

Amol



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11118 OF 2025

M/s. Ajay Industrial Corporation Ltd.

Having Offices at: B-II/29

Mohan Co-operative Industrial Estate

Badarpur Border, New Delhi 110044

... Petitioner

Versus

**1. Assistant Commissioner of Customs
(Refund)**

New Custom House Ballard Estate,

Mumbai Maharashtra 400 001

e-mail: nch-import-crars@gov.in

2. Mumbai Port Authority

Port House, Shoorji Vallabhdas Marg

Ballard Estate, Mumbai 400 001

... Respondents

Mr. Rajiv Jaipal i/b Mr. Sunil, Advocates for the Petitioner.

Mr. J. B. Mishra a/w Mr. Abhishek Mishra a/w Mr. Rupesh
Dubey, Advocates for the Respondent No.1.

Mr. Mohammed Oomar Shaikh i/b M. V. Kini & Co. for the
Respondent No.2.

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

**RESERVED ON : 12 NOVEMBER 2025
PRONOUNCED ON : 19 NOVEMBER 2025**

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

1. Heard the learned counsel appearing for the respective parties.
2. Rule. Rule made returnable forthwith, with the consent and at the request of the parties. In any event, by order dated 14 October 2025, the matter had been directed to be listed for final disposal at the admission stage on 11 November 2025.

THE CHALLENGE

3. The Petitioner has impugned the communication dated 28 December 2022 bearing reference No. F.No. CUS/RFD/OTH/141/2022/REF-O/o COMMR-CUS-IMP-II-ZONE-I and DIN 2022127800000000A259, issued by Respondent No.1, whereby the Petitioner's claim for refund of customs duty amounting to ₹35,37,358/- was rejected/disposed of. The Petitioner, therefore, seeks issuance of a writ of mandamus directing Respondent No.1 to refund the aforesaid amount along with applicable interest, in accordance with the provisions of Sections 13, 23 and 27A of the Customs Act, 1962. The challenge arises in the background of the relevant facts and circumstances set out hereinbelow.

4. This is an unfortunate case where the Petitioner, despite having duly complied with all statutory obligations and paid the necessary customs duty, is forced to approach this Court due to a prolonged and unresolved dispute between Respondent No.1 and Respondent No.2. The Petitioner, who has neither received

the imported goods nor obtained a refund of the duty paid, has had to run from pillar to post for nearly three years, caught between two public authorities, each seeking to shift responsibility onto the other.

5. The two public authorities utilise taxpayers' money or public funds, and therefore have no hesitation in raising various issues to delay the refund of customs duty to the Petitioner, even after practically admitting that the Petitioner is not responsible for their situation. The main dispute revolves around the authorities' disagreement over the liability to pay the amount already deposited by the Petitioner for customs duty on imported goods, which neither of the two authorities is willing to release to the Petitioner.

6. The Customs maintain that this is a case of pilferage of the goods after they were landed and in the custody of the Port Authorities. The Port Authorities argue that this is a short landing, for which they have issued a certificate, and that the Customs should refund the customs duty collected from the Petitioner. In this dispute between the two public authorities, the Petitioner is the only sufferer.

7. The present Petition, therefore, exemplifies a situation in which an innocent importer has suffered and continues to suffer due to administrative inaction and inter-departmental discord. This necessitates the intervention of this Court in exercise of its writ jurisdiction to ensure that such an approach by two public authorities, who are supposed to facilitate ease of doing

business and act fairly and justly, does not deprive the Petitioner of its dues. Instead, these authorities have erected barriers of procedural technicalities and largely frivolous defences, again utilising public monies, which include the Petitioner's funds unlawfully retained by them for the past three years.

RELEVANT FACTS & CIRCUMSTANCES

8. The Petitioner Company manufactures and trades in PVC/CPVC pipes and various water management products. The Petitioner imports Polyvinyl Chloride Resin Suspension Grade 5, a raw material required for the manufacturing of the PVC pipes. Since the raw material is consumed in the manufacturing process, it attracts customs duty under the Customs laws.

9. The Petitioner's case is that it had placed an order for importing 100 metric tons of Polyvinyl Chloride Resin Suspension Grade 5 Erdos for a sum of USD 148,000 and had subsequently, filed a Bill of Entry No.8441729 dated 27 April 2022 with the Respondent No.1. It is undisputed that upon filing of the aforesaid Bill of Entry, the Petitioner paid a total sum of Rs. 35,37,358/- as custom duty to the Respondent No.1, on the goods to be imported. The aforesaid sum was paid by the Petitioner in parts a) a sum of Rs.23,95,538 through its bank account maintained with the ICICI bank on 27.04.2022, b) a sum of Rs. 7,22,657.88/- debited through its SCRIP license bearing no.2112032025 on 29 December 2021 and Rs. 4,19,162.21/- debited through its SCRIP license bearing

no.2112032029 on 29 December 2021.

10. On 10 May 2022, M/s. Mitsutor Shipping Agency Pvt. Ltd., the Shipping Agent of the Carrier, had issued an Agent Delivery No. DOINBOM120220510573665, whereby it was recorded that the Petitioner's goods, comprising 100 packages weighing 100.600 MTS, have arrived at the port managed by the Respondent No.2.

11. However, upon non-issuance of Landing/Discharge Certificate by the Respondent No.2, the Petitioner's Custom House Agent requested a joint survey of the premises of the Respondent No.2. On 8 June 2022, M/s carried out a joint survey of the premises of the Respondent No.2. Wilson Surveyor and Adjusters Pvt. Ltd. and M/s. Zebec Marine Services Pvt. Ltd. The surveyors vide their joint report dated 8 June 2022 explicitly recorded that they were "*unable to trace the above subject 100 big bags*".

12. The Petitioner, having failed to trace or take delivery of the imported goods, lodged a complaint on 4 July 2022 at the Yellow Gate Police Station. However, as no action was initiated pursuant thereto, the Petitioner was constrained to file a complaint bearing No. 156/Misc/2022 before the Learned Magistrate's Court. Pursuant to the said proceedings, an FIR bearing No. 0034 of 2022 came to be registered on 23 September 2022 at the instance of the Petitioner.

13. On 24 August 2022, another joint survey was conducted

by the Respondent No. 2 and the Petitioner's representative. The Respondent No. 2, vide its report dated 7 September 2022, concluded that the Petitioner's goods were short landed.

14. The Petitioner, having failed to locate and receive the imported goods, filed an application dated 24 September 2022 before Respondent No.1 seeking refund of the customs duty paid in respect of the said consignment as the Petitioner's goods had been pilfered from the premises of the Respondent No.2. Respondent No.1, vide its communication dated 28 December 2022, disposed of the Petitioner's application citing certain deficiencies and called upon the Petitioner to produce the closure letter of the Bill of Entry as a precondition for processing the refund claim.

15. Thereafter, on 25 November 2023, the Petitioner lodged a grievance through the CPGRAMS Portal bearing No. CBOEC/E/2023/0006503, complaining of the failure of Respondent No.1 to issue the closure letter of the Bill of Entry. The said grievance was rejected by Respondent No.1 on 16 December 2023.

16. Subsequently, on 6 March 2024, the Petitioner once again made a representation to Respondent No. 1, requesting the issuance of a closure letter in respect of the Bill of Entry dated 27 April 2022. The said representation was received by Respondent No. 1 on 12 March 2024; however, no action has been taken thereon to date.

SUBMISSION OF THE PETITIONER

17. Mr Rajiv Jaipal, the learned counsel for the Petitioner, relying upon the Short Landing Certificate dated 25.04.2023 issued by the Respondent No.2, submits that it is apparent from the record and an undisputed fact that the Petitioner has not received the goods.

18. Mr Jaipal contends that the Respondent No.1, by returning the Petitioner's Application dated 24.09.2022 for refund of the customs duty, had rendered it impossible to appeal against the Respondent No.1's action. He submits that the primary shortcoming in the aforesaid action was that the closure letter sought by the Respondent No.1 was supposed to be issued by the Respondent No.1 itself.

19. Mr Jaipal submits that the Respondent No.1 avoided all kinds of communication from the Petitioner seeking the above-mentioned closure letter against the Bill of Entry to illegally hold on to the customs duty paid by the Petitioner. He further submits that the Respondent No.1 is trying to take advantage of its own wrong by not issuing the closure letter against the Bill of Entry.

20. Mr. Jaipal further submits that the Respondent No.2, despite having issued a Certificate of Short Landing, whereby it certified that the goods of the Petitioner never arrived, the Respondent No.2, through its legal representatives, made a

complete contrary representation before this Court in *Board of the Mumbai Port Authority v. The State of Maharashtra & Anr.*¹ The Respondent No.2, through its advocates in the aforesaid case, admitted that the Petitioner's goods had gone missing from the custody of the Respondent No.2, who was holding the same in lawful capacity.

21. Mr Jaipal, relying upon Section 13 of the Act, submits that it is a statutory right of the Petitioner to claim a refund of the customs duty paid if the goods are pilfered before the proper officer has made an order for clearance. He further contends that Section 23 makes it mandatory for the Respondent No.1 to remit the duty on goods that have been lost or destroyed at any time before the clearance for home consumption.

22. Mr Jaipal argues that irrespective of the category in which the Petitioner's case falls, it is an irrefutable fact that the Petitioner has not received any goods against the Bill of Entry dated 27.04.2022 and hence, the Respondent No.1 is not entitled to any customs duty. He further argues that it is a settled position of law that any amount paid without a legal demand is a deposit, and as such, the Petitioner is entitled to a refund of the amount paid along with interest from the date of such payment.

¹ Criminal Application No.416 of 2023

CONTENTIONS OF THE CUSTOMS AUTHORITIES

23. Mr. Jitendra B. Mishra, the learned counsel for Respondent No.1, submits that the present Writ Petition is misconceived, premature, and devoid of merit. He contends that the Petitioner has failed to disclose complete and correct facts before this Hon'ble Court and that the claim for refund of customs duty cannot be entertained in the absence of a duly closed Bill of Entry.

24. Mr. Mishra submits that the Petitioner imported 100 metric tons of Polyvinyl Chloride Resin SG-5 Erdos from Vietnam vide Bill of Entry No. 8441729 dated 27.04.2022, paying a total customs duty of ₹35,37,358/-. He points out that during the processing of the refund claim, it was revealed that the "Out of Charge" was never granted as the Docks Officer had raised a system query requiring the importer to obtain a No Objection Certificate (NOC) from the Commissioner of Customs (Preventive), New Delhi.

25. Mr. Mishra further submits that the refund application filed by the Petitioner on 12.10.2022 was found deficient and, therefore, returned vide communication dated 28.12.2022, directing the Petitioner to furnish a closure letter for the Bill of Entry. He emphasizes that such closure could only be effected upon amendment of the Import General Manifest (IGM) by the Shipping Line and confirmation by the Port Authority, both of which remain pending.

26. Mr. Mishra contends that although the Mumbai Port Authority issued a Short Landing Certificate dated 25.04.2023, the same is contradicted by the Shipping Line's communication dated 13.10.2025, confirming that the entire manifested cargo was duly discharged at the port. He submits that in light of the dispute between the Shipping Line and the Port Authority, the IGM has not been amended to reflect any short landing, and hence the refund claim cannot be processed until the Bill of Entry is formally closed.

27. Mr. Mishra, relying upon Sections 13 and 45 of the Customs Act, 1962, submits that liability for pilfered or short-landed goods lies with the custodian i.e., the Port Authority and not with the Customs Department, unless the goods are cleared for home consumption. He submits that the Petitioner's claim is premature since the police investigation in FIR No. 0034 of 2022 is still pending and the true cause whether theft, pilferage, or short landing remains undetermined.

28. Mr. Mishra lastly argues that the Petitioner has an alternative statutory remedy under Section 128 of the Customs Act to file an appeal before the Commissioner (Appeals) against the letter dated 28.12.2022, and therefore the present Writ Petition under Article 226 is not maintainable. He prays that the Petition be dismissed as premature and devoid of merit.

CONTENTIONS OF THE PORT AUTHORITIES

29. Mr. Mohammed Oomar Shaikh, the learned counsel for Respondent No.2, submits that his client has filed the Affidavit in Reply not in opposition to the Petitioner's prayer for refund, but solely to place on record the true and correct factual position concerning the discharge, handling, and custody of the consignment at Mumbai Port. He submitted that the Port authorities are not opposed to the grant of a refund to the Petitioner, but that they [port authorities] cannot be made liable.

30. Mr. Shaikh submits that the vessel M.V. Alby Happy arrived at Mumbai Port on 22.04.2022 carrying 20,651 packages, including the Petitioner's consignment of 100 jumbo bags of Polyvinyl Chloride Resin SG-5 Erdos manifested as Item No.96 of IGM No.2309727. He explains that the cargo was shipped under "NIL marks" from Tianjin Port, China, meaning that no external identifying marks were available for individual identification.

31. Mr. Shaikh contends that discharge operations were supervised by the vessel agent, M/s Mitsutor Shipping Agency (India) Pvt. Ltd., and conducted through their tallying contractor, M/s Zebec Marine Services Pvt. Ltd. The Port Authority's role was limited to providing berthing, storage, and supervisory functions in accordance with the Major Port Authorities Act, 2021. The Port Authority neither assumed physical custody of the cargo nor undertook individual tallying

of NIL-marked goods.

32. Mr. Shaikh submits that after discharge, a joint survey was conducted on 08.06.2022 by M/s Wilson Surveyors & Adjusters Pvt. Ltd. on behalf of the Petitioner and M/s Zebec Marine Services Pvt. Ltd. on behalf of the vessel agent. The survey found that the Petitioner's consignment was not traceable. Further inspections conducted on 23rd and 24th August 2022 revealed certain damaged and re-bagged polymer materials, which the Petitioner's representative expressly disowned.

33. Mr. Shaikh submits that based on the tally records, survey reports, and reconciled out-turn data, the Petitioner's consignment was recorded as short-landed in the landing account. Consequently, the Port Authority issued a Short Landing Certificate dated 25.04.2023, later corrected by corrigendum dated 27.04.2023. He clarifies that the said certificate merely reflects a factual position, it is neither an admission of liability nor a statement that the goods were discharged and subsequently lost while in the Port's custody.

34. Mr. Mohammed Oomar Shaikh submits that while his client maintains, on the basis of contemporaneous port records, joint survey reports, and the Short Landing Certificate dated 25 April 2023, that the goods in question have short-landed, even assuming without admitting that the goods were actually discharged at the port and subsequently lost, the liability to refund the customs duty would, in any event, rest solely upon Respondent No.1.

35. Mr Shaikh submits that the statutory scheme of the Customs Act, 1962 draws a clear distinction between cases of pilferage, as contemplated under Section 13, and cases where goods are lost or destroyed for any other reason before clearance for home consumption, as governed by Section 23. He points out that Section 13 applies only where goods are pilfered prior to clearance, in which case the importer is not liable to pay duty, and the custodian becomes liable for the same under Section 45(3). However, in all other cases where goods are lost, destroyed, or rendered unavailable for delivery before the proper officer has made an order for clearance, Section 23 squarely applies and provides that the duty paid on such goods shall be remitted or refunded by the Customs Department.

36. Mr. Shaikh refers to the police investigation in FIR No.0034 of 2022, wherein extensive inquiries were made, statements recorded, and physical inspections carried out. The Final Report dated 13.03.2024 concluded that there was no evidence to establish that the goods were discharged at Mumbai Port or subsequently misappropriated, and that the matter was civil and commercial in nature. Consequently, the case does not fall within the ambit of “pilferage” under Section 13, but rather within the scope of “loss or destruction” under Section 23 of the Act.

37. Mr. Shaikh submits that the issuance of the Short Landing Certificate was a bona fide administrative act intended to facilitate the Petitioner in pursuing statutory remedies for

refund or insurance claims under Section 27 of the Customs Act. He emphasizes that Respondent No.2 has acted with complete transparency, maintained all records, and extended full cooperation to the Customs and Police authorities.

38. Mr. Shaikh argued that no liability can be affixed on the Respondent No.2 as the goods had short landed. While continuing to maintain that the Petitioner's goods were never received at the port, he submitted that a custodian under Section 45 can be held to be liable to refund the duty only in the case of the goods having pilfered while being in the custody of the custodian.

39. Mr. Shaikh therefore contends that once it is established that the importer has not received the goods, and that the same were neither pilfered nor cleared for home consumption, the liability to refund or remit the customs duty is exclusively that of Respondent No.1 under Section 23, read with Sections 27 and 27A of the Customs Act, 1962. He submits that Respondent No.2, being merely the statutory custodian of the customs area and having no role in the levy or collection of customs duty, cannot be directed to make or process any refund.

40. Mr. Shaikh while relying upon the judgment of this Court in *Board of Trustees of the Port of Bombay v. Union of India & Ors.*² submits that even if it is assumed that the goods were pilfered from the custody of the Respondent No.2, the Respondent No.2 cannot be held to be liable to refund the

² 2009 SCC OnlineBom 1108

Custom duty as the Respondent No.2 is not a custodian as per Section 45 of the Customs Act.

41. Mr Shaikh finally reiterated that Respondent No.2 neither opposes nor obstructs the Petitioner's refund claim, but denies any liability, negligence, or wrongdoing in respect of the alleged short landing. He prays that the Writ Petition be dismissed as against Respondent No.2, there being no cause of action or breach of statutory duty attributable to the Port Authority.

ANALYSIS AND FINDINGS

42. From the record, it is abundantly clear and indeed an undisputed position that the Petitioner has never received the goods imported under the Bill of Entry No. 8441729 dated 27 April 2022. The Short Landing Certificate dated 25 April 2023, issued by the Respondent No.2, coupled with the joint survey reports dated 8 June 2022 and 7 September 2022, fortify the position that the consignment of 100 metric tons of Polyvinyl Chloride Resin was never delivered to the Petitioner. Neither authority has, nor could it dispute, this position.

43. This Court does not wish to go into the issue to determine where or under whose custody the loss occurred. The admitted position is that the Petitioner has not received the goods and is not responsible for them. There is a blame game between Customs and the port authorities over liability to pay the Petitioner. Therefore, the limited issue for consideration is

whether, in such circumstances, the Petitioner is entitled to a refund of the customs duty paid under the provisions of the Customs Act, 1962.

44. The Counsel referred to the following statutory provisions: Sections 13, 23, 27, 27A, 45, 46, and 47 of the Customs Act, 1962.

13. Duty on pilfered goods.—

If any imported goods are pilfered after the unloading thereof and before the proper officer has made an order for clearance for home consumption or deposit in a warehouse, the importer shall not be liable to pay the duty leviable on such goods except where such goods are restored to the importer after pilferage.

23. Remission of duty on lost, destroyed or abandoned goods.
—

(1) Where it is shown to the satisfaction of the Assistant Commissioner of Customs or Deputy Commissioner of Customs that any imported goods have been lost (otherwise than as a result of pilferage) or destroyed, at any time before clearance for home consumption, the Assistant Commissioner of Customs or Deputy Commissioner of Customs shall remit the duty on such goods.

(2) The owner of any imported goods may, at any time before an order for clearance of the goods for home consumption has been made, relinquish his title to the goods and thereupon he shall not be liable to pay the duty thereon:

Provided that the owner shall not be allowed to relinquish his title to such goods (a) after an offence has been committed in respect of the goods, or (b) where the goods have not been imported in accordance with any prohibition imposed under this Act or any other law for the time being in force, or (c) where an order for clearance of goods for home consumption has been passed under section 47.

27. Claim for refund of duty.—

*(1) Any person claiming refund of any duty or interest, —
(a) paid by him; or*

*(b) borne by him,
may make an application in such form and manner as may be prescribed for such refund to the Assistant Commissioner of Customs or Deputy Commissioner of Customs, before the expiry of one year, from the date of payment of such duty or interest:*

Provided that where an application for refund has been made before the date on which the Finance Bill, 2011 receives the assent of the President, such application shall be deemed to have been made under sub-section (1), as it stood before the date on which the Finance Bill, 2011 receives the assent of the President and the same shall be dealt with in accordance with the provisions of sub-section (2):

Provided further that the limitation of one year shall not apply where any duty or interest has been paid under protest.

(2) If, on receipt of any such application, the Assistant Commissioner of Customs or Deputy Commissioner of Customs is satisfied that the whole or any part of the duty and interest, if any, paid on such duty paid by the applicant is refundable, he may make an order accordingly and the amount so determined shall be credited to the Fund:

Provided that the amount of duty and interest, if any, paid on such duty as determined by the Assistant Commissioner of Customs or Deputy Commissioner of Customs under the foregoing provisions of this sub-section shall, instead of being credited to the Fund, be paid to the applicant, if such amount is relatable to—(a) the duty and interest, if any, paid on such duty paid by the importer, or the exporter, as the case may be, if he had not passed on the incidence of such duty and interest, if any, paid on such duty to any other person;

(b) the duty and interest, if any, paid on such duty on imports made by an individual for his personal use;

(c) the export duty as specified in section 26;

(d) drawback of duty payable under sections 74 and 75;

(e) the duty and interest, if any, paid on such duty borne by any other such class of applicants as the Central Government may, by notification in the Official Gazette, specify;

(f) the duty paid in excess by the importer before an order permitting clearance of goods for home consumption is made where—

(i) such excess payment of duty is evident from the bill

*of entry in the case of self-assessed bill of entry; or
(ii) the duty actually payable is reflected in the reassessed bill of entry in the case of reassessment:*

Provided further that no notification under clause (e) of the first proviso shall be issued unless in the opinion of the Central Government the incidence of duty and interest, if any, paid on such duty has not been passed on by the persons concerned to any other person.

(3) Notwithstanding anything to the contrary contained in any judgment, decree, order or direction of the Appellate Tribunal, National Tax Tribunal or any Court or in any other provision of this Act or the regulations made thereunder or any other law for the time being in force, no refund shall be made except as provided in sub-section (2).

(4) Every notification under clause (e) of the first proviso to sub-section (2) shall be laid before each House of Parliament, if it is sitting, as soon as may be after the issue of the notification, and, if it is not sitting, within seven days of its re-assembly, and the Central Government shall seek the approval of Parliament to the notification by a resolution moved within a period of fifteen days beginning with the day on which the notification is so laid before the House of the People and if Parliament makes any modification in the notification or directs that the notification should cease to have effect, the notification shall thereafter have effect only in such modified form or be of no effect, as the case may be, but without prejudice to the validity of anything previously done thereunder.

(5) For the removal of doubts, it is hereby declared that any notification issued under clause (e) of the first proviso to sub-section (2), including any such notification approved or modified under sub-section (4), may be rescinded by the Central Government at any time by notification in the Official Gazette.

27A. Interest on delayed refunds.—

If any duty ordered to be refunded under sub-section (2) of section 27 to an applicant is not refunded within three months from the date of receipt of application under sub-section (1) of that section, there shall be paid to that applicant interest at such rate, not below five per cent and not exceeding thirty per

cent per annum, as is for the time being fixed by the Central Government by notification in the Official Gazette, on such duty from the date immediately after the expiry of three months from the date of receipt of such application till the date of refund of such duty:

Provided that where any duty, ordered to be refunded under sub-section (2) of section 27 in respect of an application under sub-section (1) of that section made before the date on which the Finance Bill, 1995 receives the assent of the President, is not refunded within three months from such date, there shall be paid to the applicant interest under this section from the date immediately after three months from such date till the date of refund of such duty.

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 VII.

(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,—

(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.

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

46. Entry of goods on importation.—

(1) The importer of any goods, other than goods intended for transit or transshipment, shall make entry thereof by presenting electronically on the customs automated system to the proper officer a bill of entry for home consumption or warehousing in such form and manner as may be prescribed:

Provided that the Principal Commissioner of Customs or Commissioner of Customs may, in cases where it is not feasible to make entry by presenting electronically on the customs automated system, allow an entry to be presented in any other manner:

Provided further that if the importer makes and subscribes to a declaration before the proper officer, to the effect that he is unable for want of full information to furnish all the particulars of the goods required under this sub-section, the proper officer may, pending the production of such information, permit him, previous to the entry thereof—

(a) to examine the goods in the presence of an officer of customs; or

(b) to deposit the goods in a public warehouse appointed under section 57 without warehousing the same.

(2) Save as otherwise permitted by the proper officer, a bill of entry shall include all the goods mentioned in the bill of lading or other receipt given by the carrier to the consignor.

(3) The importer shall present the bill of entry under sub-section (1) before the end of the next day following the day (excluding holidays) on which the aircraft or vessel or vehicle carrying the goods arrives at a customs station at which such goods are to be cleared for home consumption or warehousing:

Provided that a bill of entry may be presented at any time not exceeding thirty days prior to the expected arrival of the aircraft or vessel or vehicle by which the goods have been shipped for importation into India:

Provided further that where the bill of entry is not presented within the time so specified and the proper officer is satisfied that there was no sufficient cause for such delay, the importer shall pay such charges for late presentation of the bill of entry as may be prescribed.

(4) The importer while presenting a bill of entry shall make and subscribe to a declaration as to the truth of the contents of such bill of entry and shall, in support of such declaration, produce to the proper officer the invoice, if any, and such other documents relating to the imported goods as may be prescribed.

(4A) The importer who presents a bill of entry shall ensure the following, namely:—

(a) the accuracy and completeness of the information given therein;

(b) the authenticity and validity of any document supporting it; and

(c) compliance with the restriction or prohibition, if any, relating to the goods under this Act or under any other law for the time being in force.

(5) If the proper officer is satisfied that the interests of revenue are not prejudicially affected and that there was no fraudulent intention, he may permit substitution of a bill of entry for home consumption for a bill of entry for warehousing or vice versa.

47. Clearance of goods for home consumption.—

(1) 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 clearance of the goods for home consumption:

Provided that such order may also be made electronically through the customs automated system on the basis of risk evaluation through appropriate selection criteria:

Provided further that the Central Government may, by notification in the Official Gazette, permit certain class of importers to make deferred payment of said duty or any charges in such manner as may be provided by rules.

(2) The importer shall pay the import duty—

(a) on the date of presentation of the bill of entry in the case of self-assessment; or

(b) within one day (excluding holidays) from the date on which the bill of entry is returned to him by the proper officer

for payment of duty in the case of assessment, reassessment or provisional assessment; or

(c) in the case of deferred payment under the proviso to subsection (1), from such due date as may be specified by rules made in this behalf,

and if he fails to pay the duty within the time so specified, he shall pay interest on the duty not paid or short-paid till the date of its payment, at such rate, not less than ten per cent but not exceeding thirty-six per cent per annum, as may be fixed by the Central Government by notification in the Official Gazette:

Provided that the Central Government may, by notification in the Official Gazette, specify the class or classes of importers who shall pay such duty electronically:

Provided further that where the bill of entry is returned for payment of duty before the commencement of the Customs (Amendment) Act, 1991 (55 of 1991) and the importer has not paid such duty before such commencement, the date of return of such bill of entry to him shall be deemed to be the date of such commencement for the purpose of this section:

Provided also that if the Board is satisfied that it is necessary in the public interest so to do, it may, by order for reasons to be recorded, waive the whole or part of any interest payable under this section.

45. A conjoint reading of the aforesaid provisions reveals that the scheme of the Act contemplates distinct stages in the import of goods, namely, unloading, custody, clearance, and removal for home consumption. Section 13 expressly provides that if imported goods are pilfered after unloading and before the proper officer has made an order for clearance for home consumption, the importer shall not be liable to pay duty thereon. Section 45, on the other hand, mandates that all imported goods unloaded in a customs area shall remain in the custody of a person approved by the Commissioner of Customs

until they are cleared for home consumption, warehousing, or transshipment. The person having such custody is responsible for maintaining records, ensuring security, and not removing the goods without written permission of the proper officer.

46. Sub-section (3) of Section 45 further clarifies that if any imported goods are pilfered after unloading while in such custody, the custodian, such as the Port Authority, is liable to pay the duty on such goods. This legislative intent squarely shifts the burden of liability for safe custody from the importer to the approved custodian until the point of clearance. In the present case, the Petitioner's goods were never cleared for home consumption and thus remained within the ambit of Section 45.

47. Section 27 of the Act provides the substantive right of an importer to claim a refund of any duty paid, subject to the satisfaction of the Assistant or Deputy Commissioner of Customs that such duty was not payable. The limitation of one year prescribed therein commences from the date of payment of duty unless the duty was paid under protest. Further, Section 27A mandates payment of interest to the applicant if the refund so determined is not made within three months from the date of receipt of the refund application.

48. Sections 46 and 47 prescribe the procedural framework for presentation and clearance of goods through the Bill of Entry. The statutory sequence makes it clear that unless an order for clearance ("Out of Charge") is passed under Section 47, the goods continue to remain in the legal custody of the

custodian under Section 45. The importer's liability for duty crystallises only upon such clearance, and if the goods are pilfered or short-landed prior thereto, the incidence of duty cannot be fastened upon the importer.

49. This Court notes with concern that the Petitioner has been compelled to approach multiple authorities over a span of nearly three years, filing repeated representations and grievances, only to be confronted with a bureaucratic deadlock between Respondent No.1 (Customs Department) and Respondent No.2 (Mumbai Port Authority). Both Respondents, in their respective affidavits, seek to absolve themselves of liability by shifting the burden of responsibility upon the other. The Petitioner, who has acted bona fide, paid the customs duty in advance, and made diligent efforts to trace the goods, cannot be made to suffer indefinitely due to an inter-departmental tussle in determining or fixing the responsibility for loss of goods.

50. The facts, as they stand, make out a clear case where the Petitioner has paid customs duty for goods which were never received. The *Customs Act, 1962*, specifically provides in Sections 13, 23, and 27 in such circumstances. Section 13 provides that where goods are pilfered after unloading but before clearance for home consumption, the importer is not liable to pay duty on such goods. Section 23 mandates remission of duty on goods lost or destroyed before clearance, and Section 27 grants the importer the right to claim a refund

of any duty paid in such a situation.

51. The combined effect of these provisions is that, once it is established that the imported goods were never received and that the proper officer never granted clearance, the customs duty cannot be retained. The duty collected in anticipation of clearance becomes refundable as it was paid without the corresponding receipt of goods. To hold otherwise would be contrary to both the letter and spirit of the statute and would result in collecting and retaining duty without the authority of the law, not to mention unjust enrichment of the revenue at the cost of the importer.

52. Moreover, in the present case, the amount paid by the Petitioner was not in response to a valid demand but in anticipation of the clearance of goods that never materialised. Such payment, therefore, partakes the character of a deposit rather than a duty and must, in equity and under the statutory scheme, be refunded. The refund of such duty is a statutory entitlement, not a discretionary relief. The Customs Department, being the authority which collects the duty, cannot indefinitely withhold it on the pretext of unresolved internal coordination with the Port Authority.

53. Respondent No.1's reliance on the procedural requirement of a "closure letter" cannot be sustained in the peculiar facts of the case. The closure of the Bill of Entry has become impossible due to unresolved issues between the Customs Department, the Port Authority, and the Shipping Line. The Petitioner, having

done all that could reasonably be expected of an importer, cannot be penalised for administrative or procedural lapses beyond its control. The insistence on a closure letter in such circumstances amounts to a denial of the substantive right of refund conferred by law.

54. Respondent No.2, on its part, has admitted through its Affidavit in Reply and Short Landing Certificate that the goods were not traceable and were recorded as short-landed in the landing account. While Respondent No.2 has disclaimed liability for any monetary compensation, it has not disputed the core fact that the Petitioner's goods never came into its custody for delivery. This Court does not find it necessary, nor is it within the scope of the present petition, to adjudicate upon the inter se liability between Respondent Nos. 1 and 2. That is a matter which may be resolved in appropriate proceedings, if so initiated.

55. The contention of Respondent No.1 that the matter is premature due to the pendency of the police investigation or due to the non-closure of the Bill of Entry is untenable. The criminal investigation pertains to possible theft or pilferage and not to the Petitioner's statutory right to seek a refund of customs duty. The Petitioner's entitlement to a refund arises not from the outcome of the FIR but from the admitted factual position that the goods were never delivered and the Bill of Entry never attained final clearance.

56. The argument of an alternate remedy under Section 128

of the Act also cannot defeat the Petitioner's claim in the present circumstances. The impugned communication dated 28 December 2022 merely returned the Petitioner's refund application without adjudicating upon it. Such a communication is not an appealable order within the meaning of Section 128 and, therefore, the bar of alternate remedy does not operate. There is no fairness in the contention that the Petitioner should resort to an alternate remedy without the first respondent even bothering to pass an order rejecting the refund application. Such a contention is perhaps raised only to prolong the Petitioner's misery.

57. The submission advanced by Mr Shaikh is noted at his insistence. But as observed earlier, independent of the dispute inter se between the Customs and ports authorities on whether this is a case of short landing or pilferage, the petitioner cannot be denied a refund of the customs duty with interest. The question of inter se liability can be resolved later by the Customs and port authorities, and, if necessary, by initiating proceedings against each other. But it would be quite unfair to force the Petitioner to await the resolution of such inter se dispute in the gross facts and circumstances of this case.

58. Mr Shaikh contended that the documentary record supports the position that the Petitioner's consignment was short-landed and never actually received into its custody for delivery. He submitted that the Short Landing Certificate dated 25 April 2023, supported by joint survey reports and tally

records, lends credence to this assertion. However, even assuming arguendo that the goods were in fact discharged at the port and subsequently became untraceable, the statutory consequence, he submitted, would still not materially change. In either case, the refund of customs duty already paid by the Petitioner would fall within the statutory jurisdiction and obligation of Respondent No.1 – the Customs Department, being the authority which levied and collected the said amount. He placed strong reliance on *Board of Trustees of the Port of Bombay v. Union of India & Ors [Supra]*.

59. Though we do not intend to examine the inter se dispute between the Customs and Port authorities, even Mr Mishra could not dispute that the above decision presents difficulties for the Customs in apportioning blame to the Port authorities. He, however, submitted that the Customs has challenged the cited decision before the Hon'ble Supreme Court and the appeal is pending. According to the cited decision, even in respect of pilfered goods, the Customs authorities cannot recover customs duty from the Port authorities. Thus, independent of the dispute of whether this is a case of short landing or pilferage, the Petitioner cannot be denied relief.

60. The insistence that the Petitioner now persuades the shipping line or agent to amend the IMD is also grossly unreasonable and lacks any sanction of the law. The shipping line insists that it has delivered the imported goods. Therefore, the Petitioner cannot now be forced to prevail against the

shipping line to amend the IMD. This is yet another instance of an unreasonable approach in the present case.

61. Accordingly, whether the non-receipt of goods is regarded as a case of short landing or as loss after unloading but before clearance, the legal consequence remains the same: the importer cannot be held liable to pay customs duty on goods that were never cleared for home consumption. The obligation to refund such duty, along with statutory interest, under Sections 23, 27, and 27A of the Customs Act, 1962, cannot be delayed or avoided. If the customs authorities are confident in their legal and factual position, they can, at most, proceed against the Port authorities and recover the amount from them. We again clarify that this is not our opinion, as we are not assessing the issue of inter se liability between the Customs and port authorities. However, due to such an inter se dispute, the Petitioner cannot be denied relief after bona fide paying the customs duty and not receiving the goods.

62. In this case, as discussed above, it stands established on record and is an admitted position between all parties that the Petitioner has never received the imported goods covered under Bill of Entry No. 8441729 dated 27 April 2022. The Petitioner has been pursuing the matter for nearly three years without any effective redress, caught between Respondent No. 1 and Respondent No. 2, each of whom disclaims liability. The Court finds that, considering the undisputed facts and the statutory scheme under Sections 13, 23, 27, and 27A of the Customs Act,

1962, the Petitioner cannot be made to suffer for reasons beyond its control.

CONCLUSIONS AND RELIEF

63. We hold that the Petitioner's case squarely falls within the ambit of Section 23 of the Customs Act, 1962, since the goods were lost or rendered unavailable before clearance for home consumption. Consequently, the Petitioner is entitled to a refund of the customs duty amounting to ₹35,37,358/-, together with interest at 9% from the date of payment of the Custom Duty.

64. Accordingly, we direct the Respondent No.1, the Assistant Commissioner of Customs (Refund), to process and refund the said amount to the Petitioner, along with interest at 9%, within a period of four weeks from the date of uploading of this order. The interest shall be computed from the date of its payment by the Petitioner till the actual date of refund. A compliance report must be filed by the Assistant Commissioner of Customs (Refund)-R1, latest by 8 January 2026, so that the Petitioner is not once again forced to come to this Court alleging non-compliance.

65. It is clarified that this Court has not adjudicated or determined the question of inter se liability between Respondent Nos. 1 and 2 regarding the loss, short landing, or non-traceability of the goods. The present directions are confined to ensuring that the Petitioner receives the refund of

the customs duty lawfully due to it, having not received the goods. Therefore, as observed earlier, this judgment or order shall not preclude Customs authorities from exercising their rights, if any, to initiate appropriate proceedings before a competent forum to recover the refunded amount or any portion thereof from Port authorities in accordance with law and following due process. All contentions, inter se, in this regard are kept expressly open.

66. The Petition is accordingly allowed, and the Rule is made absolute in the aforesaid terms.

67. There shall be no order as to costs.

68. All concerned are to act upon an authenticated copy of this order.

(Advait M. Sethna, J.)

(M.S. Sonak, J.)