Chaitanya

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11099 OF 2025

Make India Impex
Through its Sole Proprietor Rajesh Nakhua
Age: 49 years, Occupation: Business,
Having office at 605, 6th Floor, B Wing,
East Point, 90 Feet Road,
Ghatkopar (East), Mumbai - 400 075 … **Petitioner**

Versus

1. **Union of India**
   Through the Secretary,
   Ministry of Law and Justice,
   Department of Legal Affairs, Branch Secretariat, Aaykar Bhavan Annexe,
   2nd floor, New Marine Lines, Mumbai - 400020

2. **Additional Director General**,
   Department of Revenue Intelligence,
   Mumbai Zonal Unit, 13, Sir Vithaldas Thackersey Marg, New Marine Lines,
   Mumbai - 400 020

3. **The Chief Commissioner of Customs**,
   JNCH, Nhava Sheva, Tal.-Uran,
   District- Raigad, Maharashtra-400 707

4. **The Commissioner of Customs (NS-I)**
   JNCH, Nhava Sheva, Tal.-Uran,
   District-Raigad, Maharashtra - 400 707

5. **The Senior Intelligence Officer,**
DRI, MZU, NS-II
208, 209, 215, 2nd Floor, 'D' Wing,
Navi Mumbai SEZ Commercial
Complex, Sector-11, Dronagiri,
Raigad, Maharashtra - 400 707

6. **Mr. Sumit Kataria**
The Intelligence Officer
DRI, MZU, NS-II
208, 209, 215, 2nd Floor, 'D' Wing,
Navi Mumbai SEZ Commercial
Complex, Sector-11, Dronagiri,
Raigad, Maharashtra - 400 707 **... Respondents**

Dr. Sujay Kantawala a/w Ms. Aishwarya Kantawala, Ms. Ayushi Jha i/by Mr. Jaffry Caleb, for Petitioner.

Mr. Anil C. Singh, Additional Solicitor General a/w Mr. Jitendra Mishra, Mr. Satyaprakash Sharma, Ms. Sangeeta Yadav (through Video-Conferencing), Mr. Rajdatt Nagre, Mr. Krishnakant Deshmukh, Mr. Adarsh Vyas, Mr. Rama Gupta, Mr. Rupesh Dubey, for Respondent Nos. 1, 2 & 5.

Mr. Satyaprakash Sharma a/w Mr. Abhishek R. Mishra, for Respondent Nos. 3 & 4.

Mr. R. S. Apte, Senior Advocate a/w Ms. Anjali Helekar, for Respondent No. 6

CORAM : **M.S. Sonak &**
Advait M. Sethna, JJ.

RESERVED ON : 01 OCTOBER 2025

PRONOUNCED ON : 08 OCTOBER 2025

JUDGMENT : *(Per M. S. Sonak, J.)*

1. Heard learned counsel for the parties.

2. Rule. The rule is made returnable immediately at the request of and with the consent of the learned counsel for the parties.

3. This Petition, apart from seeking action against the sixth Respondent, seeks the release of goods covered under Bill of Entry No. 3375923, dated 19 July 2025, comprising approximately 56 tons of dry dates.

4. The record shows that after the Bill of Entry was filed on 19 July 2025, the Customs Authorities, by exercising the powers vested in them under Section 47 of the Customs Act, cleared the goods by issuing an Out of Charge ('OOC') order on 24 July 2025, at 19.23 hours. The record prima facie shows that during the period between 19 July 2025 and 24 July 2025, due verification was carried out by the Customs Authorities. Besides, the OOC was issued after a release order was made on 24 July 2025 by the Ministry of Agriculture and Farmers Welfare, Government of India, and a No-Objection Certificate for clearance of imported food was issued by the Food Safety and Standards Authority of India on 19 July 2025 itself.

5. The Petitioner, upon payment of the entire assessed customs duty of Rs. 6,30,361.7/- was issued a gate pass – custodian copy – OOC on 24 July 2025 itself, pursuant to which the imported goods were physically taken out from the jurisdiction of the Customs Authorities by engaging the

transporters and the Customs Handling Agents ('CHAs') for delivery to the suppliers, at around 19.25 hours on 24 July 2025.

6. The Petitioner, in paragraph No. 8 of the Petition, has pleaded the following in relation to what, according to the Petitioner, transpired after the imported goods were taken out pursuant to the Out of Charge order and the gate pass. The averments in paragraph No. 8 are quite telling, and therefore, transcribed below for the convenience of reference:-

> *"8. The Petitioner states that the Petitioner complied with all the required procedures and after getting the Out-of-Charge, obtained the Gate Pass around 19:25 hours and the imported goods were cleared out of the J.M. Baxi CFS at 20:30 hours on 24.07.2025. The containers thereafter, on two separate trucks moved physically out of the CFS towards Vashi, Navi Mumbai. Annexed hereto and marked as Exhibit "G" is a copy of Gate Pass No.2064969186 dated 24.07.2025. The goods /containers thereafter, proceeded to nominated Warehouse at Vashi, Navi Mumbai. The DRI Officers including one Mr. Sumit Kataria started calling up various people and completely ran amok and ordered and threatened the Customs Broker and Transporter to anyhow bring the already cleared goods after payment of Assessed Custom Duty and Examination, back into the CFS, in order to show that the goods never left the CFS. However, the goods / containers were brought back to the CFS under force and compulsion at 06530 p.m.approx. on 25.07.2023 under threat of taking severe actions and the Transporter / Customs Broker were left with no choice but to succumb to the illegal dictates and highhanded actions of Respondent No.5 and his colleagues. Both the containers are presently lying in J.M. Baxi CFS despite getting the Out-of-Charge and issuance and digital signature on the Gate Pass. The Petitioner*

> *craves leave to refer and rely upon the CCTV Footage in support of the above."*

7. The Petitioner has also pleaded that the action of Mr Sumit Kataria (R6) was taken without lawful authority, was arbitrary, and was high-handed. The Petitioner has pleaded that due to the actions of the sixth Respondent, a cascading effect occurred, resulting in the cancellation of the supply contract entered into by the Petitioner with its suppliers. The documentation about the cancellation is pleaded and annexed along with the Petition.

8. The Petitioner has pleaded about a detailed representation addressed on 26 July 2025, to the customs officials, detailing the actions of the sixth Respondent post the release of the imported goods from the jurisdiction and the authority bounds of the Customs, urging inter alia, some action against the sixth Respondent. The Petitioner has pleaded that, despite the receipt of such representation, no steps were taken by any of the Respondents to redress the Petitioner's grievance.

9. The Petitioner has also pleaded about the full cooperation extended by the Petitioner to the DRI officials in the context of their allegations that the imported goods had in fact originated in Karachi (Pakistan) and not from Dubai (UAE). However, despite such cooperation, based upon the illegal and highhanded actions of the sixth Respondent, the released dry dates, which were forced to be brought back, were not being released. The Petitioner has instituted this Petition seeking the relief referred to hereinabove.

10. The sixth Respondent was impleaded in his personal capacity, as allegations were made against him. He has filed an Affidavit stating that after the goods were cleared, a specific intelligence was received in the late evening of 24 July 2025 indicating that the two containers covered under the Bill of Entry No. 3375923 dated 19 July 2025, imported by the Petitioner contained goods that had actually originated from Karachi (Pakistan), and were merely routed through Dubai (UAE) for importing India. The Affidavit states that the Petitioner had mis declared the country of origin to circumvent the prohibition imposed on goods originating from Pakistan, as per DGFT Notification No. 06/2025-26 dated 2 May 2025.

11. The sixth Respondent, after making the statement to the above effect in paragraph 3 of his Affidavit, has proceeded to state the following in paragraphs 4, 5, 6 and 7 of his Affidavit:-

> *"4. Acting on said intelligence, and after due verification that the goods were already cleared, I, acting bonafide and in the interest of the investigation, made efforts to trace and intercept the prohibited goods that had been cleared by way of misdeclaration of country of origin and suppression of facts. Accordingly, these containers were brought in the CFS J. M. Baxi Ports & Logistics Pvt. Ltd. after coordinating with the said CFS, the customs broker and the transporter, in accordance with the provisions of Section 47 and Section 106 of the Customs Act, 1962. No coercive measure was employed by me in the process.*
>
> *5. The intelligence was received late in the evening, I, therefore, telephonically contacted the representative of the said CFS. He informed that the said 02 containers (imported by the petitioner) have already been cleared*

> *just 1-2 hours before. He also informed about the Custom broker who dealing with the clearance of said 2 containers. Further, the custom broker ie Rashmi Shipping Agency was telephonically contacted, duly communicated the issue and was requested to bring the containers back to the aforesaid CFS, for safekeeping of the cargo and further necessary actions under Customs Act, 1962. Further, an email dated 25.07.2025 was sent to the CFS in the morning, regarding the hold of the containers, to certain the hold that was telephonically communicated in the previous night. Furthermore, in the morning of 25.07.2025, the transporter, M/s Jiyansh Logistics was telephonically contacted and requested to bring back the containers to the aforesaid CFS. Later in the evening of 25.07.2025, it was informed over the phone by the representative of the Customs Broker that the vehicles carrying the aforesaid two containers had arrived at the Gate of the CFS.*
>
> *6. Accordingly, vide E-mail dated 25.07.2025 (Annexure-B), the Deputy Commissioner, Import Docks, and M/s JM Bakshi and logistics Pvt Limited, CFS were requested to allow the containers inside the CFS for further necessary actions under Custom Act, 1962.*
>
> *7. In view of above, it is respectfully submitted that the petitioner's claim that the containers were brought back to the CFS in order to show that the goods never left the premises is hereby denied in toto, as all telephonic communications and e-mail correspondences were duly made with the concerned stakeholders to bring back the Pakistani Origin goods contained in those two containers for necessary actions under Customs Act, 1962."*

12. Upon reviewing the averments in the Writ Petition and the sixth Respondent's response, we form the impression that there is prima facie merit in the factual allegations made by the Petitioner against the sixth Respondent. At this stage, it is difficult for us to determine whether the sixth Respondent was

acting mala fide or due to any extraneous consideration, as was suggested, but the sixth Respondent has admitted that after the goods left the jurisdictional bounds of the customs, the sixth Respondent telephonically contacted the Customs Broker, the CHA, or the Transporters and ensured that the cleared goods were brought back within the jurisdictional bounds of the Customs Authorities.

13. The Petitioner has alleged that the sixth Respondent called the Customs Broker, Transporter, and others, and started threatening them if they failed to bring the goods back into the CFS. The Petitioner has also averred that the goods and the containers were brought back to the CFS under force and compulsion, which included threats of severe actions against the Customs Broker and Transporter, leaving them with "*no choice but to succumb to the illegal dictates and highhanded actions of Respondent No.6 and his colleagues".*

14. The sixth Respondent, in his affidavit, has not denied the telephone calls pursuant to which the cleared goods were required to be brought back to the CFS. However, the sixth Respondent has, quite lamely, denied the allegations of threats or coercion. In his affidavit, the sixth Respondent has stated that he merely "*requested"* the Customs Brokers and Transporters to bring back the cleared goods into the CFS at the earliest.

15. At least prima facie, it is hard to believe that the goods were returned to the CFS solely based on a "request" of the

sixth Respondent. As noted earlier, the goods remained with the Customs Authorities for nearly 6 to 7 days and were prima facie cleared after completing all required procedures. The Sixth respondent completely ignored the statutory orders of clearance, and telephonic "requests" were allegedly made to CHA and the transporters to bring back the cleared goods, i.e. dry dates.

16. In any event, apart from the allegations of arbitrariness and highhandedness on the part of the sixth Respondent, what we are concerned with is really the legality of the action of the sixth Respondent.

17. The sixth Respondent is a government official conferred with certain statutory powers and corresponding duties. The powers must be exercised in accordance with law. Even if we assume that the sixth respondent was not acting out of any ulterior motives or for any extraneous considerations, still, the ends cannot always justify the means. Particularly, when exercising writ jurisdiction, this Court is concerned with the decision-making process rather than the ultimate decision. Any alleged absence of malafides is no substitute for acting contrary to the law or legal procedures.

18. The Respondents, by filing their affidavits in this matter, have relied on the provisions of Sections 47 and 106 of the Customs Act to justify the actions of the sixth Respondent. Section 47 provides that where the proper officer is satisfied that any goods entered for home consumption are not

prohibited goods and the importer has paid the import duty, if any, assessed thereon and any charges payable under this Act in respect of the same, the proper officer may make an order permitting the clearance of the goods for home consumption.

19. In this case, the goods were sought to be imported by filing a Bill of Entry dated 19 July 2025. The proper officer in this case, presumably, upon recording satisfaction that the goods were not prohibited goods, and after recovering the customs duties and other charges from the Petitioner, made an order for clearance of the goods by exercising the powers under Section 47 of the Customs Act.

20. The affidavits on behalf of the Respondents referred to the decision of the Hon'ble Supreme Court in the case of **Union of India and Ors. Vs Jain Shudh Vanaspati Ltd and Anr.**[1] to contend that a clearance order under Section 47 obtained by fraudulent means cannot debar the issuance of a show-cause notice for confiscation of the goods under Section 124.

21. There can never be any dispute regarding the above legal position. Even the Petitioner does not contend that clearance of the goods by an order made under Section 47 prevents the Customs Authorities from issuing any show cause notice. However, in this case, no show-cause notice was ever issued. Instead, the sixth Respondent, without making any order or recording any satisfaction, based on some intelligence suggesting that the goods had originated in Karachi (Pakistan),

[1] 1996 INSC 856

made phone calls to the Customs Broker and Transporters, allegedly "requesting" them to bring back such cleared goods within the CFS. This officer completely ignored the statutory clearance order and the out-of-charge order, and exercised powers that, prima facie, did not authorise him to act in the manner in which he did in this case.

22. Thus, the sixth Respondent, who is a senior intelligence officer, by completely ignoring the statutory order under section 47 of the Customs Act, and without compliance with any legal provisions, has virtually forced the Petitioner or rather the Customs Brokers and the Transporters, to bring back such goods, even though the custody of such goods was lawfully handed over by the customs authorities to the Petitioner vide the out of charge order and the gate pass cum custodian order.

23. The divesting of such goods from the custody of the petitioner or his agents was not shown to be backed by any law or lawful procedures. There was no minimum compliance with the principles of natural justice and fair play. It is well settled that any action which visits a party with such civil consequences must be preceded by at least a minimum compliance with principles of natural justice and fair play. Furthermore, such action must be authorised by law and must not be merely backed by the colour of office.

24. The affidavits filed by the Respondents referred to Section 106 of the Customs Act, which deals with the power to

stop and search conveyances. Even here Section 106 provides that where the proper officer has reason to believe that any aircraft, vehicle or animal in India *"has been, is being, or is about to be*", used in the smuggling of any goods or in the carriage of any goods which have been smuggled, he may at any time stop any such vehicle, animal or vessel or, in the case of an aircraft, compel it to land, and rummage and search any part of the aircraft, vehicle or vessel, examine and search any goods in or over them, break open the lock of any door or package for exercising the powers conferred by clauses (a) and (b), if the keys are withheld. Section 106(2) also gives the proper officer powers to use all lawful means for stopping any vehicle or animal, and where such means fail, the vehicle or animal may also be fired upon.

25. The actions of the sixth Respondent do not fall within the scope of Section 106 of the Customs Act. In this case, the goods had already been cleared by the customs authorities themselves. Their clearance orders have not been revoked, either through legal procedures or otherwise. The petitioner, as the supplier, had transported the cleared goods. After this, the sixth Respondent, by making calls to customs brokers and transporters, has effectively coerced them into returning the supplied goods. This is not the authority granted to the sixth Respondent under Section 106 of the Customs Act.

26. In any event, even if we assume that Section 106 was attracted, still, the powers under Section 106 cannot be

exercised without the conditions specified therein for the exercise of such power. Such powers can be exercised only when the proper officer '*has reason to believe*'. Such a reason to believe must be reflected either in some order or at least through notes in the file. Otherwise, judicial review could always be avoided by such means.

27. Since the affidavit made no reference to any order or notes, we inquired with the learned counsel appearing on behalf of the respondents whether there was any contemporaneous note in the file regarding this action. Initially, we were informed that such a note existed and that it could be produced for our review, although it could not be shown to the Petitioner or the learned counsel for the Petitioner. Then we were informed that no such notation was made before the impugned action, but that such notation was made sometime after. Ultimately, the noting shown to us was also not concerning any exercise of powers under Section 106 of the Customs Act.

28. It was submitted before us that there is an email which could be regarded as some writing in the context of the impugned action. The sixth Respondent addressed this email to the customs gate for allowing the goods to be brought back into the CFS. This email can hardly be considered any form of writing to constitute 'reason to believe' on the part of the authority, in support of the impugned action. This email has no

nexus with the exercise of powers under Section 106 of the Customs Act.

29. Mr Anil Singh and Mr Apte, however, submitted that since some intelligence was received, reason to believe must be presumed, whether any writing or noting was made or not. Such a blanket proposition cannot be accepted as justification for the exercise of statutory powers by a statutory functionary, given the circumstances in this case. Ultimately, the rule of law requires that statutory functionaries act in accordance with the law and within the bounds placed upon the exercise of their power by the law.

30. In this case, at least one statutory functionary, after examining the bill of entry and all accompanying documents and NOCs for nearly 6-7 days, cleared the goods by issuing a statutory order under Section 47. If this order was found wanting due to subsequent intelligence or for any other reason, there are sufficient provisions under the Customs Act to revise or stay such an order. However, here, the sixth respondent, by disregarding the statutory order, failing to adhere to natural justice, and not making any contemporaneous record of the alleged satisfaction, has exercised powers that did not even prima facie authorise him to do what he has done.

31. Mr Singh submitted that there are several legislations, such as the Prevention of Money Laundering Act, 2002 (PMLA), which require the Proper Officer to record their reasons in writing before undertaking a search or seizure. He

submitted that Section 106 of the Customs Act does not require reasons to be recorded in writing. Such a blanket proposition cannot be readily accepted.

32. As noted earlier, the action of the sixth Respondent does not fall within the scope of Section 106 of the Customs Act. Even if Section 106 were applicable to the sixth Respondent's actions, the section clearly pertains to the Proper Officer having reason to believe**.** Such reasons, at most, do not need to be documented in the form of a formal order. However, the fundamental safeguard of having such reasons cannot be disregarded based on the argument now presented. In this case, there are no writings**,** file notings, or any other contemporaneous records.

33. On a review of the Petitioner's allegation and the Respondent's response, it does appear that the Respondents, under the colour of office, forced Customs brokers and transporters to bring back the goods within the CFS, long after they had left, based upon an Out of Charge order and gate pass under Section 47 of the Customs Act. This divesting was not shown to be backed by any law or legal procedures. There was no minimum compliance with natural justice. The statutory orders made by one of the Customs officials were entirely ignored. The complete absence of any records regarding alleged reasons to believe must be considered in the established context of such facts and circumstances, rather than a mere assertion by the 6th respondent.

34. Mr Singh submitted that the Petitioner is a repeat offender regarding violations of the Customs Act. Some instances from 2018, 2022, and 2023 have been cited in the affidavit. All these are allegations, and nothing has been presented on record to demonstrate that such allegations were investigated and confirmed to be true. There is not even any positive assertion in the affidavit that these past allegations gave the 6th respondent any "reason to believe". As noted hereafter, hardly two weeks after the prima facie unlawful divestment, the Customs Authorities have cleared the Petitioner's identical consignment, imported from the same exporters and ports.

35. That apart, Mr. Kantawala pointed out that within hardly two weeks of the clearance of the goods under the Bill of Entry dated 19 July 2025, this very Petitioner filed two further Bills of Entry for import of identical goods i.e. dry dates, by involving the same suppliers and by following the same route i.e. from Dubai (UAE) to Mumbai, and, such goods were cleared by the Customs Authorities without any demur. Possibly, this time, the sixth respondent was not involved. If experience were the criterion, we would fail to appreciate how these goods were cleared within two to three weeks of the clearance of the disputed dry dates.

36. Mr Singh and Mr Apte explained that, in respect of the two further Bills of Entry, since no intelligence had been received indicating that the dry dates had originated from

Karachi (Pakistan), no action was taken. They submitted that this shows the bona fides of the Customs Authorities. Mr Kantawala countered by submitting that there was something more than what meets the eye in the action of the 6th respondent.

37. Though we cannot and we do not wish to stretch the record, we cannot ignore that there are detailed rules governing the verification of the country of origin for imported goods. None of the provisions of these rules appears to have been followed at least up to now. There is a procedure for overcoming a clearance order made under Section 47, i.e., instituting a Revision or adopting such other lawful procedures, which would include at least a notice and an opportunity to respond. None of these legal provisions was resorted to in this case.

38. Mr Singh did show us a document from UAE Customs, in which one of the endorsements suggests that the goods in question originated from Karachi (Pakistan) and were destined for India through Dubai (UAE). Mr. Kantawala submitted that tracking records of the containers are available, and they would show that this was not so.

39. In exercising our extraordinary jurisdiction under Article 226, it would not be appropriate for us to go into such disputed issues. The Customs Authorities can always investigate these disputed issues by following the due procedure prescribed under the law. However, in this Petition,

we are concerned with the action of the sixth Respondent, which, at least prima facie, did not appear to have any backing of the law. Such action has not been justified by the sixth Respondent or the Customs Authorities by referring to any law or legal provisions. The legal provision referred to cannot justify the actions as noted above. Even outside the written law, it is well settled that principles of natural justice and fairness must be followed before any party is subjected to serious civil consequences. Even such principles do not appear to have been followed even minimally in the present case.

40. The record prima facie shows that it was not as if the proper officer who cleared the goods under section 47 was not alive to the possible controversy of the dry dates having some Pakistani link. In this case, as noted by Mr Kantawala, the Bill of Entry was filed on July 19, 2025. This Bill of Entry is attached as Exhibit B to the Petition. The Examination Order, which is on page 36, containing the endorsement of the Customs Authorities, states as follows :

A1. EXAMINATION ORDER

> "FOLLOW RMS/CCR/TARGET INSTRUCTIONS AND EXAMINATION ORDER. VFY FSSAI AND PQ NOC IF NOT WAIVED IN THE SYSTEM. VERIFY PHYTO SANITARY CERTIFICATE WRT PHYSCAL GOODS BEFORE OOC IF APPLICABLE. VERIFY FSSAI LICENCE AND PHYTOSANITARY CERTIFICATE. VERIFY RE-44 IF APPLICBLE VFY GOODS ARE NOT OF PAKISTAN ORIGIN AS PER RMS INSTRUCTIONS. IN CASE OF DISCREPANCY REFER THE B/E TO GROUP. By 100XXXXX on 20/07/2025 at 11.35 A.M."

41. So, it is not the case that doubts about the goods

originating from Pakistan were not raised during the examination process, or that such doubts only arose after some intelligence was received following the Out of Charge order. The goods were cleared approximately 6 to 7 days after the Bill of Entry was filed, presumably and prima facie once such doubts had been addressed.

42. At this stage, it is not for this Court to comment on whether any imported dry dates were of Pakistani origin and therefore, attracted the prohibition in the Notification. However, once the goods were cleared after the making of an examination order and after permissible verification of this aspect, we believe that some semblance of the observance of legal procedure, not to mention compliance with natural justice, was essential before the goods were brought back into the CFS based on the flurry of phone calls to customs brokers and transporters by the Sixth Respondent allegedly "requesting" the customs brokers and transporters to bring back such cleared goods.

43. Mr. Kantawala did try to point out the certificate of origin issued by the Dubai (UAE) Chamber of Commerce, which is at page No.28 of the Petition. He also referred to the certificate of fumigation, which is at page No.29 of the Petition. He also referred to the Phytosanitary Certificate issued by the UAE bearing a QR code, which is on page No.30 of the Petition. He pointed out that there is no allegation of document falsification or that the ultimate document issued by the UAE

Authorities was fraudulent.

44. Again, although it is true that these documents were available with the Customs Authorities and were examined before the Out of Charge orders were issued under Section 47 of the Customs Act, it is not for us at this stage to enter into all such investigations or even make any observations or remarks upon the allegations. We are only concerned with compliance with the laws and legal procedures. In the exercise of this jurisdiction, in fact, we are more concerned with the decision-making process than the ultimate decision.

45. The arguments on behalf of the Respondents proceeded on a firm conviction, that the Petitioner had misdeclared the Country of Origin to evade the notification under which any goods having a Pakistani origin were prohibited for imports into India. The allegations regarding these dry dates, valued at Rs. 22–25 lakhs, being of Pakistani origin, may or may not be correct. However, there is a legal process by which such allegations must be investigated and action taken. In this case, such a process has not been followed by the sixth Respondent, as evident from his statements in the affidavit and the fact that there are no orders or notations in the file justifying such action.

46. Mr. Kantawala submitted that the imported goods, even assuming that they are ultimately found to be prohibited goods, can be released by paying a redemption fine. He submitted that discretion is vested in the Customs Authorities

to release such goods by accepting a redemption fine or penalty. He also made a submission that in the present case, the redemption fine or penalty would exceed Rs. 6 to 7 lakhs. He offered to provide a bank guarantee to secure this amount and pleaded that, given the way the Respondents were handling the matter, the dry dates would perish and become of no use to anyone. He submitted that forcing the Petitioner to suffer such huge losses, despite the goods being perishable, would be grossly disproportionate.

47. Although we have noted that the action of the sixth Respondent was not in accordance with the law, given that some intelligence was received regarding the imported goods having a nexus with Pakistani origin, we do not accede to Mr Kantawala's request. Instead, though we are not at all satisfied with the conduct of the sixth Respondent, we think that the interest of justice would be met if the Respondents are given an opportunity to issue a show cause notice to the Petitioner within four weeks from today and further directed that this show cause notice be disposed of within six weeks of the receipt of the Petitioner's response.

48. Suppose the above exercise is not completed within the timeline now indicated by us. In that case, the Respondents must release the detained goods by determining the tentative redemption fine and requiring the Petitioner to furnish a bank guarantee to secure the same.

49. We recognize that the Customs Authorities are not

obliged to release the prohibited goods upon payment of a redemption fine, but discretion is granted to the Customs Authorities to even release such goods. This discretion must undoubtedly be exercised judicially and not arbitrarily. This case concerns dry dates and not some prohibited items such as narcotics, etc. The only concern regarding dry dates is their possible origin, which might be from Pakistan. The Customs Authorities are certainly entitled to enforce this prohibition, but they cannot take the law into their own hands or unreasonably delay proceedings so that the goods spoil. As noted earlier, there are rules and procedures in place to determine the country of origin, which are to be followed by the Customs authorities.

50. Mr Singh and Mr Apte contended that if the goods perish, but it is ultimately found that they were not of Pakistani origin and therefore not prohibited goods, the Petitioner would always be entitled to seek damages by filing a suit. Although this may be possible, the approach of delaying the adjudication without reaching a conclusion within a reasonable time and allowing the goods to perish cannot be justified. We repeatedly asked about the timeframe within which the investigations could be completed to determine whether the dry dates originated from Pakistan, enough to at least issue a show-cause notice for confiscation. However, we were repeatedly told that no such timeframe could be given because “such matters take time”.

51. Mr. Singh relied on **Commissioner of Customs (Preventive) Vs. Rajendra Kumar Damani**[2]. The observations in paragraph Nos. 12 and 13 were made in the context of the peculiar facts of the said case. In any event, the observations do not dispense with the lawful exercise of powers by Customs / DRI Officers.

52. Mr Singh also relied on **the Union of India and others. Vs. M/s. Raj Grow Impex LLP and Ors.**[3] This decision holds that importing of goods in contravention of a notification or importing goods beyond the permissible quantity and without a licence would amount to importing "prohibited goods".

53. In the present case, if the goods are of Pakistani origin, then, under the relevant notification, they would be prohibited goods, about which there can be no dispute. The Respondents, in this regard, have sought to justify their action on the basis of the intelligence information received. However, this issue, at least prima facie, was examined by the proper officer who made the section 47 clearance order. This officer's attention was specifically drawn to the possibility of the dray dates having a Pakistani origin. The statutory clearance order was made almost seven days after the bill of entry was lodged. The goods were actually cleared in pursuance of the statutory clearance order. This statutory clearance order was supported by several other clearances issued by diverse prescribed authorities.

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[2] 2024 SCC OnLine CAL 4986

[3] Civil Appeal No(s). 2217-2218 of 2021

54. In contrast, the sixth respondent, by ignoring this entire exercise, and without following any lawful procedures or complying with principles of natural justice, proceeded on the firm belief that the goods in question were of Pakistani origin and were consequently prohibited goods. Apart from all this, the Sixth Respondents' acts did not appear to have any legal backing or were not undertaken in accordance with the prescribed legal procedures as discussed above. An equitable order, upholding the rule of law, protecting, to the extent possible, the interests of the revenue and the petitioner, will therefore have to be made.

55. Accordingly, for all the above reasons, we dispose of this Petition by issuing the following directions.

(a) Though we do not approve of the actions of the sixth Respondent, still, considering that we are exercising our jurisdiction under Article 226 of the Constitution of India, we grant the Respondents an opportunity to issue the Petitioner a show cause notice within four weeks from today and dispose of such show cause notice within six weeks of the receipt of the response from the Petitioner on the issue of the status of the imported goods. An opportunity to hear must be given to the Petitioner, and any adverse material proposed to be relied upon must be shared with the Petitioner along with the show cause notice,

so that the Petitioner can file an effective response.

(b) If no show cause notice is issued within four weeks, or if the same is not disposed of within the timeline referred to in the paragraph above, the Respondents are directed to release the dry dates forming the subject matter of Bill of Entry No. 3375923 dated 19 July 2025 and Out of Charge Order dated 24 July 2025.

(c) The release of the goods, if it occurs, may be conditional upon the payment of a redemption fine or the provision of a bank guarantee to secure the payment of the redemption fine.

(d) The contentions regarding the goods being prohibited goods are kept open for decision by the Proper Officer, who will issue a show cause notice.

56. The Rule is made partly absolute to the above extent only. No costs. All concerned are to act on an authenticated copy of this order.

(Advait M. Sethna, J) **(M.S. Sonak, J)**