CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.II

Customs Appeal No.70815 of 2024

(Arising out of Order-in-Appeal No.221-Cus/APPL/LKO/2024 dated 21/03/2024 passed by Commissioner (Appeals) Customs, Central Excise & Service Tax, Lucknow)

M/s Deep Distributors Pvt. Ltd., ...Appellant
(12/112, Gwal Toll, K.B. Market, Kanpur)

VERSUS

Commissioner of Customs (Pre.), Lucknow ....Respondent
(Apratyaksh Kar Bhawan, 7th Floor,
Vibhuti Khand, Gomti Nagar, Lucknow)

APPEARANCE:

Shri S.A. Khan, Consultant for the Appellant
Smt Chitra Srivastava, Authorised Representative for the Respondent

CORAM: HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

FINAL ORDER NO.70708/2025

DATE OF HEARING : 05 August, 2025
DATE OF DECISION : 05 August, 2025

SANJIV SRIVASTAVA:

This appeal is directed against Order-in-Appeal No.221-Cus/APPL/LKO/2024 dated 21/03/2024 passed by Commissioner (Appeals) Customs, Central Excise & Service Tax, Lucknow. By the impugned order, Commissioner (Appeals) has uphold the Order-in-Original dated 26.02.2023 wherein following has been held:-

"After examination of the facts as discussed supra, I pass the following order:

i. I confirm the Customs Duty of Rs. 18,08,298/- (Eighteen Lakh Eight thousand Two hundred ninety eight only) *leviable on the above said un-cleared Bonded warehoused goods under Section 72(1)(d) of the Customs Act, 1962.*

ii. I also order to pay the interest at the rate applicable leviable on the duty of above said un-cleared Bonded warehoused goods under Section 72(1)(d) of the Customs Act, 1962.

iii. I impose penalty of Rs. 50,000/- under Section 117 read with Section 72 of the Customs Act, 1962, on the importer M/s Deep Distributors Private Limited, 12/112 Gwal Toll, K.B. Market, Kanpur."

2.1 Appellant imported Beer through Indo-Nepal Border for which they filed warehousing bill of entries as detailed in the table below:

Warehousing Bill of Entry		Description	Quantity in CTN	Value in Rs	Duty in Rs
Number	Date				
3008149	27.04.2019	Tensberg Premium Strong Beer 500 Ml	1200	515042	566546
6353886	04.01.2020		2200	940593	1034652
3213548	13.05.2019	Tensberg Premium Strong Beer 650 Ml	3600	1304136	1434550
6271332	28.12.2019		2200	723664	796030

2.2 Jurisdictional authorities vide letter dated 27.04.2022 informed that as per the monthly return submitted by the owner of warehouse, following quantities of the warehoused goods were shown as balance:

Warehousing Bill of Entry		Description	Quantity in CTN
Number	Date		
3008149	27.04.2019	Tensberg Premium Strong Beer 500 Ml	600
6353886	04.01.2020		1100
3213548	13.05.2019	Tensberg Premium Strong Beer 650 Ml	1530
6271332	28.12.2019		1100

2.3 Since, balance beer were stored beyond stipulated period of one year as provided under Section 61(1) of the Customs Act, 1962 and appellant had also not filed any application for extension of warehousing period, a show cause notice dated 28.06.2022 was issued to the appellant asking them to show cause as to why:

(i) The amount of duty of Rs.20,23,481=00 (Twenty Lakhs twenty three thousand four hundred and eighty one only)

along with interest should not be demanded under Section 72 (1) (d) of the Customs Act, 1962.

(ii) Penalty/ Fine should not be imposed upon them under the provisions Section 72 (1) (d) of the Customs Act, 1962 for contravention of the provisions as discussed in the foregoing paras.

2.4 The show cause notice was adjudicated as per the Order-in-Original dated 26.02.2023 referred in para 1 above.

2.5 Aggrieved appellant have filed appeal before Commissioner (Appeals) which has been dismissed as per the impugned order.

2.6 Aggrieved appellant have filed this appeal.

3.1 I have heard Shri S.A. Khan learned Consultant appearing for the appellant and Smt Chitra Srivastava learned Authorised Representative appearing for the revenue.

3.2 Arguing for the appellant learned Counsel submits that-the goods – Beer stored in the warehouse with the passage of time have lost the self life and is of no use for any purpose and they are not interested in claiming the same or clearing the same on payment of the duty. They have already submitted this fact before the lower authorities.

3.3 Learned Authorized Representative reiterates the findings recorded in the orders of the lower authorities.

4.1 I have considered the impugned orders along with the submissions made in appeal and during the course of argument.

4.2 For upholding Order-in-Original, impugned order records as follows:-

"5.1 I have carefully gone through the case records and found that three points are to be decided in the case on which the appellant is contesting. The first point is-whether the demand of duty, interest and imposition of penalty under Section 72 of the Act is proper as the appellant has pleaded that demand can only be made under Section 28 of the Act and interest and penalty are also not recoverable under Section 72(1)(d) of the Act. The Second point is regarding 'proper officer' for demanding the duty

in his case and whether the Assistant Commissioner, Customs Sonauli had jurisdiction to decide the case. The third point is regarding applicability of Section 23 of the Act and whether the duty can be remitted in the present case in light of the fact that the appellant tried to clear the goods timely but Ex-bond Bill of Entries couldn't be finalized due to technical glitches.

5.2 Now, I come to the first point whether the demand of duty and interest and imposition of penalty under Section 72(1)(d) of the Act is proper. The appellant pleased that Order-in-Original has been issued following a circular 31/97-Customs which clarified that warehoused goods shall be deemed to be removed if on expiration period neither goods are removed nor extension of warehousing period sought. Thus only section that can cover the case of charging/recovery of Customs duty not levied or not paid would be section 28 but the impugned demand was raised invoking the provision of Section 72. Moreover, pre-SCN consultation was mandatory in case the demand under Section 28 of the Act, however, in the present case the same was not done. Here, the relevant portion of Section 72 is being reproduced for better appreciation of the facts:-

Section 72:-

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

(d) where any goods in respect of which a bond has been executed under section 59 and which have not been cleared for home consumption or exportation are not duly accounted for to the satisfaction of the proper officer, the proper officer may demand, and the owner of such goods shall forthwith pay, the full amount of duty chargeable on account of such goods together with all penalties, rent, interest and other charges payable in respect of such goods.

5.3 From a plain reading of the above, it is obvious that where warehoused goods have not been cleared and permission for extension of storage period has not been sought from the competent authority, a demand under Section 72 of the Act, can be made. In this regard, a Standing Order No. 04/2013 dated 18.09.2013 issued by the Commissioner of Customs (I), ACC, Sahar, Mumbai was issued wherein it has been provided under point (vi) that "where goods are lying in a warehouse and the importer fails to clear the warehoused goods on completion of warehousing period, a Demand notice under Section 72(1) of the Customs Act, 1962 shall be issued to the importer". Moreover, Hon'ble Tribunal in case of Bharat Tissues Pvt. Ltd., Vs Commr. Of C. EX. Cus & S.T. Bangalore-2015 (321) E.L.T. 266 (Tri. Bang.) upheld the demand of Customs duty under Section 72 of the Customs Act, 1962 where the goods remained stored beyond stipulated period. The relevant portion the of order is being reproduced hereunder for better appreciation of facts: -

> *"Even though appellants have several grounds such as principles of natural justice, distortion of facts etc., I do not think that I am required to consider all these submissions in view of the legal provisions in the Customs Act, 1962. According to Section 72 of the Customs Act, 1962, if any warehoused goods are not removed from a warehouse on the expiration of period during which such goods are permitted under Section 61 to remain in the warehouse, the proper officer may demand duty and the owner of such goods shall forthwith pay, the full amount of duty chargeable on account of such goods together with all penalties, rent, interest and other charges payable in respect of such goods. In view of the specific provisions in the Section 72, once extension of the time for storing goods in the warehouse is refused, the duty and interest and other liabilities*

> *automatically arise. Therefore, the impugned order cannot be found fault with. Accordingly, the appellant has not merits and is rejected."*

It is clear from the above that the demand of duty under Section 72(1) is justified. Penalty has also been imposed under Section 117 read with Section 72 of the Customs Act, 1962, which is also justified. Here, I found no ground in plea taken by the appellant that in this very case duty, interest and penalty cannot be demanded under Section 72(1) of the Customs Act, 1962.

5.4 Now, I come to the second point i.e. whether the Assistant Commissioner, Customs Sonauli is 'proper officer' for demanding the duty in the instant case. Here, I find that the procedure for filing ex-bond bill of entry is provided under Circular No. 22/2016-Customs dated 31.05.2016, the relevant portion of the said circular is being reproduced hereunder for better appreciation of facts:-

> *2. "Accordingly, the Board has decided that the importer or owner of the warehoused goods seeking to clear goods for home consumption under section 68 shall henceforth file ex-bond bills of entry on ICES and the customs station of import shall assess the Bill of Entry for clearance of the warehoused goods for home consumption."*
>
> *5 "The Board has already issued a circular providing that the bonds to be executed by the importer while filing a Bill of Entry for warehousing shall be executed at the customs station of import itself. Furthermore, with the imminent introduction of the system of providing a warehouse code at the into-bond bill of entry stage (circular no.19/2016-Customs refers), the warehouse where goods are to be deposited will also be available in EDI. Furthermore, Board, vide circular 21/2016-Customs dated 31st May 2016 has laid down that the period*

> *of warehousing shall be extended by the Principal Commissioner/Commissioner of Customs at the port of import and the security to be provided by the importer or owner of the goods shall be fumished at the port of import where the bill of entry for warehousing was filed. All these measures represent a fundamental change in management of warehoused goods for the department. Now, not only do these procedures fully leverage EDI facilities, but also aggregate the responsibilities at the customs station of clearance as a focal point for management of warehoused goods."*

From the above it is clear, that Ex-bond bill of entry is to be filed on ICES and the customs port of import shall assess the bill of entry for home consumption. The customs station of clearance has been made a focal point for management of warehoused goods. Further, I do not find that any other instructions have been issued in suppression of the procedures laid down under said Circular. As such, there is no breach of jurisdiction by the Assistant Commissioner, Customs Sonauli.

5.5 The third point is regarding applicability of Section 23 of the Act and whether the duty can be remitted in the present case in light of the fact that the appellant tried to clear the goods timely but Ex-bond Bill of Entries couldn't be finalized due to technical glitches. Here, I find that the appellant didn't try even once to file an application for extension of the warehousing period. Moreover, the appellant even didn't file any ex-bond bill of entry for clearance of quantity of beer in balance with the respect to the warehousing BE Nos. 6271332 dated 28.12.2019 and 6353886 dated 04.01.2020 as mentioned in Para (iii) of Discussion and Findings of the said O-in-O. The appellant should have relinquished the title of goods before the expiration of warehousing period for remission of duty in terms of Section 23 and 68 of the Act which clearly *provides that the owner of any imported goods may, at any time before an order for clearance of goods for home consumption under section 47 or an order for permitting the deposit of goods in a warehouse under section 60 has been made, relinquish his title to the goods and thereupon he shall not be liable to pay the duty thereon. In the present case the appellant has not informed the department regarding relinquishment of his title to the warehoused goods. Further, relinquishment of title after expiration of warehousing period is not permissible. In this regard, in the Appeal No.C/87027/2013-Mum filed by M/s Videocon Industries Pvt. Ltd. Vs CCE (Appeals) Mumbai, Hon'ble CESTAT, Mumbai vide their order dated 27.08.2015 held that:*

> *"The central issue to be decided is whether in terms of Section 68 proviso, the appellant have a right to relinquish their title to the time expired warehoused goods in respect of which a demand of duty has been raised under Section 72(1) and the duty demand confirmed in the terms of the Order-in-Original dt. 28.6.2011. The appellant are taking the plea that they had relinquished the title to the goods by letters dt. 28.10.2009, 6.11.2009 and 15.12.2009, whereas the show cause notice demanding duty was issued on 1.10.2010. We have already observed that the department had addressed letters to the appellant as far back as 2002 asking them to deposit duty. The entire facts regarding notices issued, whether in the form of letters or otherwise, were in the knowledge of the High Court when it passed its Order dated 24-09-2002 rejecting the prayer of the appellant to allow the re-export. Therefore, raking up the same issue at this stage has no meaning. Reliance on the case of Sanjay Dhanuka (supra) also does not help because in that case no demand was issued under Section 72 of the Act whereas in the present case*

letter was issued followed by reminders demanding duty under Section 72 of the Act. That the warehouse goods were not cleared from the warehouse within the stipulated time period laid down in Section 61 is an undisputed fact. It is also seen that the Courts have held that the goods which are not removed from a warehouse within the permissible period are treated as goods improperly removed from the warehouse under the provisions of Section 72. Thus in the present case the goods have to be treated as improperly removed. In such circumstances the proper officer may demand the full amount of duty chargeable on account of such goods together with all penalties, rent, interest and other charges payable. There is no doubt about this legal provision in the Act."

It is clear from the above judgement that once the warehousing period has expired, the goods are deemed to be improperly removed from the warehousing and cannot be considered as warehoused goods and the appellants are required to pay duty under Section 72(1) of the Customs Act, 1962 irrespective of the fact that they want to abandon or relinquish title of the goods.

From the foregoing paras, it is obvious that the adjudicating authority has rightly confirmed the demand under Section 72(1) of the Customs Act, 1962 along with the interest and penalty on the expired goods stored beyond prescribed period. Accordingly, I do not find any merit in the appeal.

In view of the above, I reject the appeal filed by the appellant and uphold the Order-in-Original No. 11/उप-आयुक्त/ सोनौली dated 26.02.2023."

4.3 Order in original records the findings as follows:-

(i) I have gone through the records/ documents available with this office and find that the importer has filed the BE No. 3008149, 3213548, 6271332 and 6353886 dated

27.04.2019, 13.05.2019, 28.12.2019 and 04.01.2020 respectively under bond for clearance to bonded warehouse. The consignments of beer having HSN Code 22030000 were cleared under respective BEs and thereafter were warehoused in public bonded warehouse (W.H. Code NGRBU0O1) for which Licence has been granted to MI/s P.J. Trading Company, G4/49, Basement. Transport Nagar, Lucknow-226012 (UP). As the jurisdictional authority, vide letter No. 27.04.2022 informed that as per monthly return submitted by the owner of the bonded warehouse, some goods imported under various Bills of Entry are still being shown as "Balance" by them. Further, it is also found from the available records that the importer has not filed any application for extension of warehousing period of the imported goods, warehoused in public bonded warehouse (W.H. Code NGRBU001) for consideration of the competent authority.

(ii) Further, I find that in the demand cum show cause notice, the balance quantity of beer mentioned in the table-2 against BE No. 3213548 dated 13.05.2019 is 1530 CTN. Whereas, in table-3 of the SCN the balance quantity of beer mentioned against BE No. 3213548 dated 13.05.2019 is 2070 CTN and customs duty on the above-mentioned quantity has been calculated for computation of total demand. Ongoing through the show cause notice and available documents, it is noticed that the balance quantity of beer was informed by the jurisdictional authority vide their letter dated 27,04.2022. In this letter, they informed the balance quantity of beer against the BE No. 3213548 dated 13.05.2019 is 1530 CTN. In view of the above , it is evident that there is clerical mistake in the table -3 of the Show Cause Notice against the BE No. 3213548 dated 13.05.2019 in balance quantity of beer and duty thereon. Accordingly, the duty liability of the importer is given as under:

Table -3

Sl	*Warehoused*	*Date*	*Description*	*Quantity*	*Quantity*	*Duty to be*

No	Bill of Entry No		of Goods	of Beer imported	of Beer in Balance	paid (in Rs)
1	2	3	4	5	6	7
1	3008149	27.04.2019	Tensberg Premium Strong Beer 500 Ml	1200 CTN	600 CTN	2,83,273/-
2	3213548	13.05.2019	Tensberg Premium Strong Beer 650 Ml	3600 CTN	1530 CTN	6,09,684/-
3	6271332	28.12.2019	Tensberg Premium Strong Beer 650 Ml	2200 CTN	1100 CTN	3,98,015/-
4	6353886	04.01.2020	Tensberg Premium Strong Beer 500 Ml	2200 CTN	1100 CTN	5,17,326/-
					Total	15,08,298/-

(iii) Further, on going through the reply and details submitted by the importer, I find that the importer has filed ex-bond bills of entry No. 3615235 dated 12.06.2019 and 3615238 dated 12.06.2019 against warehousing bill of entry no. 3213548 dated 13.05.2019 showing the customs duty amounting to Rs. 6,86,416/-. Further. the importer filed ex-bond bill of entry No 3429357 dated 28.05.2019 against warehousing bill of entry no. 3008149 dated 27.04.2019 showing the customs duty amounting to Rs.2,83,273/-. However, I find that the only quantity of beer mentioned in column 6 of table 3 has not been cleared by the importer and rest quantity has been cleared and applicable customs duty has been paid. Further, I find on perusal of submission of the importer that they have not filed any ex-bond bill of entry for clearance of the quantity of beer in balance with respect to the warehousing BE Nos. 6271332 dated 28.12.2019 and 6353886 dated 04.01.2020 as mentioned in table-3.

(iv) The Party also submitted in the reply to SCN that the challan generation could have been failed possibly because bond amount was not debited at the time of filing of warehousing Bills of entry.

(v)However, on going through the ledger available in the EDI system, I find that the bond amount was duly debited with respect to all the Bes in the question.

(vi) In view of the above I find that the importer has deliberately not cleared the goods and not paid the Customs Duty on the goods in question. In view of the above, the contention of the importer is not tenable and I also do not find much force in the contention of the importer that the imported goods have not been cleared from the warehouse due to technical issue/ glitches, as the importer have cleared the part shipment of goods imported through warehousing Bill of Entries as mentioned in Table-3 supra and made payment of Customs Duty for the same

4.4 Appellant has submitted that they were not able to clear the balance quantity for the reason of certain technical glitches that they were facing while filing the ex-bond bill of entries. They have produced certain e-mails and correspondences in this respect. The three bill of entries which have be stated in the correspondences have been examined in the order in original and adjudicating authority has found that indeed the goods were cleared against these ex bond Bill of Entries on payment of duty. Thus he has rejected the argument advanced by the appellant in this respect. Further I also observe that demand is not in respect of the entire quantity of the beer warehoused but only against the quantity that was in balance and not cleared within prescribed period of warehousing. I also observe that two in bond bill of entries are dated after the three ex bond Bill of Entries referred in the correspondences produced by the appellant. Part of these consignments have also been cleared on filing of ex-bond Bill of Entries after payment of due duty. Thus I do not find any merits in the submissions made by the appellant to the effect that the it was on the account of the technical glitches that the appellant as not able to fill ex bond bill of entries for clearance of the balance amount.

4.5 However I find that the period of the bonding i.e. one year from the date of warehousing, in case of all the Bill of Entries would have expired only after 20.03.2020. It was the time when on account of the prevailing conditions on account of COVID, the period of limitation which would have expired during that period had been extended by Hon'ble Supreme Court vide order 10th January 2022 dated in Suo Motto Writ Petition No 3/2020 observing as follows:

> *"Taking into consideration the arguments advanced by learned counsel and the impact of the surge of the virus on public health and adversities faced by litigants in the prevailing conditions, we deem it appropriate to dispose of the M.A. No. 21 of 2022 with the following directions:*
>
> *I. The order dated 23.03.2020 is restored and in continuation of the subsequent orders dated 08.03.2021, 27.04.2021 and 23.09.2021, it is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasijudicial proceedings. 4*
>
> *II. Consequently, the balance period of limitation remaining as on 03.10.2021, if any, shall become available with effect from 01.03.2022.*
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> III. *In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply.*

4.6 Thus in view of above decision, I am of considered view that prescribed period of warehousing would have to be accordingly amended. Appellant have sought for remission of duty in respect of the balance warehoused beer in terms of section 23 of the Customs Act,1962. As per the appellant the goods having lost the self life and of no use they intend to abandon the same and the duty payable on the same be remitted in terms of Section 23 of Customs Act, 1962. Relying on certain decisions impugned order rejects the request made by the appellant for remission of duty. I do not find much merits in the request for remission made simply for the reason that those order were not made in situation when the entire country was struggling to cope with the situations on account of COVID. I find that Hon'ble Bombay High Court has in case of Mafatlal Fine Spinning & Manufacturing Co. Ltd. [1987 (27) ELT 19 (Bom] observed as follows:-

> *"5. Shri Andhyarujina, learned counsel appearing on behalf of the Department, submitted that the demand made by the Assistant Collector is wholly illegal and the Department is ignoring the clear-cut provisions of sub-section (2) of Section 23 of the Act. The submission of the learned counsel is correct and deserves acceptance. Section 12 of the Act, inter alia, prescribe that customs duty shall be levied on goods imported into India, while Section 13 prescribes that the importer shall not be liable to pay duty if the imported goods are pilferred after the unloading and before the proper officer has made the order for clearance for home consumption. Section 17(1) of the Act demands that after the importer files the bill of entry, the Customs Officer without undue delay shall examine and test the goods and on completion of such examination and testing, the goods shall be assessed. Section 57, in Chapter IX of the Act provides that the Assistant Collector of Customs may appoint public warehouses wherein dutiable goods would be deposited without payment of duty. Section 58(1) provides for grant*

of licence to provide warehouses by the Assistant Collector of Customs, while Section 59 prescribes for execution of bond by the importer when dutiable goods have been entered for warehousing. Section 23 of the Act deals with remission of duty on lost, destroyed or abandoned goods and Section 23(2) reads as under :

> *"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."*

The plain reading of sub-section (2) of Section 23 of the Act makes it clear that the owner of the imported goods is at liberty to relinquish his title to the goods at any time before an order for clearance of the goods for home consumption is passed and in case of such relinquishment, the owner will not be liable to pay the Customs duty on such imported goods.

In respect of warehoused goods, Section 61 prescribes the period for which such goods can remain in warehouse. Section 72 deals with goods improperly removed from warehouse and it is necessary to set out Section 72 to ascertain the legality of the impugned notice :

> *"72.(1) In any of the following cases, that is to say, -*
>
> *(a) where any warehoused goods are removed from a warehouse in contravention of Section 71;*
>
> *(b) where any warehoused goods have not been removed from a ware house at the expiration of the period during which such goods are permitted under Section 61 to remain in a warehouse;*
>
> *(c) where any warehoused goods have been taken under Section 64 as samples without payent of duty;*

(d) where any goods in respect of which a bond has been executed under Section 59 and which have not been cleared for home consumption or exportation are not duly accounted for to the satisfaction of the proper officer; the proper officer may demand, and the owner of such goods shall forthwith pay, the full amount of duty chargeable on count of such goods together with all penalties, rent interest and other charges payable in respect of such goods.

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

Section 72(1)(b) of the Act provides that where any warehoused goods have not been removed from the warehouse at the expiration of the period fixed then the proper officer may demand the full amount of duty chargeable along with penalty, rent, etc. The impugned notice does not refer to Section 72(1)(b) of the Act specifically but on assumption that the demand is made under that sub-section, it is necessary to examine the legality of the same. Shri Andhyarujina submits, and in my judgment with considerable merit, that the demand is wholly illegal because the petitioners have relinquished the title to the goods in accordance with sub-section (2) of Section 23. It is not in dispute that the licence granted by the Assistant Collector for warehousing imported goods was to remain alive upto March 15, 1983 and before the expiry of that period, the petitioners had relinquished the title by letter dated February 28, 1963. It is, therefore, obvious on the undisputed facts of this case that Section

72(1)(b) of the Act is not attracted and the demand made by the Assistant Collector is without any authority. Shri Andhyarujina submits that even assuming that the period of licence for warehousing had expired, still the Assistant Collector could not have demanded or compelled the petitioners to pay duty under Section 72(1) of the Act. The submission is correct because Section 72(1) of the Act enables the proper officer to make demand of the duty, but recovery thereof is not permissible if the importer exercises the right conferred under sub-section (2) of Section 23 of the Act. The point of time before which this right can be exercised is passing of the order of clearance of the goods for home consumption and before that date, it is open for the importer to relinquish the title. Even in cases where a demand is made by the Assistant Collector under Section 72(1)(b) of the Act, it is open for the importer to relinquish the title to the imported goods, provided an order for clearance for home consumption is not passed. In my judgment, the impugned demand is totally unsustainable and is required to be quashed."

4.7 Hon'ble Karnataka High Court has in the case of i2 Technologies Software Pvt. Ltd. [2007 (217) E.L.T. 176 (Kar.)] observed as follows:

14. *In the light of the above provisions we are of the opinion that Hon'ble Supreme Court, while interpreting the provisions of Section 72(1) and (2) of the Act as to the improper removal of warehoused goods from the warehouse in the context of determining the date to be considered for quantifying the customs duty on the warehoused goods at the time of their clearance from the warehouse, observed at para 14 of the judgment in Kesorams's case that :*

"The provisions of Section 68 and, consequently, of Section 15(l)(b) apply only when goods have been cleared from the warehouse within the permitted period or its permitted extension and not when, by reason of their remaining in the

warehouse beyond the permitted period or its permitted extension, the goods have been deemed to have been improperly removed from the warehouse under Section 72."

It is pertinent to note here that the Hon'ble Supreme Court did not lay down in the said case law to the effect that in the event of the importer allowing the warehoused goods to remain in the warehouse even after the expiration of the initial period of warehousing or the extended period he loses his right to relinquish his title to the said goods and consequently becomes liable to pay full amount of duly chargeable on such goods together with all penalties and interest. On a plain reading of the provisions of Sections 23(2), 47, 68 and the proviso to Section 68, it is clear that the owner of any warehoused goods has right to relinquish his title to such goods 'at any time before an order for clearance of goods for home consumption has been made in respect thereto'. There is no prohibition for the owner of the goods to exercise his right to relinquish his title to such goods after the expiration of the warehousing period or after expiration of the extended period. Further, the provisions of Section 23(2) and proviso to Section 68 make it clear that upon relinquishment of his title to any imported goods, including the warehoused goods, the owner of such goods shall not be liable to pay duty thereon. When he is not liable to pay duty, the question of paying any interest on the duty and the penalty does not arise. Therefore, we are of the considered view that by virtue of proviso to Section 68 and the provisions of Section 23(2) of the Act, the respondent-Company herein had right to relinquish its title to the said goods even after expiry of the warehousing period and as such, the relinquishment of his title to the said goods by addressing his letter dated 3-9-2003 before the Commissioner of Customs proceeded against the respondent-Company under Section 72(2) of the Act by issuing show cause notice proposing to impose duty, penalty, interest, etc., was legal and valid.

4.8 Hyderabad Bench in case of John Energy Ltd. [2025 (392) E.L.T. 268 (Tri. - Hyd.)] observed as follows:

> *"22. Upon careful reading of Section 68, as amended by the provision for relinquishment of title to warehoused goods inserted w.e.f. 14-5-2003 and the subsequent amendment made in the year 2016 to remove other charges and fees from its provisions, it is clear that the said proviso has extended the time available to the owner/importer of warehoused goods for relinquishment of title till or before an order for clearance of such goods for home consumption, as mentioned in clause (c) of Section 68, has been made by the proper officer.*
>
> *23. We find that in the facts of the present case, the relinquishment of title was made by the appellant well in time, as permitted by the Statute as no order for clearance of goods for home consumption was made till that date. We further hold that the issuance of SCN under Section 72(1)(b) for warehoused goods cannot stop the time running and available to the owner to relinquish the title before the order for clearance of such goods for home consumption, as stipulated in Section 77 read with Section 68, is made.*
>
> *24. We further find that none of the provisions of Section 72 of the Act restrict an owner of the warehoused goods to relinquish the title after issuance of SCN. Even after expiry of bond validity, the title of the goods remains with the owner as is manifested in the language of Section 72(2) of the Act. We further find that similar is the purport of the Board Circular dated 20-5-2003, which has clarified that with the relinquishment of right, the owner is absolved from the liability of duty and interest on the goods.*
>
> *25. In view of our aforementioned findings and observations, we hold that the appellant has rightly relinquished the title to the goods during the pendency of*

the proceedings under Section 72(1)(b) of the Act. We further find that on the date of such relinquishment, no case of any offence committed by the appellant under this Act or any other Act for the time being in force is made out in the facts and circumstances. Accordingly, we hold that the appellant is entitled to the benefit of relinquishment of title as provided under Section 68 of the Customs Act read with proviso. We further find that appellant has already been imposed penalty of Rs. 20,000/- under Section 117 of the Act and the same has already been deposited vide CM No. 109, dated 6-9-2019. Accordingly, we refrain from imposing any further penalty."

4.9 Thus in view of the above I do not find any merits in the impugned order to the extent it denies the appellant claim to remission of duty and interest in terms of Section 23 of the Customs Act, 1962, in respect of the balance warehoused goods.

4.10 General penalty has been imposed upon the appellant under Section 117 of the Act for not clearing the balance of warehoused goods in the prescribed period of time. In the interest of justice, I reduce the penalty to Rs. 25,000/-.

5.1 Appeal is partially allowed as indicated in para 4.8 and 4.9.

(Dictated and pronounced in open court)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

akp