



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.6520/2024

<u>PETITIONER :</u>	Asian One Pvt Limited A company incorporated under the laws of Singapore, having its registered address at Unit 11-12, tong Engineering Building, 101 Cecil Street, Singapore, 069533 through its Authorized Representative Mr. Santosh Raja, residing 52 B, 2 nd Main Road, P.T.C. Quarters, Oggiam Thuraipakkam, Kancheepuram, Tamil Nadu – 600 097.
<u>...VERSUS...</u>	
<u>RESPONDENTS :</u>	1. The Commissioner of Customs Office of the Commissioner, Customs Commissionerate, GST Bhavan, Telangkhedi Road, Civil Lines, Nagpur – 40001, Maharashtra.
	2. The Assistant Commissioner of Customs Inland Container Depot, Wardha, Bhugaon Link Road, Near Uttam Value Steels Ltd., Wardha 442 001, Maharashtra.
	3. Worlds Window Wardha Infrastructure Pvt. Ltd., Inland Container Depot, Bhugaon Link Road, Near Uttam Value Steels Ltd., Wardha 442 001, Maharashtra and having its Registered Office at 25, DSIIDC Shed Scheme – 2, Okhla Industrial Area, Phase II, New Delhi 110 020.

	4. A P Moller – Maersk a Company registered in Denmark and having its registered office at Esplanaden 50, Copenhagen K, 1263 Denmark and represented by its Agents, Maersk Line India Private Limited, the Indian Agents and a subsidiary company of A P Moller-Maersk, having its registered office at Unit no.401 & 402, Godrej Two, Pirojshanagar, Eastern Express Highway, Vikhroli (East), Mumbai - 400079 and correspondence address at APMT India Pvt. Ltd., k Block No.5-18, Sector 6, Dronagiri Warehousing Complex, Navi Mumbai – 400707.
	5. Vrisa Minerals Private Limited 3rd Floor, Shop No.310, Infinity Business, Park Vyapar Vihar, Bilaspur through Director. (R.-5 added vide order dt. 25.10.2024)

Mr. V.S. Sridharan, Senior Advocate a/b Mr. Darshan Mehta, Mr. Aditya Mapra and
Mr. A.M. Sudame, Advocates for petitioner
Mr. S.N. Bhattad, Advocate for respondent Nos.1 and 2
Mr. Akshay A. Naik, Senior Advocate a/b Mr. P.S. Kadam, Advocate for respondent No.3
Mrs. R.S. Sirpurkar, Advocate for respondent No.4
Mr. A.B. Patil, Advocate a/w Mr. Raunak Kurani, Advocate for respondent No.5

**CORAM : AVINASH G. GHAROTE AND
ABHAY J. MANTRI, JJ.**

Date of reserving the judgment : 17/12/2024
Date of pronouncing the judgment : 13/01/2025

J U D G M E N T : (PER : AVINASH G. GHAROTE, J.)

1. Heard. Rule. Rule made returnable forthwith with the consent of the learned Counsels for the respective parties.

2. Heard Mr. V.S. Sridharan, learned Senior Counsel for the petitioner; Mr. S.N. Bhattad, learned counsel for the respondent Nos.1 and 2; Mr. Akshay A. Naik, learned Senior Counsel for the 5 respondent No.3 along with Advocate Mr. P.S. Kadam; Mrs. R.S. Sirpurkar, learned counsel for the respondent No.4 and Mr. A.B. Patil, learned counsel for the respondent No.5.

3. The petitioner seeks a writ of mandamus for issuing a direction to the respondent Nos.1 to 3 to recall the permission 10 granted by them to the respondent No.3 to proceed with the auction of the Cargo under the bills of lading bearing Nos.MAEU 222568555, MAEU 222568576 and MAEU 222568540 and so also the auction notice in that regard. It also seeks a writ of mandamus to direct the respondent Nos.1 to 4 to reship the Cargo i.e. 1263.880 MPS of Steel 15 Scrap ISRI – 211 – Grade under the aforesaid bills of lading, which are now lying with the respondent No.3, at Wardha and reship the same to the port at Singapore. It also seeks a declaration that the auction conducted by the respondent no.3 in which the bid of the

respondent No.5 has been accepted is illegal and liable to be set aside. In the alternative, a direction is sought to the respondent No. 3 to hand over the entire sale proceeds of the Cargo to the petitioner, unconditionally and free of all lien, including payment of container detention charges, cargo demurrage charges or auction charges 5 payable or demandable by any of the respondents.

4. The facts leading to the present petition, as agreed to by Mr. V.S. Sridharan, learned Senior Counsel for the petitioner and Mr. Akshay Naik, the learned Senior Counsel for the respondent No.3 are summarized as under :

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Sr. No.	Date	Particulars	Ref.Annex./Pg.	PD F Pg.
1.	25.08.2022	Pursuant to an order placed by Petitioner (as buyer) with Maptrasco (as seller) under a Sale Contract dated 25.08.2022, a consignment of 1263.880 MTS of Shredded Steel Scrap ISRI 211 Grade (“ Cargo ”) was shipped by Gemini Corporation B.V. (“ Gemini ”) from the Port of Valencia, Spain to Jawaharlal Nehru Port, Mumbai, India (“ JNPT ”) by sea, and thereafter by rail to Respondent No.3’s ICD at Wardha (“ ICD Wardha ”), under three (3) Bill(s) of Lading (“ BL ”) issued by the Singapore based agents of Respondent No.4.	A1/ Pg. 81	92

2.	01.12.2022 & 02.12.2022	Three BL were issued by Singapore based agents of Respondent No.4 with the following details: -				A2/ Pg.89 A3/Pg. 101 A4/Pg. 113	100 112 124
		Sr. No.	Date of BL	BL No.	No. of Cont.	Qty. (Mts.)	
		1.	01.12.2022	222568540	20	506.880	
		2.	01.12.2022	222568576	20	504.720	
		3.	02.12.2022	222568555	10	252.220	
					Total:	1263.880	
3.	10.12.2022	Unbeknownst to the Petitioner, Respondent No.4 deliberately and fraudulently entered the name of a third party, one 'M/s. Rathi Iron and Steel Industries, Pithampur' in the import documents and while so doing, wrongfully entered the place of delivery as Dhannar, Madhya Pradesh in two of the Invoices.				A10 / Pg.149 Para 17 / Pg. 14	175 25
4.	21.12.2022	Prior to the arrival of the Cargo at JNPT, the Petitioner, in its capacity as the owner of the Cargo, had addressed an email to Singapore based agents of Respondent No.4, requesting for an amendment to the BL and import documents and that the Cargo be carried to an ICD in Malanpur, rather than ICD Wardha.				A5 / Pg.137	148
5.	21.12.2022	Vide their email, Singapore based agents of Respondent No.4 refused to make the amendment stating that custom import manifest had been filed at destination and requested Petitioner to contact Respondent No.4 for the same.				A5 / Pg.137	148
6.	04.01.2023	Petitioner once again addressed an email to Singapore based agents of Respondent No.4,				A6 / Pg.138	149

		requesting for issuing switch BL and for change in final destination from ICD Wardha to an ICD in Malanpur.		
7.	04.01.2023	Singapore based agents of Respondent No.4 responded stating that Import Manifest for all BLs was closed on 12.12.2022 and requested the Petitioner to approach Respondent No.4. Respondent No.4 cited another reason that after checking their systems, they had determined that the Cargo could not be delivered to an ICD in Malanpur as ICD in Malanpur was not available for transit from JNPT.	A6 / Pg.138 - 139	149 - 150
8.	04.01.2023	Import General Manifest (“IGM”) issued by Respondent No.4 for all three BL mentioning consignee as IOB, Maptrasco as first notify party and Petitioner as second notify party.	A8 / Pg.145	156
9.	05.01.2023	Sub-manifest Transshipment Permit was issued for all containers without the name of any Indian Consignee.	A9 / Pg.147	162
10.	05.01.2023	Vide their email, Asian One requested Maersk Spain to re-check as earlier goods were delivered at Malanpur. Copies of other BL evidencing Malanpur as place of delivery.	A7/ Pg.140 Pg. 141 - 144	151 152 - 155
11.	17.01.2023 to 09.03.2023	Respondent No.4 transported the Cargo in 50 (fifty) containers to ICD, Wardha. 50 Containers containing the Cargo arrived at ICD Wardha on the following dates: - 42 Containers – 17.01.2023 1 Container – 22.01.2023 6 Containers – 16.02.2023		

		1 Container – 09.03.2023 [Note: This was not to the knowledge of the Petitioner. The Petitioner learnt about the same much later, i.e. after it obtained a copy of the email dated 08.12.2023 addressed by Respondent No.3 to Maptrasco (Annexure 28 hereto).	A28 / Pg. 190 - 191	216 - 217
12.	17.04.2023	It appears that Respondent No.4 issued notice for NMB to Maptrasco. Maptrasco replied to Respondent No.4 (on behalf of the Petitioner, since Respondent No.4 was addressing email only to Maptrasco) stating that the Cargo was shipped to ICD Wardha without their knowledge or consent.	A11 / Pg. 159	185
13.	18.04.2023	Petitioner's agent received an email from Respondent No. 4, referring to a telephonic conference that it had with them, and requested for the following: 1. All three BL 2. Invoice 3. Packing List 4. Old BL 5. Revised BL 6. New Consignee IEC 7. MBL Consignee NOC from Singapore stating that no claim will be made in the future on Maersk. Respondent No.4, <i>inter alia</i>, stated that, ‘... with regards to amendment cost we would take it on us for detention and Wardha ground rent we would have to take approval from	A12 / Pg. 160	186

		<i>management not sure on 100% waiver but surely will do whatever best we can to support you. Lastly customs penalty is something that you need to take care at your end...?.</i>		
14.	26.04.2023	Petitioner as a response to the aforementioned Respondent No.4's e-mail, forwarded to them the letters/undertakings as required by the Respondent No.4.	A13 / Pg. 161	187
15.	04.05.2023	E-mail exchanged between the Petitioner, Respondent No.3 and Maptrasco regarding payment of ground rent etc.	1/Pur- sis dated 06.12. 2024	
16.	05.05.2023	Respondent No.4 addressed an e-mail to the Petitioner stating that: i. They will amend the IGM without any charges. ii. They will try their best to waive detention charges. iii. For Demurrage Charges Petitioner was asked to speak directly to Respondent No.4. iv. Customs / Penalty to be borne by consignee / customer.	A 14 / Pg. 164	190
17.	29.05.2023	Petitioner requested the Respondent No.4 for a complete waiver of the detention charges, IGM amendment charges and demurrage since the containers had been wrongfully carried to ICD Wardha, which was against the instructions of the Petitioner and that the CFS liability was in excess of the value of the Cargo, and hence requested for a waiver of 100% detention charges, IGM amendment charges and	A 15 / Pg. 165	191

		demurrage.		
18.	01.06.2023	Vide their e-mail, Respondent No.4 admitted to mishandling the Cargo by stating that: “ ... (4)The subject bookings were identified as having a foreign consignee at our pre-Manifest checks. (5)As we per Indian requirement only the Indian consignee or notify party was required to be presented on the bill of lading, we had sent communications with export teams to obtain the local consignee/notify party for these shipments. (6)Even after several follow-ups, we did not find any local customer details, and these shipments were retained on board as per the policy. (7)These shipments were rescheduled again for the imports to India, and again we did a follow up with the origin team but did not get the local customer details. (8)During the second manifestation, these shipments should have been returned to the origin countries, but the user handling these requests incorrectly added the shipments to the manifest instead of removing them, which led to an incorrect IGM manifestation. (9)These containers were 1st schedule to arriving in December on vessel Maersk	A 16 / Pg. 166	192

		Genao where while filing IGM we came across missing local consignee and we highlighted the same. However we did not get any revert from anyone and we raised the ROB and requested in.import team to raise the ISR with origin. (10)Later in January again these containers were loaded on vessel CAP SAN LAZARO without updating the details even after we raising the ROB and ISR in December. While working on the vessel user did highlighted these cases to Origin asking them to update the local consignee but still no one turned back with any revert. ...”		
19.	23.06.2023	Respondent No.3 appears to have written to the Respondent No.2 with regard to enlisting of the long staying import containers/cargo for auction under the above Bills of Lading, by referring to Maptrascos, Singapore as the consignee, and that till that date no one had filed the Bill of Entry to claim the Cargo and therefore, requested for permission to enlist the Cargo for auction as per the provisions contained in Section 48 of the Customs Act, 1962	A 17 / Pg. 167	193
20.	28.06.2023	Respondent No.4 addressed an email to the Petitioner, <i>inter alia</i> , stating that they would try extending the waiver on detention charges upto 50% on all the 3 (three) Bills of Lading, subject to approval from its management.	A 18 / Pg. 170	196
21.	09.08.2023	Respondent No.3 once again appears to have	A 19 / Pg.	197

		written to the Respondent No.2, requesting permission to enlist the Cargo for auction. The e-mail mentions that Respondent No.3 had sent an e-mail to the Respondent No.4 with a direction to them to contact the consignee and inform them to contact Respondent No.3, and since no one has come forward to file Bill of Entry and clear the Cargo, the Cargo should be auctioned.	171	
22.	18.08.2023	3 (three) Import Tax Invoice bearing Nos. 5067320301, 5067320302 and 5067320303 were issued by the Indian agents of Respondent No.4 to Petitioner towards various charges relating to the Cargo lying at ICD Wardha. 2 (two) of the said invoices incorrectly refer to Dhannar, Madhya Pradesh as the place of delivery of the Cargo, and only one invoice records ICD Wardha as place of delivery.	A 20 / Pg. 172	198
23.	18.10.2023	Respondent No.3 appears to have addressed an e-mail to Respondent No.4, requesting for an NOC to be addressed to Respondent No.2 for auction of the Cargo.	A 21 / Pg. 177	203
24.	30.10.2023	Letter from Custodian to Maersk requesting for NOC to auction the Cargo.	A 22 / Pg. 179	205
25.	11.10.2023 18.10.2023 26.10.2023 27.10.2023 31.10.2023 09.11.2023	Respondent No.3 seems to have addressed 6 (six) emails to Respondent No.4, requesting for details of importer and directing them to file Bill of Entry and to clear the cargo immediately and if there is no response from them, they will proceed as per the Act and auction the Cargo.	A 23 / Pg. 180	206
26.	06.11.2023 and 07.11.2023	Respondent No.3 seems to have addressed an e-mail on 06.11.2023 and a letter on	A 24 / Pg. 185	211

		07.11.2023 to the Respondent No. 4 enquiring whether they have contacted the importer and asked them to clear the Cargo.	A 25 / Pg. 186	212
27.	01.12.2023	Respondent No.3 appears to have written to the Respondent No.4 reiterating what it had stated in its earlier communications, and that if there was no response from the Respondent No.4 by 15.12.2023, the Cargo would be auctioned without further notice.	A 26 / Pg. 187	213
28.	01.12.2023	E-mail from Respondent No.2 to Maptrasco, enquiring with them if they are ready to clear the Cargo from ICD, Wardha and informing them that if there is no reply by 15.12.2023, the Cargo will be auctioned without further notice.	A 27 / Pg. 188	214
29.	06.12.2023	Letter by the Respondent No.2 (Customs) asking the Respondent No.3 to contact the notified party Maptrasco.	Pg 2/ Pursis dated 06.12. 2024	
30.	08.12.2023	Letter and E-mail from Respondent No.3 to Maptrasco informing that the cargo arrived at ICD Wardha on the following dates: - 1. 42 Containers – 17.01.2023 2. 1 Container – 22.01.2023 3. 6 Containers – 16.02.2023 4. 1 Container – 09.03.2023 Since, no one has claimed the Cargo till date, Maptrasco was called upon to clear the same by 15.12.2023 failing which the Cargo will be auctioned.	A 28 / Pg. 190	216
31.	13.12.2023	Reminder e-mail from Respondent No.2 to Maptrasco regarding the Cargo.	A 29 / Pg. 192	218
32.	21.12.2023	Letter from Respondent No.1 to Maersk seeking	A 30 /	220

		details / clarification as to why Cargo was shipped to ICD, Wardha instead of sending it back to Singapore and what steps has Maersk taken to rectify this wrong shipment.	Pg. 194	
33.	23.12.2023	Letter from Respondent No.3 to Maptrasco, directing them to clear the Cargo by 31.12.2023 failing which the Cargo will be auctioned.	A 31 / Pg. 195	221
34.	23.12.2023	E-mail from Respondent No.3 to Maptrasco, directing them to clear the Cargo by 31.12.2023 failing which the Cargo will be auctioned.	A 32 / Pg. 196	222
35.	23.12.2023	Letter from Respondent No.3 to the Assistant Commissioner, Special Investigation and Intelligence Branch, Customs (“ SIIB Customs ”) informing them that it had communicated with the Respondent No.4 as well as Maptrasco to clear of the Cargo, and that there was no response from them.	A 33 / Pg. 197	223
36.	01.01.2024	E-mail on behalf of the Respondent No.3 to Maptrasco reiterating the request to clear the cargo.	314	
37.	12.02.2024	Respondent No. 1 wrote to the Respondent No.3, referring to a letter dated 24.01.2024 and directed it to prepare a list of cargo lying unclaimed/un-cleared for initiating further action.	A 34 / Pg. 198	224
38.	19.02.2024	Respondent No.3 replied to the Assistant Commissioner, SIIB by furnishing the required information.	A 35 / Pg. 199	225
39.	01.03.2024 to 22.03.2024	Several correspondences appear to have been exchanged between the Assistant Commissioner, SIIB and Respondent Nos.1 to 3 with regards to auction of the Cargo lying at	A 36 / Pg. 201 to	227

		ICD Wardha and drawing of 10 % inventory from the Cargo.	A 40 / Pg. 205	231
40.	03.04.2024	Respondent No.1 wrote to the Respondent No.2, with a copy marked to the Respondent No.3, directing the Respondent No.2 to issue a notice to the importer under Section 48 of the Act, and to also initiate further action in terms of Para 3(vi) and 3(vii) of Circular No. 49/2018-Customs dated 03.12.2018.	A 41 / Pg. 209	235
41.	16.04.2024	Respondent No.2 directed Respondent No.3 to comply with the directions as set out in the aforementioned letter dated 03.04.2024.	A 42 / Pg. 210	236
42.	09.05.2024	Respondent No.3 wrote to Respondent No.2 informing that it had issued 3 (three) notices via e-mail to Maptrasco, to which there was no response from them, which had also been conveyed to the Respondent No.1, and that it had appointed a Government Approved Valuer, Shri Keshao R. Dudhe, Chartered Engineer, and was in the process of preparing a detailed inventory in his presence and would submit the same shortly to the Respondent No.2.	A 43 / Pg. 211	237
43.	15.05.2024	Petitioner had written to the Respondent No.2 informing them that the Petitioner is the owner of the Cargo and requested for their co-operation in clearing the same.	A 44 / Pg. 212	238
44.	15.05.2024 to 24.05.2024	In the interregnum, Petitioner was able to identify a potential buyer for the Cargo, resulting in several emails exchanged between the Indian Agents of Respondent No.4 and the Petitioner's proposed buyer.	A 45 / Pg. 214	240
45.	26.05.2024	Petitioner wrote to the Respondent No.2, seeking certain information as well as copies of	A 46 / Pg. 221	247

		certain documents i.e. the inter-se communication exchanged between Respondent Nos.1 to 3.		
46.	27.05.2024	Respondent No.1 wrote to the Petitioner herein requesting for certain documents pertaining to the Sales Contract dated 25.08.2022 entered into between the Petitioner and Maptrasco and certain other clarifications.	A 47 / Pg. 222	248
47.	28.05.2024	Petitioner vide its letter, provided all the documents and explanation sought by Respondent No. 1 vide its letter dated 27.05.2024.	A 48 / Pg. 224	250
48.	28.05.2024	Petitioner in an e-mail addressed to the Respondent No.3, referred to its visit to the ICD Wardha, and pointed out that since the original seals of all the 50 (fifty) containers had been removed, it was obvious that it had been tampered with, and therefore, sought for an explanation for the same. The Petitioner had also sought for an explanation, whether Respondent No.3 could guarantee that the condition of the Cargo was in its original state, owing to the tampering of the original seals. It also raised an issue with regard to the de-stuffing of its 5 (five) containers, and pointed out that the said containers had been tampered with without having secured the Petitioner's prior consent or concurrence.	A 49 / Pg. 243	269
49.	28.05.2024	Letter from Respondent No.1, calling upon the Petitioner to submit a bank certified copy of the documents that were requested for by the Respondent No.1.	A 50 / Pg. 244	270
50.	29.05.2024	Letter from Respondent No.2 with a copy	A 51 /	271

		marked to the Petitioner, and referring to the Petitioner's grievances regarding tampering of the original seals of the 50 (fifty) containers and directed the Respondent No.3 to submit a detailed explanation on an urgent basis.	Pg. 245	
51.	19.06.2024	Respondent No.1 addressed a letter to the Indian Agents of Respondent No.4 seeking clarifications as to why the import tax invoice mentions name of 'Rathi Iron and Steel Industries' as buyer when the Petitioner is claiming to be owner of the Cargo and that the same is contrary to the documents that has been filed by them.	A 52 / Pg. 246	272
52.	28.06.2024	Letter from Respondent No.2 to the Petitioner, forwarding the information and documents that were available with them.	A 53 / Pg. 247	273
53.	01.07.2024	Detailed representation from to the Respondent No.1 with a copy to the Respondent No.2, setting out the entire true and correct facts pertaining to this transaction, and while so doing pointed out the various fraudulent and illegal acts of omission and commission committed by the Indian Agent of Respondent No.4 in this regard, as well as set out its various grievances to the notice issued by the Respondent No.1 for auction of the Cargo. Under the circumstances, the Petitioner requested Respondent No.1 to direct the Respondent Nos.3 and 4 not to charge any detention/demurrage/ground rent on the Cargo and to waive the penalties, if any, under the Act for the delay in filing of the Bill of	A 54 / Pg. 248	274

[illegible]

		correct facts pertaining to the entire transaction. In the letter, the Petitioner has categorically stated that it had not received Respondent No.3's purported letter dated 05.07.2024. The Petitioner also called upon the Respondent Nos.1 and 2 not to initiate any steps to auction the Cargo belonging to the Petitioner. The Petitioner further requested that instructions be issued to the Respondent Nos.1 and 4 to reship the Cargo to Singapore.	258	
61.	08.08.2024	Letter from ICD, Wardha to Customs requesting for permission to auction the goods.	A 60 / Pg. 275	301
62.	09.08.2024	Letter from SIIB Customs to ICD Wardha, granting permission for auction of the Cargo.	A 61 / Pg. 276	302
63.	20.08.2024	The auction notice is uploaded/ published on MSTC Government website holding and conducting auctions for Authorities.		
64.	30.08.2024	Letter by the Respondent No.3 to the Respondent No.2 regarding submission of the valuation report Valuation Report at Pg.11/Pursis dated 06.12.2024.	Pg 10/ Pursis dated 06.12. 2024	
65.	04.09.2024	The Respondent No.5 submit its bid along with EMD of Rs.50,00,000/-.	Pg. 1 of Pur-sis of R/5	
66.	06.09.2024	Copy of the auction notice for auction of Petitioner's Cargo as available on the website of MSTC Ltd. Evidencing auction of the Cargo. That 6 parties participated in the said auction process and Vrisa Minerals Pvt. Ltd. (Respondent No.5) bid was accepted being the highest i.e. Rs.32,700/- per Metric Ton plus GST.	A 62 / Pg. 277 296	303
67.	09.09.2024	Respondent No.5 paid Rs.53,31,729.00. Letter by the Respondent No.3 to the	Pg 14/ Pursis	

		Respondent No.1 (Customs) informing that the Respondent No.5 emerged as the successful bidder in the auction.	dated 06.12.2024	
68.	18.09.2024	Respondent No.1 addressed a letter to Respondent No.4 <i>inter alia</i> observing that Respondent No.3 has not complied with the provisions laid down in the Circular No.49/2018-customs dated 03.12.2018 and thereby cancelled the auction to Respondent No.5 and directed Respondent No.3 to start auction process afresh.	A 64 / Pg. 286	
69.	20.09.2024	Respondent No.5 paid the full and final payment of auction Rs.3,89,21,687.00. Total amount paid by Respondent No.5 is Rs. 4,92,53,416.00. This is including IGST.	Pg 3 of Pursis of R/5	
70.	11.10.2024	Respondent No.5 issued mails to ICD Wardha to inform about the lifting of goods.	Pg 4- 5 of Pursis of R/5	
71.	17.10.2024	Apropos of the Respondent No.3's letter dated 18.09.2024 - Letter by the Respondent No.3 to the Respondent No.1 (Customs) clarifying that the auction was held in accordance with law.	Pg 18/ Pursis dated 06.12.2024	
72.	25.10.2024	In spite of the above, Respondent No.3 suppressed the said letter dated 18.09.2024 from this Hon'ble Court and made a false statement in its pursis that the cargo was already sold on 06.09.2024 <i>as per auction procedure.</i>	A 66 / Pg. 295	
73.	06.11.2024	Letter by the Respondent No.2 (Customs) to the Respondent No.3 granting approval for filing the Bill of Entry.	Pg 20/ Pursis dated 06.12.2024	
74.	20.11.2024	Respondent No.5 was informed to submit pollution certificate.		
75.	21.11.2024	Respondent No.5 informed that it is just a	Pg 6 of	

		trader and not a manufacturer of the goods. Hence, no pollution certificate is required by it. However, Respondent No.5 has sold the goods to one Evonith Value Steel Ltd., Wardha, who is the manufacturer and has the necessary pollution certificate.	Pursis of R/5	
76.	22.11.2024	That on the request of the Respondent No.5 Evonith Value Steel Ltd. supplied a copy of the pollution Certificate, which was submitted to Respondent No.3, which in turn submitted it to Customs. Letter by the Respondent No.3 to the Respondent No.2 submitting the Bills of Entry.	Pg 7-11 of Pursis of R/5 Pg 21/ Pursis dated 06.12.2024	
77.	23.11.2024	Respondent No.5 entered in to an agreement of sell and purchase in the respect of auction purchased goods with Evonith Value Steel Ltd., Wardha, whereby the entire goods are sold for Rs.5,36,87,074/- including GST. That one of the condition of the said agreement is that the goods are to be delivered in three stages on 09.12.2024, 12.12.2024 and 15.12.2024. If the goods are not delivered as per agreed terms, the Respondent No.5 will have to face the consequences of penalty to the tune of 25% of total value of material.	Pg 12-14 of Pursis of R/5	
78.	25.11.2024	Challan prepared in respect of payment of duty by the Respondent No3.	Pg 22/ Pursis dated 06.12.2024	

4.1. The position, as stated by the respondent Nos.1 and 2 in their submissions, is as under :

(A) Steel scrap as detailed below was shipped by one M/s. Gemini Corporation BV from Port of Valencia, Spain to M/s. Maptrasco, another Singapore based entity with Port of Discharge as **"Nhava Sheva, India"** and Port of Delivery as **"Wardha"** under following three BLs as detailed under;

Sr. No.	BL No.	No. of Containers	Qty in Mts
1	MAEU 222568540 dated 01.12.2022	20 Nos x 20 Ft	506.88
2	MAEU 222568576 dated 01.12.2022	20 Nos x 20 Ft	504.72
3	MAEU 222568555 dated 02.12.2022	10 Nos x 20 Ft	252.22
		Total	1263.88

(B) When the Vessel containing above cargo reached Indian shore, the respondent No.4 Viz. M/s MAERSK filed IGM bearing No.2331559 dated 04/01/2023 for said 3 B/Ls Bills of Lading No.222568540, No.222568555, No.222568576 all dated 20/11/2022 at Line No. 523, 524 and 525 respectively. IGM stands for Import General Manifest, a legal document that contains details

of goods being imported into a country. The IGM contains information about the goods, such as their description, quantity, weight, value, country of origin, and other details. It also includes information about the importer, exporter, and transport vessels.

(C) They also requested for issue of a "**Sub Manifest Transshipment Permit**" (SMTP) for Transshipment of above cargo from gateway Port at **JNCH i.e. INNSA1** to Port of Delivery at ICD **Wardha i.e. INCHJ6**. Sub Manifest Transshipment Permit is a document issued by Customs authorities that allows a shipping agent to transfer cargo from one vessel to another during transit, permitting the "transshipment" of goods to a different destination port or inland container depot (ICD) while providing detailed information about the cargo on a sub-manifest. Thus, it is a smaller part of the overall cargo manifest and essentially a permit needed to move part of a larger shipment to another location during transit.

(D) As these consignments were meant for Transshipment to ICD Wardha (INCHJ6) as requested by Shipping Line viz. respondent No. 4 while filing of IGM, a Transshipment Permit i.e. TP bearing number 2208285 dated 05/01/2023 was generated by ICES system automatically. "ICES" stands for "Indian Customs Electronic Data

Interchange System". It is a system that uses Electronic Data Interchange (EDI) to electronically exchange information related to customs clearance without any human intervention. Thus the Entry Inward was granted to the said vessel on 05/01/2023 under Section 31 of the Act. 5

(E) As mentioned above, the containers were lawfully discharged at the JNPT port on the basis of IGM filed by the shipping line which mentions destination port as INCHJ6 i.e. ICD Wardha (Indian Port), in accordance with Section 30 of the Customs Act, 1962 read with IGM Regulation 1971 as amended wherein no such 10 condition is mentioned that the goods *ab initio* should not be allowed to unload in Indian Customs territory when there is no Indian importer. It is further submitted that IGM can be amended on the request of the shipping line on the basis of documentary evidence as provided under Section 30(3) of the Customs Act, 1962 which reads 15 as:

"Section (30)(3). If the proper officer is satisfied that the arrival manifest or import manifest or import report is in any way incorrect or incomplete, and that there was no fraudulent intention, he may permit it to be amended or supplemented." 20

In this regard the CBIC has also issued circular No.14/2017 Cus dated 11/04/2017 outlining the process for amendment of IGM. This includes change in importers of address. Therefore, there is no fault on part of respondent Nos.1 and 2 in allowing the goods unloaded at Indian port. 5

(F) With regard to, public notice Nos.33/2018 dated 07/03/2024 and 154/2018 dated 07/12/2021 issued by JNCH, it is submitted that the Public Notices have been issued for the importer to inform to their exporters to incorporate details such as IEC, GSTN etc. of the importer in the Bill of Lading. Shipping lines are also 10 directed to ensure that the above mentioned requirements are complied. From the Public Notice it is seen that the onus of compliance is put on the Importer and shipping lines. The proper office of customs is required to work in accordance with Section 30 of the Customs Act, 1962 and IGM Regulations mentioned above. 15

(G) It is further submitted that the Importer Exporter Code (IEC) number is mandatory for filing of the bills of entry for home consumption. However non-mentioning of IEC Code in the IGM does not prevent the goods from unloading at the port. In view of the above, it is submitted that the respondent Nos. 1 and 2 have no role 20

whatsoever till the goods reached ICD Wardha. It was incumbent's responsibility to file Bill of Entry by appointing an Indian agent of Maptrasco or any Indian buyer of Maptrasco. The goods were unnecessarily kept idle for 24 months but Bill of Entry was never filled by anyone. 5

(H) Further, it is submitted that in accordance with Section 48 of the Customs Act, 1962 and the Board circular 49/2018- Customs dated 03/12/2018 regarding auction of the cargo, the Customs issued letters dated 27/05/2024, 03/06/2024 and 10/06/2024 to MAERSK Shipping Liner and letter dated to 09/07/2024 and 10 26/07/2024 to M/s. Asian One PTE Ltd., Singapore (by email) to file Bill of Entry but they failed to do so. Last opportunity was accorded to them to file it by 07/08/2024.

(I) Since the petitioner failed to file the Bill of Entry for clearance of the goods in spite of sufficient time granted for the 15 same, the respondent No.1 accorded the permission to auction the goods on 08/08/2024 under Section 48 of Customs Act, 1962. The same was informed to the petitioner (M/s. Asian One PTE Ltd., Singapore) vide email dated 09/08/2024.

(J) Further, the custodian vide their letter dated 17/10/2024 informed this office that they had also requested M/s. Asian One PTE Ltd., Singapore on 05/07/2024 to file the Bill of Entry.

(K) In view of global shortage of Containers Customs authorities are under executive instructions from CBIC to dispose the unclaimed 5 cargo at the earliest so that the held up containers are used in export import under ease of business and affording containers to Indian trade. Also, IGST payment is held up post auction which is otherwise liable to be paid at the time of Out of Charge/clearance of the goods.

5. Mr. Sridharan, learned Senior Counsel for the petitioner 10 submits that for the purpose of importing goods into India, there is a necessity for the importer to be an Indian party, which according to him is in consonance with the public notice No.33 of 2018 dated 07/03/2018 in which vide Clause 2.2 it is directed that in order to 15 give impetus to Direct Port Delivery (DPD) it is essential to capture basic details of importers in the bill of lading itself, so that such details can be used to decide DPD stacking code and for various other purposes. Therefore, according to him, it is necessary for importing the goods in India, that the importers are required to ensure that the details regarding (a) import and export Code (IEC); 20

(b) GST identification number (GST-IN) of importer (c) official email ID of importer, are to be incorporated in the bills of lading, which is what is laid down in clause 3(i) of the above circular.

5.1. He also invites our attention to clause 3(ii) of the same circular, in which, according to him an obligation is imposed upon the shipping lines operating/functioning at Nhava Sheva to ensure that such details are obtained from the exporters abroad, if such consignment are to be discharged at Nhava Sheva, which is to be indicated in the Import Advance List (IAL) to be submitted to the terminal.

5.2. He further invites our attention to the above said public notice, which contains directions to the importers / custom brokers to ensure that the said requirement are complied with. The directions as contained in public notice No.33/2018, according to him, were indicated to be mandatory in nature and were to be applicable from 01/04/2018, which meant that all bills of lading issued after 01/04/2018, should contain the details as mentioned in public notice No.33/2018. He, therefore, submits, that it was the obligation of the respondent No.1, to ensure that there would be no unloading at the point of disembarkation, if the aforesaid details

were absent.

5.3. The very fact that the goods were permitted to be disembarked would indicate that all requirements in that regard as per Indian Law stood satisfied. In the alternative, he submits that if the retirements of Indian Law were not satisfied then it was the fault of the custom authorities in permitting, unloading of the goods, who ought to have refused to do so, and having not so done it was the custom authorities, who were responsible for the present state of affairs, on account of which, the petitioner, having title would be entitled to the goods and the directions as sought.

5.4. In fact, it is his contention, that even before the vessel sails from the port of lading, the necessary details such as the name of the importer, his/its PAN number/GSTIN number/IE Code are necessary to be incorporated, in the bills of lading.

5.5. Further inviting our attention to the public notice No.154 of 2018, dated 07/12/2018, it is contended that a proper declaration of description of the goods in Import General Manifest (IGM), has to be done by the shipping lines, which would include the requirement of furnishing the information, as indicated in public notice No.33/2018 dated 07/03/2018. He, therefore, submits that in

view of the above public notices, the carrier/shipping lines are required to declare details of cargo, shipper, consignee, number of packages, kind of packages, description of goods, bill of lading number and date, vessel details, etc, in the IGM, which, in turn, would also indicate the necessity of including the requirements as indicated in public notice No.33/2018 therein. The very purpose, according to him, is to ensure correct filing of an IGM to the customs and import advance list to the terminals. 5

5.6. He further invites our attention to the provisions of Section 30 of the Customs Act, 1962, which according to him, casts an obligation upon the person in charge of the vessel carrying imported goods, to deliver to the proper officer an arrival manifest or import manifest by presenting the same electronically prior to the arrival of the vessel, failure to do which, has been made liable for penalty not exceeding Rs.50,000/-. Sub Section 3 of Section 30, according to him, empowers the proper officer, to permit the arrival or import manifest to be amended, if he finds that it is incorrect or incomplete. 10 15

5.7. He further invites our attention to the provisions of Section 31 of the Customs Act, which mandate that the master of the 20

vessel would not permit the unloading of any imported goods until an order has been given by the proper officer granting entry inwards to such vessel which has to be only after, an arrival or import manifest has been delivered to the proper officer to his satisfaction. He further submits that Section 31 of the Customs Act, which 5 mandates that no imported goods required to be mentioned under the regulations in an arrival manifest or import manifest, shall, except with the permission of the proper officer, be unloaded at any customs station unless they are specified in such manifest, indicates that it is necessary even before the vessels sails from the point of 10 exporting port, that all these details, have to be ensured to be present in the bills of lading and/or import manifest and the basis obligation to do so, would be that of the shipper which in this case is the respondent No.4.

5.8. He further submits by relying upon the sales contract 15 dated 25/08/2022 (pg.81) executed by MAPTRASCO in favour of the petitioner to contend that there cannot be any dispute that the petitioner has title to the goods in question on the basis of this document. He further invites our attention to the three commercial invoices dated 20/11/2022 (pg.82/84 and 86); three packing lists of 20

the same date (pg.83/85 and 87) to buttress his submission regarding title to the consignment of shredded scrap.

5.9. It is further submitted, that since the consignment was entrusted to the respondent No.4 for shipping it was the duty of the respondent No.4 to have ensured the necessary details to be inserted 5 in the import manifest as well as the bills of lading and the corresponding duty of the customs authorities to have ensured that without the necessary details there was no unloading, on account of which, it is the customs authorities and the shipper/respondent No.4, who are responsible for the unloading of the goods, which were at 10 the first place not destined to be unloaded at Nhava Sheva port, itself, due to which the petitioner not being at fault, the consequences, as indicated above, need to follow.

5.10. Mr. Sridharan, learned Senior Counsel for the petitioner further places reliance upon the provisions of Section 32 of the 15 Customs Act, which mandate that the imported goods cannot be unloaded unless mentioned in the arrival or import manifest, which would cast an obligation upon the shipper and the customs to ensure the compliance with the statutory requirements in that regard and the petitioner was not at fault for the unloading of the goods. 20

5.11. He further relies upon Section 45 of the Customs Act to contend that the imported goods even if unloaded remain in the custody of the customs unless cleared. Reliance is also placed on Section 46 which contemplates lodging of a bill of entry which is the duty of the importer and to give a declaration in terms of Section 46(4) and to ensure that the requirements under Section 46(4-A) are fulfilled. He also relies upon Section 47 which mandates clearance of the goods for home consumption and Section 48 which lays down the procedure in case the imported goods are not cleared for home consumption within 30 days and the duty of the custodian to give notice to the owner before the custodian would be entitled to sell the goods and as no such notice was given to the petitioner, who is the owner of the goods, the further action of sale of the goods was *non est* and bad in law.

5.12. He also submits that no permission from the customs was obtained prior to conduct of such sale due to which also the sale would be without any legality.

5.13. He further places reliance upon Section 150 of the Customs Act, which prescribes the procedure of sale and according to him, a notice to the owner before conducting such sale, which

according to him is absent. He further relies upon Section 150(2)(d) of the Customs Act to contend that in the procedure of sale the customs are not involved but it is the custodian which does all these acts and therefore is under a statutory obligation to ensure compliance with the requirements therein.

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5.14. He also relies upon Regulation 2/3 of the Uncleared Goods (Bill of Entry) Regulations, 1972 and Form 60 to contend that even after the sale, there has to be confirmation by the customs of such sale, which is absent.

5.15. He further contends that all documents have been prepared by Maersk, the shippers /respondent No.4, who has played a fraud by incorrectly not showing an Indian Importer, which is a must for importing goods into the country. He also placed reliance upon the e-mail dated 01/06/2023 (pg.166) by the respondent No.4 and the letter dated 21/12/2023 (pg.194) by the customs to respondent No.4/Maersk and the reminder dated 19/06/2024 (pg. 246). He further submits that a fraud has been played upon the petitioner by the respondent No.4/Maersk by presenting fraudulent bills of lading upon the customs showing Rathi Iron and Steel as the Indian importer, when the petitioner had never entered into any

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transaction with the said Rathi Iron and Steel at any point of time. He submits that the import tax invoice dated 10/12/2022 (pg.149) raised by the respondent No.4/Maersk upon Rathi Steel, which showed the port of delivery as JNPT and the place of delivery at Dhannad, was not an invoice for price of goods but an invoice for 5 IGST on the bill of lading of the petitioner, and was for charges on account of services rendered by respondent No.4/ Maersk, which was also during High Seas. He also invites our attention to the Cargo Shipment approval order dated 04/01/2023 (pg.147) issued at 10 Nhava Sheva port to contend that the consignee shown therein was Maptrasco, which was not an Indian party, on account of which, the discharge of the cargo at Nhava Sheva, India, ought not to have been permitted by the respondents Nos.1 and 2.

5.16. He also relies upon the communication dated 08/08/2024 (pg.275) by the respondent No.3 to the customs seeking 15 permission for auction and the communication dated 18/09/2024 (pg.286) by the customs to contend that the auction dated 06/09/2024 held by the custodian/respondent No.3 had been cancelled, on account of which, also according to him, the petitioner was entitled for the reliefs claimed by it. 20

5.17. Learned Senior Counsel Mr. Sridharan submits that goods not liable for confiscation could not have been auctioned and were required to be re-delivered to the petitioner as it was on account of the mistake of respondent No.4/Maersk in not mentioning an Indian Importer, which mistake came to be continued and carried forward by the Customs, on account of which, the auction had taken place, which stands vitiated. He further submits that even if auction has been conducted, the sale proceeds thereof need to be handed over to the petitioner, as the custody of the goods by the custodian was an invalid custody, on account of which, the custodian/respondent No.3 was not entitled to any charges under Section 150 (2) (d) of the Customs Act and therefore, the sale price was liable to be paid to the petitioner.

6. Mr. Akshay Naik, learned Senior Counsel for the respondent No.3/custodian submits that remedy of the petitioner is not by way of invoking the writ jurisdiction of this Court under Article 226 of the Constitution, as the petitioner claims that the respondent No.4/Maersk, who was the Shipper, has played a fraud upon the petitioner by unloading the goods at Nhava Sheva port

when right from the beginning respondent No.4/ Maersk was aware that there was no Indian Importer, who was the consignee and therefore, the goods were not destined for transportation and unloading to India in which situation, since there were disputed questions of fact, this Court should decline to interfere. 5

6.1. He further contends that the plea raised by the petitioner that the goods were never intended to be unloaded in Indian territory is *per se* factually incorrect for which he invites our attention to the sales contract between Maptrasco and the petitioner dated 25/08/2022 (pg.81); the commercial invoice dated 10 20/11/2022 (pg.82); the packing lists (pgs. 85 to 87) in all of which, the port of discharge is shown as Nhava Sheva. He also invites our attention to the Bill of Lading dated 01/12/2022 (pg. 89) in which the place of delivery is shown as Wardha. He also relies upon the document at pg.91, which according to him, indicates freight prepaid 15 for Indian GST purposes, since destination country as per this document is India. He also invites our attention to a similar position occurring in the three bills of lading.

6.2. Reliance is also placed upon the e-mail dated 21/12/2022 (pg.137) by the petitioner to respondent No.4/Maersk 20

seeking change of destination and the reply by the respondent No.4/ Maersk that it could not be done as the custom manifest had already been issued at destination. He also invites our attention to the e-mail dated 04/01/2023 (pg.138) by the petitioner to respondent No.4/ Maersk for switching destination from Wardha to Malanpur and the 5 reply dated 04/01/2023 (pg.138) by respondent No.4/ Maersk that it cannot be done. Reliance is also placed upon the e-mail dated 17/04/2023 (pg.159) by Maptrasco to the respondent No.4/Maersk (after 3 months) that it had found a buyer at Wardha and asking respondent No.4/Maersk to assist, copy of which has been addressed 10 to harsh@asianone, which is the petitioner, to contend that all throughout the petitioner was fully aware of the factual position that the goods were destined for India and the plea that is now being raised of a mistake of they having been unloaded at Nhava Sheva Port, Mumbai and transported to Wardha was not only incorrect but 15 outright false is made only for the purpose of getting out of the mess, which the petitioner now found itself. He further contends that the petitioner and Maptrasco were hand in glove.

6.3. Mr. Akshay Naik, learned Senior Advocate further invites our attention to the definition of conveyance under Section 2(9), 20

Customs Area under Section 2(11), Customs Port under Section 2(12), Custom Station under Section 2(13) of the Customs Act to point out that unless and until the goods are taken out of the custody of the respondent No.3 by payment of the custom duty for home consumption, the goods continued to remain in custody of the respondent No.1 and in fact there is no unloading as is being sought to be claimed. He further invites our attention to the reply by the respondent Nos.1 and 2 dated 16/12/2024 specifically paras 7A to 7J, which according to him, indicate the narration of events, so far as the respondent Nos.1 and 2 are concerned.

6.4. He further invites our attention to the e-mail dated 18/04/2023 (Pg.160) to contend, that throughout the petitioner as well as the respondent No.4/shipper as well as Maptrasco, were aware of the factual position that the goods were lying at the Dry Port at Wardha with the respondent No.3, for which the ground rent was liable to be paid. The e-mail, according to him, also indicates the intention of the petitioner and Maptrasco to find a new consignee for the consignment. He further invites our attention to the documents annexed to the pursis dated 06/12/2024 Stamp No.07/2024 filed by respondent No.3, in which document No.1 is an

e-mail dated 04/05/2023 written by the respondent No.3 to Maptrasco, with a copy to the petitioner claiming rental charges for the consignment lying with the respondent No.3; the communication dated 06/12/2023 by the respondent Nos.1 and 2 to the respondent No.3 asking the respondent No.3 to contact and notify Maptrasco 5 and to ask him to clear the cargo from ICD Wardha; the e-mail dated 08/12/2023 by the respondent No.3 to Maptrasco, asking it to clear the cargo by 15/12/2023 otherwise the cargo will be referred for public auction as per the Indian Custom Procedure; the communications dated 23/12/2023 and 01/01/2024 on the same 10 line, to contend that petitioner was throughout aware of the liability to pay the rental charges.

6.5. He further invites our attention to the communication dated 09/05/2024 (pg.211) seeking permission to put the cargo to auction and so also the communication dated 15/05/2024 by the 15 petitioner to the Assistant Commissioner of Customs, ICD Wardha, (pg.212) which indicates their intention to pay the customs duty and clear the consignment after completing the clearance formalities. He also places reliance upon the e-mail dated 09/07/2024 addressed by the Customs to the petitioner, to which there is an attachment in 20

respect to the communication dated 09/07/2024 (Pg.252) intimating the communication by the respondent No.3/custodian vide letter dated 05/07/2024 (pg.254) for auction of the goods as the bill of entry has not been filed by the petitioner and calling upon the petitioner to file bill of entry and clear the goods before the date 5 given by the respondent No.3/custodian, failing which the request of the respondent No.3/custodian of the auction would be granted. This e-mail also contains an attachment which is the communication dated 05/07/2024 by the respondent No.3 seeking to put the goods to auction. Reliance is also placed upon the e-mail dated 24/07/2024 10 (pg.256) by the petitioner to the Customs seeking extension of time by ten days to give reply and the communication dated 26/07/2024 by the Customs to the petitioner (pg.257) granting extension up to 07/08/2024 to the petitioner for filing reply; and so also the legal notice dated 02/08/2024 (pg.258) addressed to the respondents, to 15 contend that throughout the petitioner was aware of the liability to lift the cargo within the statutory period as contemplated by Section 48 of the Customs Act and upon failure to do so, the liability to pay the ground rent. It is, therefore, submitted that no fault can be found with the order dated 09/08/2024 by the Customs, which 20

granted approval for auction of the goods which is indicated by the covering letter of the same date in pursuance to the request for auction by the respondent No.3 dated 08/08/2024 (pg.276).

6.6. In response to the plea by the learned counsel for the petitioner that the auction was cancelled, the learned Senior Counsel 5 for the respondent No.3 invites our attention to the pursis dated 06/12/2024 and the document dated 18/09/2024, by which the Customs had intimated anomalies in the notice of auction on account of it not being served upon the petitioner and the reply of the respondent No.3 dated 17/10/2024 (pg.18) of the pursis clarifying 10 the position, accepting which, by an order dated 06/11/2024 the respondent no.2, had granted approval to file Bill of Entry in terms of Para (xv), (xvi-a) and (xvi-b) of CBIC Circular No.49/2018 dated 03/09/2018 (pg.20 of pursis), in pursuance to which, by the communication dated 22/11/2024 a Bill of Entry for the auction was 15 submitted by the respondent No.3 consequent to which the challan for the payment of IGST was generated on 25/11/2024 (pg.25 of pursis). He, therefore, submits that this would indicate that due notice prior to the auction was given to the petitioner as well as the respondent No.4 in spite of which, they did not bother to get the bill 20

of lading amended and the goods released by paying the necessary dues and IGST on account of which since the auction has become final, the same cannot now be cancelled and the position cannot be now reverted back as is being claimed in the position.

6.7. He also places reliance upon *Mumbai Port Trust Vs. Shri Lakshmi Steels and another (2018) 14 SCC, 317* (Paras 36 and 37), which mandates, that it is the duty of the importer to first clear the charges due and in case if he demonstrates any *mala fides* or abuse of the power by the Customs then reclaim it after proving the same. He, therefore, submits that since the respondent No.3 is entitled to the demurrage and ground rent, the payment of the same cannot be stalled by the petitioner, under the guise of the present petition, which has been filed only to prevent the auction being fructified by delivery of the cargo to the auction purchaser. It is also submitted that only on account of the pendency of the present petition the challan for the IGST as generated is not being accepted by the Authorities, which not being the fault of the respondent No.3, nothing can be made out of it.

6.8. He further submits that though the goods were disembarked at Nhava Sheva Port on 04/01/2023 and had reached

the ICD terminal of the respondent No.3 at Wardha between 17/01/2023 to 09/03/2023, in spite of being aware of the responsibility and liability to get the goods cleared within the statutory period under Section 48, the petitioner as well as the respondent No.4 have permitted the goods to lie in the ICD for nearly 5 about more than a period of one and half year and have approached the Court only after the auction was completed and therefore, were raising grounds which are based upon disputed facts, which cannot be gone into in the writ jurisdiction under Article 226 of the Constitution, on account of which, the petition needs to be 10 dismissed. He also submits, that all the actions of the respondent No.3 are in consonance with the provisions of Section 48 read with Section 150 of the Customs Act and the relevant circulars thereunder, on account of which no fault can be found with the same.

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7. Mr. Amol Patil, learned counsel appearing for the respondent No.5, the auction purchaser, adopts the arguments of Mr. Akshay Naik, learned Senior Counsel for the respondent No.3 and also invites our attention to the auction notice dated 20/08/2024 (Pg.299), to point out that it was open for inspection 20

from 23/08/2024 to 05/09/2024 and the auction was held on 06/09/2024, in which six parties participated, out of which the respondent No.5 was the highest. On 04/09/2024, the respondent No.5 had deposited Rs.50,00,000/- as EMD, after acceptance of his bid, a further amount of Rs.53,31,729/- came to be deposited on 09/09/2024 and the balance of Rs.3,89,21,687/-, came to be paid to the respondent No.3 on 20/09/2024 which amount includes GST after which the respondent No.5 has been continuously communicating with the respondent No.3 for release of the goods in its favour, as the respondent No.5, in turn, has already entered into a contract with EVEONITH Value Steel Wardha on 23/11/2024, in terms of which, there is a condition for penalty on account of late delivery of the goods therefore, the respondent No.5 was being put to loss due to the delay occasioned for release of the goods.

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8. Mr. S.N. Bhattad, learned counsel for the respondent Nos.1 and 2, invites our attention to the bills of lading for Ocean Transport (pg.89 to 136) to contend that it mentions port of delivery at ICD Wardha. He further invites our attention to the document at page 35 with the reply of the respondent Nos.1 and 2 dated

16/12/2024, which is a final printout of the Import General Manifest (IGM) dated 04/01/2023, in which also the destination port is INCHJ-6 which is ICD Wardha. He also invites our attention to the sub-manifest transshipment permit (pg.39 of the reply) for the purpose of transshipment of the goods from Valencia to ICD Wardha 5 via JNPT and the cargo transshipment approval order dated 05/01/2023 (pg.45) in which also the port of destination is shown as ICD Wardha.

8.1. He further states, that circular No.14/2017 dated 11/04/2017, insofar as it speaks about the name of the Indian Party, 10 to be included in the documents, the same is not mandatory, but is for the sake of convenience to ensure shortest transshipment time and can be amended at any point of time before the clearance of goods in terms of Section 46 of the Customs Act. He further invites our attention to the legal notice dated 02/08/2024 issued by the 15 petitioner through counsel (pg.258) specifically paras 4 to 6, which according to him, indicates that the transshipment of the goods to ICD Wardha were within the specific knowledge of the petitioner and the respondent No.4 and an attempt was made for change of the destination in the bill of lading from ICD Malanpur (MP). He, 20

therefore, submits that since the mandate of Section 48 of the Customs Act, stood breached the necessary permission was granted for auction which having taken place the same cannot be now undone at the behest of the petitioner.

8.2. Mrs. R.S. Sirpurkar, learned counsel for the respondent No.4, submits that till date the petitioner has not placed any contractual dispute in any fora as against the respondent No.4. She further submits that in terms of circular No.14 of 2017 dated 11/04/2017 for the purpose of amending bill of lading, the original has to be submitted to the Customs, which was never provided by the petitioner to the respondent No.4 at any point of time, on account of which the amendment could not be carried out, as a result of which no blame can be laid at the doorstep of the respondent No.4. 5 10

9. Mr. Sridharan, learned Senior Counsel for the petitioner, in rebuttal, submits that the contention of the respondent No.3 that the goods were not unloaded is factually incorrect, as consequent to the discharge of the goods at Nhava Sheva Port by the respondent No.4/Maersk they come into the control of the Customs and upon the transshipment, to ICD Wardha in the control of the respondent 15 20

No.3, which is subject to the directions of the respondent Nos.1 and 2 i.e. the Customs. Therefore, to say that the goods are not unloaded, is incorrect.

9.1. He also relies upon the language of Section 45 of the Customs Act, which speaks about unloading all imported goods in the Customs area, which are to remain in the custody of a person to be approved by the Customs, which in this case is the respondent No.3 as the custodian, unless they are cleared for home consumption. 5

9.2. He further invites our attention to the document at page 166 which is an e-mail by the respondent No.4/Maersk dated 01/06/2023 indicating that on the first occasion when the goods were brought to India on account of absence of an Indian consignee they were taken back. The shipment was again rescheduled for import to India and on the second manifest though the shipment in absence of an Indian consignee had to be returned to the original country of origin, on account of a mistake by the respondent No.4/Maersk in incorrectly adding the shipments to the manifest instead of removing them, resulted in the goods being unloaded at the Nhava Sheva Airport Mumbai. He, therefore, submits that the basic mistake was that of the respondent No.4/Maersk. 10 15 20

9.3. He also invites our attention to Public Notice No.33/2018 dated 07/03/2018 issued by the Customs to contend that the instructions had a binding effect upon one and all, as that is the standard mode of functioning of the Customs, by issuing various circulars and public notices, which are binding on the shipping lines, the custodian as well as the importer, and therefore, they need to be enforced, for which he relies upon *Ramana Dayaram Shetty Vs. International Airport Authority of India and others (1979) 3 SCC 489*, para 10. 5

9.4. He specifically relies upon Clause 3(ii) of Public Notice No.33/2018, which are the instructions to the shipping line functioning at Nhava Sheva Port to indicate the requirements as given in para 3(i) for the purpose of discharging the consignment cargo at the port. He, therefore, submits that the instructions as issued in the Public Notice No.33/2018 are mandatory and binding upon the shipping lines and in case the manifest and the import advance list do not contain the name and details of the Indian consignee/importer, the goods could not have been permitted to be unloaded on the port, on which count, it is contended, that the respondent Nos. 1 and 2 are equally responsible. 10 15 20

9.5. He further places reliance upon Circular No.154/2018, by which the Sea Cargo Manifest and Transshipment Regulations, 2018 (for short hereinafter, “Regulations of 2018”) have been framed and brought into force w.e.f. 01/08/2018 and specifically Regulation 4(2)(e)(i), which indicates the information to be included in the arrival manifest, has to be in Form VI (A), which according to him, makes the disclosure of the details of the consignee name, consignee code and address mandatory, and the enforcement of which is also the obligation and responsibility of the respondent Nos.1 and 2. 5

9.6. He also submits, that the entire mess is the creation of respondent No.4/Maersk, which by including the cargo in the manifest meant for Rathi Ispat caused it to be unloaded. Insofar as the delay is concerned, he submits that the petitioner has been continuously following up with the respondent No.4 as well as the respondent Nos.1 and 2, on account of which, the delay ought not to come in the way of the petitioner in grant of the relief which is being sought. It is his contention, that the claim of the petitioner is based upon the requirement as indicated in Public Notice No.33/2018 dated 07/03/2018. 10 15

9.7. He fairly submits, that considering the passage of time and the fact that auction has already taken place, all that is now permissible for the petitioner is to seek enforcement of the claim to the auction money and the claim for reshipment of the goods back to its point of origin, is not been pressed by him upon instructions of the petitioner, which statement is accepted as a statement to the Court. 5

10. Mr. Akshay Naik, learned Senior Counsel for the respondent No.3, submits that the Sea Cargo Manifest and Transshipment Regulations, 2018 which have been brought into force from 01/08/2018, were amended and brought into force w.e.f. 01/08/2019, however, in view of Regulation 15, the implementation thereof, has been postponed and these have been implemented in the phase-wise manner on various dates as indicated in the table which has been inserted vide GSR 531(E) dated 31/08/2024 with effect from the said date, notifying the dates on which the transitional provisions are applicable to various ports. He, therefore, submits that since the implementation of the Sea Cargo Manifest Regulation has been postponed *vis-a-vis* the Nhava Sheva Port, the manifest therein, 10 15 20

continues not to be in Form VI (A) but in terms of Form III of Import Manifest (Vessels) Regulations, 1971 which in fact, is the Form used in the present matter.

10.1. He, therefore, submits that the unloading of the goods, at Nhava Sheva Port is the sole mistake of the respondent No.4/Maersk and not of the Customs so as to claim that any negligence first made by it. It is his contention, that the petition does not have any merit and it may be dismissed. 5

11. In view of the candid statement made by Mr. Sridharan, learned Senior counsel for the petitioner that the relief in the petition was being restricted to the enforcement of the claim to the auction money, and since the auction purchaser had already deposited the auction money and considering the impending vacation, by way of an interim arrangement, we had passed the following order on 17/12/2024 : 10 15

“We have extensively heard the respective learned Counsels for the parties and have closed the matter for judgment, however, considering the exigency of the situation and since Mr. Shreedharan, learned Senior Counsel for the Petitioner, has fairly stated that the Petitioner would be entitled to lay claim to the auction money, instead of claim for reshipment of the cargo to its point of origin, considering that the auction has been

completed, we permit the custodian to pay the IGST and release the goods in the custody of the auction purchaser by following the due process as contemplated under Sections 46 and 47 of the Customs Act.

2. We, however, direct that the auction money which is received by the custodian shall be retained by it and the disbursement thereof shall be subject to the result of the Petition.

3. The interim order dated 27.11.2024 stand modified in the above terms.

which came to be modified as under :

Order dated 18.12.2024

Apropos the order dated 17-12-2024, Mr. A.A. Naik, learned Senior Counsel for the respondent No.3 has tendered across the bar an affidavit of the respondent No.3, which states that auction money which has been received by respondent No.3, has been expended by it towards various expenses incurred by the respondent No.3 as it continues to suffer from severe financial distress. The affidavit is taken on record. The affidavit, however, gives an undertaking, to deposit the money in the Court by liquidating the assets, which are owned and possessed by the respondent No.3, in case the result of the petition is against the respondent No.3. This position ought to have been brought to our notice yesterday itself before the order dated 17-12-2024 was passed. However, considering the circumstances, we modify paragraph No. 2 of the order dated 17-12-2024 and direct that the auction money received by the respondent No.3 exclusive of the IGST, shall be deposited by the respondent No.3 in this Court by 15-1-2025. The order dated 17-12-2024, stands modified to the above extent."

12. What is necessary to be considered is whether the goods

were in fact destined for India or there was a mistake in the delivery

of goods by the respondent no.4/Shipper at Nhava Sheva Port, so as to entitle the petitioner to claim a mistake by the respondent Nos.1 and 2, in having custody of the goods and continuing with it, and thus entitlement to the auction money.

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13. The definition of the word 'importer', as defined in Section 2(26) of the Customs Act, in relation to any goods, at the time between their importation and the time when they are cleared for home consumption, indicates that it includes any owner, beneficial owner or any person holding himself out to be the 10 importer. This would indicate that the definition is an inclusive one and considering the definition of 'beneficial owner', as defined in Section 2(3-A) of the Customs Act, which defines it to mean any person on whose behalf the goods are being imported or exported, or who exercises effective control over the goods being imported or 15 exported, would further indicate that it would also mean a person, who is capable of exercising legal control and possession over the same. The language of the definition of 'importer', nowhere indicates that such importer, for the purposes of importing of goods into India, has to be an Indian Party. The Statutory provisions as contained in 20

the Customs Act, also do not indicate, such a requirement, for the purpose of importing any goods in India. No such provision has been brought to our notice by the respective learned Counsels, which postulates such a requirement, before importing any goods in India.

13.1. We, therefore, have to consider, whether the Public 5
Notices/Circulars issued by the respondent Nos.1 and 2, prescribe any such requirement and their effect. At the outset, it is necessary to state that directions in a public notice without any statutory backing are of no effect. The relevant public notices are Public Notice No.33/2018 dated 07/03/2018 and Public Notice No.154/2018 10
dated 07/12/2018. A perusal of the Public Notice No.33/2018, indicates that it was issued on account of a number of instances where consignments of hazardous waste, other waste or restricted items were imported in the name of certain importers and remained uncleared, without anyone coming forward to claim the cargo, 15
leading to a suspicion that such consignments were imported for dumping hazardous waste from the exporting country which was posing a serious environmental threat. It is in this background that the requirement of details regarding the (a) Import and Export Code (IEC) of the Importer, (b) GST identification number (GSTIN) of the 20

importer and (c) Official e-mail id of the importer, were directed to be supplied by the importers to their exporters, so that they could be included in the Bills of Lading at the time of booking of such consignments, which was to be applicable w.e.f. 01/04/2018. This has been reiterated in Public Notice No.154/2018, dated 5 07/12/2018, wherein Public Notice No.33/2018 has been referred to in para 2, and it has been stated that the full description of goods, correctly and completely has to be ensured in both the Bills of Lading and the Import General Manifest, which is required to be filed in terms of Section 30 of the Customs Act. The respondent Nos.1 and 2, 10 vide pursis dated 10/12/2024, (Stamp No.08/2024) have stated that declaration of name of importer is mandatory at the time of unloading the consignment at the port (ICD Wardha herein) before submission of Bill of Entry in terms of Section 46 of the Customs Act for clearance of goods. What is material to note is that neither Public 15 Notice No.33/2018; Public Notice No.154/2018 nor the pursis referred to above, indicate that any penalty has been prescribed for the Bills of Lading and the Import General Manifest, not disclosing the (a) Import & Export Code (IEC) of the Importer, (b) GST identification number (GSTIN) of the importer and (c) Official e-mail 20

id of the importer. If a requirement is claimed to be mandatory, then its violation, ought to carry consequences, which is not the position as is reflected from Public Notice No.33/2018, Public Notice No.154/2018 or for that matter the stand of the respondents Nos.1 and 2 as reflected from the pursis dated 10/12/2024.

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13.2. Though Mr. Sridharan, learned Senior Counsel for the petitioner, relies upon *Ramana Dayaram Shetty* (supra) para 10, in support of his this contention, what is necessary to note is that the observation in para 10 thereof, that an Executive Authority must be rigorously held to the standards by which it professes its actions to be judged and it must scrupulously observe those standards on pain of invalidation of an act in violation thereof, was in the context of an eligibility criteria prescribed for a person submitting a tender, satisfaction of which, was obviously a *sine qua non*, before the tender could be considered as a valid and acceptable one. We are here not considering a similar scenario. That however does not mean that the directions as contained in the Public Notice Nos.33/2018 and 154/2018, were not to be followed, however, for the purposes of basing a claim on such directions, it was necessary, for the petitioner to have demonstrated that these directions were scrupulously being

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followed by the respondent Nos.1 and 2, and that in enforcement thereof, shippers were being prohibited to unload their consignments at the ports, in absence of such requirements being disclosed in the Bills of Lading and the Import General Manifest, for which there is no material placed on record, whatsoever, so as to enable us to take an according view that unless the Bills of Lading and the Import General Manifest disclosed the (a) Import and Export Code (IEC) of the Importer, (b) GST identification number (GSTIN) of the importer and (c) Official e-mail id of the importer, there could have been no discharge of the cargo by the Shipper at the Nhava Sheva Port, and therefore, having permitted such discharge, the respondent Nos.1 and 2, were at fault.

13.3. The matter can be viewed with another angle. The declaration of the Sea Cargo Manifest is governed by the provisions of the Sea Cargo Manifest and Transshipment Regulations, 2018, Regulation 4 of which requires an authorized sea carrier carrying imported goods to deliver the arrival manifest to the proper officer electronically. Regulation 4 being material is reproduced as under :

“4. Delivery of an Arrival Manifest. - (1) An authorised sea carrier carrying imported goods, export goods or coastal goods, shall deliver the arrival manifest to the proper officer electronically:

Provided that where it is not practicable to deliver the arrival manifest or any part thereof electronically, then the manifest or any part thereof shall be submitted manually in duplicate with the approval of the Commissioner of Customs or any other officer authorized by him:

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Provided further that for the vessels carrying only coastal goods and operating from exclusive berths meant for coastal goods at the loading as well as the unloading ports, there shall be no requirement of delivering arrival manifest.;

(2) The arrival manifest shall consist of, -

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(a) an application for entry inwards in Form-II (except in case of vessel carrying exclusive coastal goods);

(b) a general declaration in Form-III;

(c) vessel's stores list in Form- IV;

(d) list of private property in the possession of the Master and crew, in Form- V;

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(e) cargo declaration: -

(i) for vessel arriving at an Indian port from a Foreign port in Form-VIA; or

(ii) for vessel arriving at an Indian Port from another Indian Port directly or through designated foreign route in Form-VI-B;

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(f) any other declaration which, under the provisions of the Customs Act or any other Act for the time being in force is required to be delivered to the proper officer on arrival of vessel.

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(3) The general declaration and cargo declaration shall be delivered before the departure of the vessel from last port of call and the rest of the arrival manifest shall be delivered before arrival of the vessel.

(4) Notwithstanding anything contained in sub-regulation (3), the authorized sea carrier may update the information furnished in Form- VIA and Form- VI-B, -

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(i) before 48 hours of expected arrival at the destination customs port, for the vessels on voyage of more than ninety-six hours between departure from the last port of call and arrival at the next port;

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(ii) before 24 hours of expected arrival at the destination customs port, for the vessels on voyage of forty-eight to ninety-six hours between departure from the last port of call and arrival at the next port;

(iii) before 6 hours of expected arrival at the destination customs port for the vessels on voyage of less than forty-eight hours between departure from the last port of call and arrival at the next port:

Provided that for vessels carrying non-containerized cargo, whether or not carrying containerized cargo, the authorized sea carrier may, irrespective of the voyage duration, update the arrival manifest before entry inwards at the destination customs port.”

Clause 2 of Regulation 4, indicates the information to be included in the Arrival Manifest, for which various Forms as indicated therein are prescribed. Form VI A, with which we are concerned, is a Form to be used for Goods to be landed, meant for home clearance, which would in turn indicate that these goods were to be consumed/sold in the Country. These Forms, require the Consignee's Code i.e. IEC and GSTIN etc, which would relate to the requirement as prescribed in Public Notice Nos.33/2018 and 154/2018 and since that information is now required to be given in Form VI A, in terms of Regulation 4(2)(e)(i) of the Regulations of 2018, the furnishing of such information in the Arrival Manifest, would be necessary. It is also necessary to note that Regulation 11

empowers the jurisdictional Commissioner of Customs to suspend or revoke the registration of an authorized carrier on failure to comply with any of the provisions of the Regulations of 2018 and Regulation 13 provides for the imposition of penalty, for non-compliance thereof, indicating the mandatory nature of these Regulations of 2018. The compliance with the requirement of these Regulations of 2018, which relate to the directions as contained in Public Notice Nos.33/2018 and 154/2018, will have to be held to be mandatory, however, w.e.f. 31/11/2024, for the reasons indicated below.

13.4. In the above contextual background what is material to consider is that these Regulations of 2018, though have come into force w.e.f. 01/08/2019, however, on account of the Transitional provisions, as contained in Regulation 15, they were not been implemented, as by way of the Transitional provisions, it was permissible for the authorised sea carrier to continue to deliver the cargo declaration in Form III of the Import Manifest (Vessels) Regulations, 1971, till the date mentioned in column (2) of the Table, in terms of Regulation 15. Regulation 15 of the Regulations of 2018 and the Table showing the dates till which the transitional

provisions are applicable are reproduced as under :

“15. Transitional provisions. –(1) Notwithstanding anything contained in regulations 4, 5 and 7, the authorized carrier may deliver the cargo declaration in Form VI-A or Form VI-B and Form VII-A or Form VII-B or arrival and departure manifest in Form VIII or Form VIII-A, for the period of forty-five days from 15th May 2020, till 1st August, 2020.

(2) Notwithstanding anything contained in these regulations, the authorized sea carrier shall continue to deliver the cargo declaration in Form III of the Import Manifest (Vessels) Regulations, 1971 and Form I of the Export Manifest (Vessels) Regulations, 1976, in the manner as was applicable before the commencement of these regulations, till the date mentioned in columns (3) of the table below for the Customs Ports in the column (2) of the said table.

TABLE

<i>Sr. No.</i>	<i>Customs Ports</i>	<i>Date till which the transitional provisions are applicable</i>
<i>(1)</i>	<i>(2)</i>	<i>(3)</i>
1.	Mormugao (INMRM1)	10.09.2024
2.	Mangalore (INNML1)	30.09.2024
3.	Mumbai (INBOM1) and Kandla (INIXY1)	15.10.2024
4.	Tuticorin (INTUT1) and Vishakhapatnam (INVTZ1)	31.10.2024
5.	Ennore (INER1), Kattupalli (INKAT1) and Cochin (INCOK1)	15.11.2024
6.	<u>All the Customs Ports other than mentioned at Sr. No.1 to 5 above</u>	<u>31.11.2024</u>

[Inserted vide GSR 531(E), dt.31-8-2024, w.e.f. 31-8-2024].”

Thus, till 31/11/2024, the requirement to indicate the name of the consignee as well as to furnish the details of the consignee such as IE Code, GSTIN and other requirements as indicated in Public Notice Nos.33/2018 and 154/2018, which now stand culminated in Statutory Regulations, vide Regulation No.4 of the Regulations of 2018, stood postponed, on account of the transitional provisions, as contained in Regulation 15(2) of the Regulations of 2018. The provisions of Sections 30, 31 and 32 of the Customs Act, relating to Arrival or Import manifest, therefore have to be construed accordingly, in view of the above position, considering which, it cannot be held that for the purpose of importing goods into the Country, the requirement of consignee or one of the constituents of the consignee being an Indian Party was mandatory, at that point of time, when the Arrival manifest was lodged with the Customs or the consignment was discharged at Nhava Sheva, India, on account of the fact that GSTIN number could be granted only to an Indian National. Of course, after 31/11/2024, the compliance with the requirements of Form Form VI A, in terms of Regulations 4(2)(e)(i) of the Regulations of 2018, will have to be done by any consignee/importer, in its strict sense.

14. That takes us to the contention that the goods were not destined for being shipped to India and therefore, ought not to have been permitted to be unloaded by the respondent Nos.1 and 2 or for that matter transshipped to ICD Wardha. This need not detain us long, for the reason that the sales contract between Maptrasco and the petitioner dated 25/08/2022 (pg.81), itself indicates that the port of discharge of the consignment/cargo was Nhava Sheva/Mundra, India and the Commercial Invoices dated 20/11/2022 (Pgs.82, 84 and 86), the corresponding packing lists dated 20/11/2022 (Pgs. 83, 85 and 87) which form part of the sales contract, all indicated the port of delivery to be Nhava Sheva, India. Not only that, the Commercial Invoices as well as the Packing Lists, in addition to indicating the port of delivery being Nhava Sheva, India, also indicated further transshipment to Wardha, being the place of delivery of the consignment/cargo. In the bills of lading, which is a transport document, which have been issued by the respondent No.4/Maersk dated 01/12/2022- Bill No.222568540 (20 Containers) (Annex-II/pg.89); dated 01/12/2022- Bill No.222568576 (20 Containers) (Annex-III/pg.101) and dated 02/12/2022- Bill No.222568555 (10 Containers)

(Annex-IV/pg.113), the port of discharge is mentioned as Nhava Sheva, India and the place of delivery as Wardha, which indicated that the consignment/cargo was destined for Wardha. The Bills of Lading further mention that there would be available to the petitioner a facility of 12 days free detention at destination, meaning 5 thereby that the consignments/cargo, was to be cleared by the petitioner, within that time frame, failing which any further detention of the consignment cargo, would call for charges to be payable by the petitioner, in terms of rent or demurrage as would be the policy applicable at the destination. The e-mails dated 10 21/12/2022 (pg.137); 04/01/2023 (pg.138); 05/01/2023 (pg.140) which are from harsh@asianone.sg, the petitioner, would indicate that a change of final destination was being sought by the petitioner in respect of the consignment/cargo from Wardha to ICD Malanpur, the vessel being berthed on 05/01/2023, which in fact would 15 substantiate that they were indeed destined for India and further transshipment to Wardha. The Bills of Lading contain a further endorsement 'FREIGHT PREPAID', which in turn would indicate that the freight till the destination which was Wardha, already stood paid. All this would point out that all throughout, right from the date of 20

the sales contract dated 25/08/2022 (pg.81), till the discharge of the cargo on 05/01/2023 at Nhava Sheva, India and its further transshipment at Wardha, between 17/01/2023 to 09/03/2023, the petitioner was aware that the port of delivery was Nhava Sheva, India and the destination was at Wardha. It therefore does not now lie with the petitioner to contend that the goods were never destined for India, and the respondent No.4, ought not to have discharged them at Nhava Sheva, India, in the custody of the respondent Nos.1 and 2. The contention is, therefore, rejected.

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15. It is also necessary to note that the petitioner itself has come with a case as indicated in para 17 of the petition that the respondent No.4, by misrepresentation and fraud, had entered the name of a third party, namely M/s Rathi Iron and Steel Industries, Pithampur, as the consignee, in the import documents, on account of which the consignment/cargo got discharged at Nhava Sheva, for which reliance is placed upon the Import Tax Invoice bearing No.5123354121, (pg.149); Invoice No. 5123354120 (pg.152) both dated 10/12/2022 and Invoice No.5123472603 dated 22/03/2023 (pg.155) which are in the name of M/s Rathi Iron and Steel

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Industries, Pithampur. The e-mail dated 01/06/2023 (pg.166) by the respondent No.4, to the petitioner, would indicate that on a previous occasion as local customer details were not found, the consignment/cargo was retained on board and was re-scheduled again for import to India, at which time also the same discrepancy 5 was found due to which they should have been returned to the Country of origin, however, on account of incorrectly adding the shipment to the manifest, had led to an incorrect IGM manifestation, and this obviously had resulted in discharge of consignment at Nhava Sheva, India and transshipment to Wardha. If that be the case then 10 the remedy of the petitioner would be as against the respondent No.4/Maersk, the shipper, who is claimed to be responsible for such a fraudulent act and not against the respondent Nos.1 to 3. It is equally trite, that since a plea of fraud is being invoked, the same would require evidence to be led, as disputed questions of fact would be 15 involved and would not permit the invocation of the extraordinary jurisdiction of this Court under Article 226 of the Constitution.

16. Insofar as the contention that the consignment/cargo, upon its discharge, came into the custody of the respondent Nos.1 20

and 2 and thereafter upon transshipment, to Wardha, in the custody of the respondent No.3, as contended by Mr. Sridharan, learned Senior Counsel for the petitioner, we are in agreement with it, for the reason, that the language of Section 45 of the Customs Act, mandates it to be so, which is reproduced as under :

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“Section 45 :- Restrictions on custody and removal of imported goods.- (1) Save as otherwise provided in any law for the time being in force, all imported goods unloaded in a customs area, shall remain in the custody of such person as may be approved by the Principal Commissioner of Customs or Commissioner of Customs until they are cleared for home consumption or are warehoused or are transhipped in accordance with the provisions of Chapter VIII.

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(2) The person having custody of any imported goods in a customs area, whether under the provisions of sub-section (1) or under any law for the time being in force,--

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(a) shall keep a record of such goods and send a copy thereof to the proper officer;

(b) shall not permit such goods to be removed from the customs area or otherwise dealt with, except under and in accordance with the permission in writing of the proper officer or in such manner as may be prescribed.

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(3) Notwithstanding anything contained in any law for the time being in force, if any imported goods are pilfered after unloading thereof in a customs area while in the custody of a person referred to in sub-section (1), that person shall be liable to pay duty on such goods at the rate prevailing on the date of delivery of an arrival manifest or import manifest or, as the case may be,

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an import report to the proper officer under section 30 for the arrival of the conveyance in which the said goods were carried.”

A perusal of the language of Section 45 of the Customs Act, would point out that though the goods are discharged at the port and though they may be transshipped to a dry port, in this case ICD at Wardha, they remain in the custody of the Customs, though the physical possession may be with such person as may be approved by the Officer Authorised in that behalf, in this case the respondent No.3, as they cannot be removed by the consignee or the importer, unless the procedure for clearance of goods as contained in Sections 46 and 47 of the Customs Act is complied with. Section 46(1) mandates that the importer of goods for home consumption, shall present to the proper officer, a bill of entry, in such Form as may be prescribed, before the end of the day, on which the vessel or vehicle carrying the goods arrives at a customs station at which such goods are to be cleared for home consumption, as provided for in Section 46(3) therefor, and also make and subscribe a declaration as to the truth of the contents of the bill of entry and in support thereof to produce to the proper officer the invoice and such other documents relating to the imported goods as may be prescribed.

Sub Section 4-A of Section 46 further indicates an obligation upon the importer to ensure the accuracy, completeness, authenticity and validation of the information as contained in such bill of entry. Section 47 then provides for the clearance of the goods as entered in the bill of entry for home consumption, upon being satisfied with the compliance with all requirements thereto, by passing a written order in that regard, consequent to which the goods are then released in the custody of the consignee/importer. All this has to be got done by the consignee/importer, within a period of 30 days from the date of the unloading of the goods at a custom station or within such extended time as the proper officer may allow, in this regard, which is spelt out from Sections 48 and 49 of the Customs Act. Thus, till the goods are cleared by passing of an order in that regard under Section 47 by the proper officer, they continue to remain in custody of the customs. This is not to say that such custody has to continue indefinitely, for as indicated above, in terms of the mandate of Section 48, the duration is only 30 days from the date of unloading or such extended time, which may be allowed by the proper officer under Section 49. It is, thus, apparent that the duty, obligation and responsibility to get the imported goods cleared for home

consumption, and accordingly released from the custody of the Customs, is of the consignee/importer in terms of Sections 45 to 48 of the Customs Act. The free detention period, during which the goods could be stored at the Custom station or such other place, as indicated by the respondent No.4, in its bills of lading was 12 days at the destination. In case the consignee/importer does not clear the goods after unloading within the time frame as provided by Section 48 or such extended time as permitted under Section 49, the goods, then become liable to be sold by the person having custody thereof, of course, with the permission of the proper officer, which mandate is contained in Section 48 of the Customs Act, by adopting the procedure as provided in Section 150. This is necessary as the person in whose custody the goods have been placed by the Customs, is not expected to hold them for an indefinite period.

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17. In the instant case, it is not in dispute that the goods reached ICD Wardha, between 17/01/2023 to 09/03/2023, on account of their transshipment from Nhava Sheva, India. The obligation of the petitioner, who claims title to such goods, to get them cleared, after following the procedure as prescribed in

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Sections 45 to 47 of the Customs Act, thus accrued on such dates when the goods reached ICD Wardha. The petitioner, thus had to get them cleared within a period of 30 days as and when they were unloaded at ICD, Wardha. The communication dated 08/08/2024 (pg.275) by the respondent No.3 to the respondent No.2, indicates 5 that the respondent No.2, had at the request of the petitioner, by its letter No.VIII(Cus) 2591/SHB/2023 dated 26/07/2024, granted final extension of time to clear the goods till 07/08/2024, however, in spite of the same, the petitioner had not filed the Bill of Entry within 10 the time frame granted to it, in view of which, permission was sought by the respondent No.3, for auctioning the goods. It is equally an admitted position, that after the extension having expired on 07/08/2024, the petitioner had not applied for and been granted any extension thereafter, and as the goods continued to remain in the custody of the respondent Nos.1 and 2, through the respondent No.3, 15 the same gave a cause to the respondent No.3, to claim auction of the goods on account of demurrage or rent, apart from such other charges as were permissible for the respondent No.3, to claim on account of storage of the goods with it. The e-mail dated 04/05/2023 by the respondent No.3, to Manish Khaitan of 20

Maptrasco (filed with pursis dated 06/12/2024) to which the petitioner is also an addressee, indicates a claim by the petitioner of rental charges for the overstay of the consignment with the respondent No.3; the e-mail dated 08/12/2023 by the respondent No.3, asking Maptrasco to clear the cargo by 15/12/2023 otherwise 5 the cargo will be referred for public auction as per the Indian Custom Procedure; the e-mail communications dated 23/12/2023 and 01/01/2024 on the same lines, would indicate that Maptrasco as well as the petitioner were throughout aware of the liability to pay the rental charges, on account of the overstay of the consignment 10 with the respondent No.3. In fact, the earlier communication dated 15/05/2024 (pg.212) by the petitioner to the Assistant Commissioner of Customs, ICD Wardha, in fact, indicates its knowledge of the entire set of events which had led to the consignment reaching ICD Wardha, and so also its obligation and 15 responsibility to get them cleared as the said communication specifically records the intention of the petitioner to pay the customs duty and clear the consignments. Even if customs duty was not payable on the consignment, as is contended, still, this communication indicates the willingness of the petitioner to clear the 20

consignment, which in turn would mandate it to follow the procedure for clearance as indicate in Sections 45 to 49 of the Customs Act.

18. Section 48 of the Customs Act, permits the 5
custodian/respondent No.3, to sell the goods, in its custody, if they
are not cleared within 30 days from the date of unloading at a
customs station, or such further time as may have been allowed by
the proper officer. There are however two pre-requisites to such sale
(a) a notice to the importer and (b) permission by the proper officer. 10
Insofar as the notice is concerned, a plea is raised that there is no
notice to the petitioner, who has title to the goods. In this context, it
would be material to note that the language of Section 48 of the
Customs Act, contemplates, notice to the importer and not to the
owner. The Bills of Lading, do not show, the petitioner as the 15
consignee or importer. All that it shows is that the petitioner was to
be notified in respect of the consignment/goods. The Bills of Lading,
also indicate that the first party to be notified was Maptrasco. It is
Section 150(1) of the Customs Act, which prescribes the procedure
for sale of goods, which contemplates a notice to the owner. The 20

purpose of a notice is to bring to the knowledge of a person to whom it is addressed a certain set of facts, for such person to act upon. If such knowledge is attributable to such person, by any other mode or manner, then the plea of absence of a notice may not be sustainable in law. In this context, it is necessary to note that receipt of the e-mail dated 09/07/2024 (pg.252) issued by the Assistant Commissioner, Customs Commissionerate to the petitioner, intimating it, that the custodian/respondent No.3 vide its letter dated 05/07/2024 (copy of which was enclosed) had issued a notice for auction of the goods in question as the petitioner had not filed any bill of entry and asking the petitioner to clear the goods before the date given by the Custodian/respondent No.3, otherwise the request for grant of permission under Section 48 for auction would be considered by the respondent Nos.1 and 2, has not been denied by the petitioner. In fact, the e-mail dated 24/07/2024 (pg.256) by the petitioner specifically acknowledges the receipt of this e-mail dated 09/07/2024, and seeks extension of 10 days. This would clearly indicate that the petitioner, was put to notice that the goods were being proposed to be auctioned, on account of their overstay with the respondent No.3, and the respondent Nos.1 and 2, were intending to

consider the grant of permission for the same in terms of Section 48 of the Customs Act. Since there was no further response from the petitioner, during the aforesaid 10 days as sought by it, by the e-mail dated 26/07/2024 (pg.257) by the office of the respondent No.2, addressed to the petitioner, further time was granted till 07/08/2024, as a final opportunity. To this, there is a legal notice issued by the petitioner on 02/08/2024 (pg.258) raising several claims. All this would indicate that the plea raised by the petitioner of absence of notice under Section 150(1) of the Customs Act, in respect of the auction conducted on 06/09/2024, is without any merits whatsoever, as all throughout the petitioner was fully aware of the claim made by the respondent No.3 for rental charges as well as its application to the respondent Nos.1 and 2 for sale of the goods in terms of Section 48 r/w Section 150 of the Customs Act. The plea of want of notice to the petitioner, must therefore fail, in view of the above discussion.

19. That leads us to the contention regarding cancellation of permission of the proper officer under Section 48 of the Customs Act. As indicated above, the e-mail dated 09/07/2024 (pg.252) issued by

the Assistant Commissioner, Customs Commissionerate to the petitioner, already intimated to it about the application of the respondent No.3, to sell the goods and seeking permission under Section 48 of the Customs Act for the same. The Customs vide order dated 09/08/2024 (pg.276) granted approval for auction of the goods, which came to be auctioned on 06/09/2024. Though it is sought to be contended that the permission was cancelled, this is based upon the communication dated 18/09/2023 (pg.286). A perusal of this communication indicates that it nowhere speaks about any cancellation, rather it only expresses the apprehension of the respondent Nos.1 and 2, regarding the anomalies, which it claims to have noticed in the process, including an apprehension regarding serving a notice of the auction in terms of Section 150(1) of the Customs Act. The respondent No.3, by its reply dated 17/10/2024 (pg.18 of pursis dated 06/12/2024) gave a clarification, being satisfied with and accepting which the respondent No.2, by his order dated 06/11/2024, granted approval to file a bill of entry, the same came to be submitted on 22/11/2024, as a result the Chalan for payment of the IGST was generated on 25/11/2024. The plea that the permission for auction was cancelled therefore cannot be

accepted.

20. We, therefore, find that the action of the respondent Nos.1 and 2, permitting the goods to be auctioned and that of the respondent No.3, in auctioning the goods, in view of the above discussion, cannot be faulted with. For the same reasons, we also hold 5 that the claim by the petitioner that the custody of the respondent Nos.1 to 3, was invalid, is incorrect, as a result of which, the plea by the petitioner, that the deductions as contemplated by Section 150(2) of the Customs Act, are not attracted or applicable is turned down.

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21. That being so, the course of action as contemplated by Section 150(2)(a) to (d) of the Customs Act, in relation to the application of the sale proceeds, on account of the auction, should follow. In this context, in terms of Section 150(2) (a) the proceeds of the sale have to be first applied to the payment of the expenses of the 15 sale. The sale has been conducted by the respondent No.3 and therefore, this is for the respondent No.3, to do, as no data has been placed before us as to how much were the expenses of the sale. The sale proceeds have then to be applied in terms of Section 150(2)(b) to the payment of the freight and other charges, if any, payable in 20

respect of the goods sold, to the carrier, if notice of such charges has been given to the person having the custody of the goods, which is the respondent No.3. The respondent No.4, who is the Shipper, nor any other entity has placed on record any document to show that any amount is due and payable to it, on account of the freight and other charges. On the contrary, the bills of lading, indicate that the freight was prepaid, till the delivery point, i.e. ICD Wardha, and therefore, it is apparent that there cannot be any claim on this count. The sale proceeds, then in terms of Section 150(2)(c) have to be applied to the payment of the duty, if any, on the goods sold. The respondent Nos.1 and 2, have not raised any claim on account of any duty, payable in respect of the goods sold, rather it has been indicated that no customs duty was payable, which is reflected from the communication dated 04/12/2024 by the Assistant Commissioner (SIIB) addressed to the Assistant Commissioner (Legal), Nagpur Customs, Nagpur. The sale proceeds then in terms of Section 150(2)(d) have to be applied to the payment of the charges in respect of the goods sold, due to the person having custody of the goods, which is the respondent No.3. It is, thus, after satisfying the claim of the respondent No.3, that the claim of the Central Government in terms of Section 150(2)(e) of the Customs

Act, will have to be satisfied and then the residue will become payable to the petitioner.

21.1. In ***Shri Lakshmi Steels*** (supra) [paras 36/37] relied upon by Mr. Akshay Naik, learned Senior Counsel for the respondent no.3, it has been held as under:

“37. We have already referred to a number of decisions wherein the law has been clearly laid down that even if the importer is not at fault, it is the importer alone who is liable to pay the demurrage charges. As far as detention charges are concerned, this is a private contract between the importer and the carrier i.e. shipping line. The DRI/Customs Authorities can be directed to pay the demurrage/detention charges only when it has proved that the action of the DRI/Customs Authorities is absolutely mala fide or is such a gross abuse of power that the officials of the DRI/Customs should be asked to compensate the importer for the extra burden which he has to bear. Even if an importer feels that it has been unjustly dealt with, it must clear the goods by paying the charges due and then claim reimbursement from the Customs Authority.”

22. It is, therefore, manifest, that the primary responsibility for payment of the rent/demurrage charges is that of the importer, who obviously would be the person claiming title to the goods, which in the present matter is the petitioner. In fact, as indicated above, in its e-mail dated 15/05/2024, (pg.212) the petitioner, itself has not only claimed title to the goods but has also expressed its intention to clear the consignments, which would indicate that the primary

responsibility of payment of the demurrage charges or for that matter the dues of the respondent No.3, was that of the petitioner, which has not been done by it, in view of which, turn of the petitioner for the share in the auction money would have to necessarily follow, clearance of the claim of the respondent No.3, in terms of Section 5 150(2)(d) of the Customs Act.

23. In the result, we do not find any merit in the petition. The writ petition is dismissed. Rule stands discharged. Considering the circumstances, there shall be no order as to costs. 10

(ABHAY J. MANTRI, J.)

(AVINASH G. GHAROTE, J.)