of entries, would fall into the realm of arbitrariness, as also abdication of duties by the concerned officers of the department.

7. In the aforesaid circumstances, we are of the opinion that the petition needs to be disposed of keeping open all contentions of the parties, by directing respondent no.3 to finalize the bills of entries in each of the petitions, which shall be completed within four weeks from today. If any further documents are required to be submitted by the petitioner, the same be called upon to be submitted within a period of one week from today.

8. Needless to observe that in the event the provisional assessments are finalized and there is no requirement of bank guarantees to be maintained, the same be returned to the petitioners subject to final orders being passed on the assessment of the bills of entries.

9. Disposed of in the above terms. No costs.

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