IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4918 of 2021

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1. M/s Ashoke Das, Village Mill Road, P.O. - Falakata, Dist- Alipurduar (West Bengal) 735211 Through its Proprietor Ashoke Das, Aged about 56 years, Male, S/o - Shri Harendra Kumar Das, Resident of Hatkhola, Falakata, Jalpaiguri, West Bengal 735211
2. Sunil Kumar Gupta Son of Shri Jiyun Bandhan Gupta Resident of 16, Kashi Enclave Colony, Pahariya, Varanasi, Uttar Pradesh 221007

... ... Petitioners

Versus

1. Union of India Through The Commissioner of Customs (Prev), Patna 5th Floor, Kendriya Rajaswa Bhawan, Bir Chand Patel Path, Patna - 800001
2. The Joint Commissioner of Customs (Prev), Patna 5th Floor, Kendriya Rajaswa Bhawan, Bir Chand Patel Path, Patna - 800001
3. The Deputy/Assistant Commissioner, Customs (Prev) Division, Muzaffarpur 2nd Floor, Customs Building, Imlichatti, Muzaffarpur - 842001
4. The Superintendent (Prev), Customs (Prev) Division, Muzaffarpur, 2nd Floor, Customs Building, Imlichatti, Muzaffarpur 842001
5. The Inspector (Prev), Customs (Prev) Division, Muzaffarpur 2nd Floor, Customs Building, Imlichatti, Muzaffarpur 842001

... ... Respondents

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Appearance :

For the Petitioner/s	:	Mr. Ashwani Kumar, Advocate Mr. Raj Kumar, Advocate Mr. Sumit Kumar, Advocate
For the Respondent/s	:	Mr. Dr. K.N. Singh, ASG Mr. Anshuman Singh, Sr. SC Mr. Shivaditya Dhari Sinha, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE SHAILENDRA SINGH

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 19-02-2025

This writ application has been preferred seeking the following reliefs:-

> "(i) To issue a writ in the nature of Certiorari for quashing the Seizure Order/Seizure Memo dated 26.11.2019

whereby and where under 19,188 kgs of Betel Nuts (Arecanuts) as evaluated at Rs.38,37,600/- and a truck bearing Registration No. UP 65 CT/0573 as evaluated at Rs.12,00,000/- were seized on 26.11.2019 without having any ‘reason to believe” that the impugned goods have been smuggled from Nepal in violation of the provisions of the Customs Act, 1962 and without having any “reason to believe” that the impugned goods and the vehicle are liable for confiscation under the said Act with all consequential proceedings in pursuance of same; And/or

(ii) To issue a writ in the nature of certiorari for quashing the show cause notice bearing C. No. VIII (10) 13/Cus/Seiz/Muz/2019-20/961 dated 19.11.2020 issued by the Assistant/Deputy Commissioner of Customs (Prev), Muzaffarpur Division with a pre-conceived notion and subject matter bias, leaving no scope for fair and impartial hearing for the defense of the Petitioner(s); And/or

(iii) To issue an Order/Direction/Writ of appropriate nature declaring the provisional release of goods viz. 19,188 kgs of Betel Nuts as evaluated at Rs.38,37,600/- and the provisional release of vehicle bearing Registration No. UP 65CT/0573 as evaluated at

Rs.12,00,000/- under Section 110A of the Customs Act, 1962, as absolute return, in terms of Section 110(2) of the said Act as no Notice for confiscation of such goods and vehicle under Section 124 of the Customs Act, 1962 were issued within six months of seizure, with all consequential relief(s); And/or

(iv) To grant any other relief or reliefs to which the Petitioners are entitled in the facts and circumstances of the case."

Brief Facts of the Case

2. It is the case of the petitioners that petitioner no. 1 is engaged in business of trading of betel-nuts (Areca nuts) grown in the north-eastern region of the country and the petitioner no. 2 is the owner of the vehicle used for the transportation of the said goods. On 26.11.2019, when the vehicle bearing Registration No. UP 65 CT/0573 owned by petitioner no. 2 was engaged in transportation of betel-nuts of petitioner no. 1 and was moving from Falakata in West Bengal to Nagpur in Maharashtra, consigned to one M/S Jayshree Enterprises, Masaknath, House No. 14, Itwari, Nagpur (Maharashtra), it was detained by the Officers of the Customs (Prev) Division, Muzaffarpur under the Office of the Commissioner of Customs (Prev), Patna near Maithi Toll Plaza, Muzaffarpur at around 17:00 Hours of 26.11.2019 and

seized at the Office of the Deputy/Assistant Commissioner of Customs (Prev), Muzaffarpur Division at around 22:00 Hours of 26.11.2019. The value of the goods has been evaluated at Rs. 38,37,000/- and that of the truck at Rs.12,00,000/-.

Submissions on behalf of the Petitioners

3. Mr. Ashwini Kumar, learned counsel for the petitioners has challenged the seizure memo dated 26.11.2019 (Annexure 'P/1'). It is submitted that even as the seizure memo records the country of origin of goods as "third party" but it nowhere says as to which country the goods originated from or on what basis such plea has been formed. It is submitted that the seizure memo does not contain "the reasons to believe" as envisaged under Section 110 of the Customs Act, 1962 (hereinafter referred to as the 'Act of 1962'). It is submitted that the seizure memo mentions "Sections 7, 11, 46 and 47 of the Act of 1962; Section 3(2) of the Foreign Trade (Development and Regulation Act, 1992) and Government of India, Ministry of Finance, Notification No. 9/96-CUS (NT) dated 22.01.1996 issued under Section 110 of the Act of 1962." The said notification prohibits import of goods from Nepal which is exported into Nepal from any country other than India.

4. Learned counsel submits that the seized goods were accompanied by invoice, E-way bill issued in accordance with the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the 'GST Act, 2017'). In the E-way bill and the invoice, the name of the buyer and the consignee of goods have been duly shown. The invoice mentions the GST Registration of the consignee as well as the consigner. Copy of the invoice and the E-way bill have been brought on record as Annexure P/2 (Series). It is his submission that the petitioner no. 1 had also paid the requisite fee of Alipurduar Regulated Marketing Committee vide Receipt dated 25.11.2019 (Annexure 'P/3' Series) which clearly established that the seized goods were originated in India and there was nothing to believe that the goods were in any way imported from Nepal to India in contravention of the Act of 1962.

5. It is submitted that the seized vehicle was released provisionally by order of the Joint Commissioner of Customs (Prev), Patna vide order dated 20.02.2020 but the seized goods were released vide order dated 16.06.2020 after a period of six months from the date of seizure of the goods in terms of Section 110-A of the Act of 1962.

6. One of the contentions of learned counsel for the petitioners is that the show cause notice issued by the

Assistant/Deputy Commissioner of Customs (Prev), Muzaffarpur on 19.11.2020 is within the extended time limit for issuance of show cause notice under Clause (a) of Section 124 of the Act of 1962. It is his submission that the Commissioner of Customs (Prev), Patna passed an order on 15.05.2020 by which he extended the time limit for issuance of the show cause notice and again vide order dated 14.08.2020, the time was extended for another three months on the same grounds. While considering the extension of time limit for issuance of show cause notice under Clause (a) of Section 124 of the Act of 1962, Respondent No. 1 has not granted any opportunity to the petitioners of being heard.

7. Learned counsel has relied upon a judgment of the Hon'ble co-ordinate Bench of this Court in case of **M/S Ramesh Kumar Baid and Sons (HUF) and Another Vs. Union of India and Others** reported in **2020 (3) PLJR 98**. Learned counsel has also relied upon an another judgment of learned co-ordinate Bench of this Court in case of **Krishna Kali Traders and Another Vs. Union of India and Others** reported in **2024 SCC OnLine Pat 880** wherein the learned co-ordinate Bench having examined an identical situation in the seizure memo held that '*panchnama*' cannot be read into seizure memo and the judgment in case of Assam Supari Traders has taken a view that 'panchnama' cannot

be read with seizure memo. It is submitted that the learned co-ordinate Bench while deciding the case of **Krishna Kali Traders** has taken note of the co-ordinate Bench judgment in case of the **Commissioner of Customs (Preventive), Patna Vs. Sh. Rajendra Sethiya** in **Miscellaneous Appeal No. 528 of 2022** and **Santosh Kumar Murarka Vs. Union of India and Others** in **CWJC No. 5427 of 2022**.

8. In **Krishna Kali Traders**, it has held that **Assam Supari Traders, through its Authorized Representative Cum Power of Attorney Holder Anil Kumar Yadav Vs. Union of India through the Secretary, Ministry of Finance, Department of Revenue and Otheres** reported in **2024 SCC OnLine Pat 6401** would be binding in the light of the Hon'ble Supreme Court decision in the case of **Mary Pushpam Vs. Telvi Curusumary and Others** reported in **(2024) 3 SCC 224**.

9. Learned counsel has further relied upon the judgment in the case of **Assistant Collector of Customs and Superintendent, Preventive Service Customs, Calcutta and Others Vs. Charan Das Malhotra** reported in **1971 (1) SCC 697** a copy of which has been enclosed with the writ petition as Annexure '6'. Attention of this Court has been drawn towards paragraph '15' of the said judgment to submit that in the matter of

extension of time under sub-section (2) of Section 110 of the Act of 1962, it was obligatory on the part of the competent authority to give an opportunity of hearing to the petitioners. Submission is that the decision towards extension of time would be in the nature of a quasi-judicial decision and it would be imperative upon the authority to follow the principle of fair play in action by giving an appropriate opportunity to the party who is likely to be affected by the order of extension of time.

Submissions on behalf of the Respondents

10. On the other hand, Dr. Krishna Singh, learned ASG for the Union of India submits that the word "reasons to believe" as occurring under Section 110(1) of the Act of 1962 cannot be put in a straight jacket formula. The proper officer has to form this 'reason to believe' as far as practicable at the time of seizure of the goods but the circumstances under which the goods are seized would always be a reason to be looked into. If the goods are being seized at the roadside and it is not practically possible for the proper officer to record "reason to believe", at length, the fact that the proper officer has mentioned the relative sections of the Act of 1962 which have been violated in a particular case would be suffice.

11. Learned Senior Counsel has relied upon the judgment of learned co-ordinate Bench of this Court in case of **Sh. Rajendra**

Sethiya (supra). Attention of this Court has been drawn towards paragraph '13' of the judgment in which the learned co-ordinate Bench has held in the said case that the seizure memo of 24.07.2017 which was prepared at the DRI, Regional Unit, Patna clearly indicate violation of Sections 7, 46 and 47 of the Act, as the reason to believe. The learned co-ordinate Bench went through the provisions of the Act of 1962 and held that the reason to believe is very clear from the violations alleged and there can be no challenge to the goods being sourced from outside the country which was evident from a mere visual inspection and the presence of Swiss markings were clear to even a layman who does not have any expertise in the matter. In **Sh. Rajendra Sethiya** (supra) case, the gold bars with Swiss markings on the gold bars were seized by the proper officer and that was the issue before the Hon'ble Division Bench.

12. Learned Senior Counsel has further relied upon the judgment in the case of **Santosh Kumar Murarka** (supra) (paragraphs '7' to '9') to support his contentions. It is submitted that the same learned co-ordinate Bench who has decided the case of **Krishna Kali Traders** (supra), has taken a view that in respect of reasons to be assigned, it would suffice if the provision of law is cited, which is alleged to have been violated suffice the reasons.

13. Learned Senior Counsel has then relied upon the judgment in the case of **Pukhraj v. D.R. Kohli** reported in **AIR 1962 SC 1559 (Para 8)** to submit that the Court would not be dealing with

a question whether the belief in the mind of the Officer who effected the seizure was reasonable or not. All that it can be considered whether there is ground which prima-facie satisfies the said reasonable belief. In the case of **Pukhraj** (supra), it was held that a person carrying large quantity of gold and found travelling without a ticket may well have raised a reasonable belief in the mind of the Officer that the gold was smuggled. Further relying upon the judgment of **Bikaner-Assam Road Lines India Limited and Others Vs. The Union of India and Others** reported in **2000 (1) PLJR 136 (Paragraphs '10', '12', '15' and '16')**, learned senior counsel submits that in the said case, learned Single Judge of this Court has discussed Section 110 of the Act of 1962. In paragraph '12' of the said judgment, reliance has been placed upon the judgment of the Hon'ble Supreme Court in the case of **State of Gujarat vs. Mohanlal** reported in **AIR 1987 SC 1321** wherein the Hon'ble Apex Court held that while considering the question whether the officer concerned has a reasonable belief or not that the goods are smuggled ones, the court cannot sit as an appellate forum. It is for the authority to be satisfied, prima-facie, about the grounds to justify the belief and once there is a prima-facie material to justify the reasonable belief, the court has to accept the said fact. The Division Bench judgment of this Court in the case of **Angou Golmel vs. Vizovolie Chakhasang** reported in **1996 (81) E.L.T. 440 (Patna),** their Lordship have relied upon the judgment rendered in **Mohanlal** (supra) and after taking into

consideration the facts of that case, they came to a conclusion that the materials in that case were not sufficient to form a reasonable belief that the goods were liable to confiscation under the Act.

14. Learned Senior Counsel has further relied upon the judgment in the case of **Yakub Abdul Razak Memon Vs. State of Maharashtra through CBI, Bombay** reported in **(2013) 13 SCC 1**. It is his further submission that the circular of the Department of Customs which have been issued after the decision of the **Hon'ble Delhi High Court in the case of Worldline Tradex P. Ltd Vs. Commissioner of Customs and Others** reported in **(2016) 40 GSTR 141** clearly talks of "in addition to panchnama', therefore, it would be mandatory to read panchnama and seizure together to find out the reason to believe on the part of the officer. It is submitted that the reason to believe under Section 110 is to be formed by the proper officer and it is not meant for the Court to replace its opinion on the belief of the proper officer.

15. It is lastly submitted that presently, the petitioner has moved this Court only at a show cause notice stage. It is always open for him to show the reasons and bring to the notice of the adjudicating authority the entire facts and circumstances.

16. Learned Senior Counsel relies upon the judgment of the Hon'ble Supreme Court in the case of **Special Director v. Mohd. Ghulam Ghouse** reported in **AIR 2004 SC 1467** to submit

that the Hon'ble Supreme Court held that ".. Unless, the High Court is satisfied that the show cause notice was totally non est in the eye of law for absolute want of jurisdiction of the authority to even investigate into facts, writ petitions should not be entertained for the mere asking and as a matter of routine and the writ petitioner should invariably be directed to respond to the show cause notice and take all stands highlighted in the writ petition..."

17. It is lastly submitted that regarding the extension of period as envisaged under sub-section (2) of Section 110, the submission of learned counsel for the petitioner seems to be based on misconception of law. The said provision only provides a period of limitation of six months for purpose of issuance of notice and the consequences of non-issuance of notice would be that the seized good shall be returned. The said provision cannot be interpreted in a manner so as to say that after expiry of the period of six months, no show cause notice could be issued to the petitioner.

Consideration

18. We have heard learned counsel for the parties. The main question which has fallen for consideration in the present case is as to whether the seizure order/seizure memo dated

26.11.2019 satisfies the condition precedent i.e. "reason to believe" as envisaged under Section 110(1) of the Act of 1962.

19. Section 110(1) of the Act of 1962 reads as under:-

> "**110. Seizure of goods, documents and things.-**(1) If the proper officer has reason to believe that any goods are liable to confiscation under this Act, he may seize such goods:
>
> [1][Provided that where it is not practicable to remove, transport, store or take physical possession of the seized goods for any reason, the proper officer may give custody of the seized goods to the owner of the goods or the beneficial owner or any person holding himself out to be the importer, or any other person from whose custody such goods have been seized, on execution of an undertaking by such person that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer:
>
> Provided further that where it is not practicable to seize any such goods, the proper officer may serve an order on the owner of the goods or the beneficial owner or any person holding himself out to be importer, or any other person from whose custody such goods have been found, directing that such person shall not remove, part with, or otherwise deal with such goods except with the previous permission of such officer.]"

20. On a bare reading of sub-section (1) of Section 110, it is crystal clear that the proper officer must form reason to believe that the goods which he is looking to cease are liable to be confiscated. Chapter XIV of the Act of 1962 contains the

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11. Subs. by Act 23 of 2019, S.74(i), for proviso. Prior to its substitution, proviso read as under:- "Provided that where it is not practicable to seize any such goods, the proper officer may serve on the owner of the goods an order that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer.".

provisions for confiscation of improperly imported goods, goods attempted to be improperly exported etc., confiscation of conveyance, confiscation of goods used for concealing smuggled goods, adjudication of confiscations and penalties and adjudication procedure. Section 123 of the Act of 1962 talks of the burden of proof in certain cases and Section 124 provides for issuance of show cause notice before confiscation of goods etc. Section 123 and Section 124 of the Act of 1962 are being reproduced hereunder for a ready reference:-

> "**Section 123 Burden of proof in certain cases.-**[1][(1) Where any goods to which this section applies are seized under this Act in the reasonable belief that they are smuggled goods, the burden of proving that they are not smuggled goods shall be –
>
> (a) in a case where such seizure is made from the possession of any person,--
>
> (i) on the person from whose possession the goods were seized; and
>
> (ii) if any person, other than the person from whose possession the goods were seized, claims to be the owner thereof, also on such other person;
>
> (b) in any other case, on the person, if any, who claims to be the owner of the goods so seized.]
>
> (2) This section shall apply to gold, [2][and manufactures thereof], watches, and any other class of goods which the Central Government may by notification in the Official Gazette specify.
>
> **Section 124. Issue of show cause notice before confiscation of goods, etc. –** No order confiscating

1. Substituted by Act 36 of 1973, S.4, for sub-S. (1) (w.e.f.1-9-1973)
2. Substituted by Act 40 of 1989, S.2, for "diamonds, manufacturers of gold or diamonds".

any goods or imposing any penalty on any person shall be made under this Chapter unless the owner of the goods or such person –

(a) is given a notice in [3][writing with the prior approval of the officer of Customs not below the rank of [4][an Assistant Commissioner of Customs], informing] him of the grounds on which it is proposed to confiscate the goods or to impose a penalty;

(b) is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of confiscation or imposition of penalty mentioned therein; and

(c) is given a reasonable opportunity of being heard in the matter:

Provided that the notice referred to in clause *(a)* and the representation referred to in clause *(b)* may, at the request of the person concerned be oral:

[1][Provided further that notwithstanding issue of notice under this section, the proper officer may issue a supplementary notice under such circumstances and in such manner as may be prescribed.]"

21. The cluster of words "reasons to believe" has been considered by the learned co-ordinate Benches of this Court. In case of **Assam Supari Traders** (Supra), a learned Co-ordinate Bench of this Court was examining a seizure memo dated

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3. Substituted by Act 29 of 2006, S.28, for "writing informing" (w.e.f. 13-7-2006).
4. Substituted by Act 8 of 2011, S.49, for "a Deputy Commissioner of Customs".
1. Inserted by Act 13 of 2018, S.94.

02.04.2024 issued by Inspector of Customs/Seizing Officer, Kishanganj Circle which read as under:-

> "**6. Reason for seizure** : Violation of Sections 7, 11, 46 and 47 of the Customs Act, 1962 read with Section 3(2) of the Foreign Trade (Development and Regulation) Act, 1992."

22. The learned co-ordinate Bench held that what has been assigned as reason for seizure is that there are violation of the aforementioned statutory provisions. In what manner is not forthcoming in the seizure memo. The Court observed "Prima-facie, none of the cited provisions are attracted in the present case, having regard to the factual aspect of the matter read with documents relating to purchase of goods and its transportation and traders are registered and they are fulfilling all the criteria for purchase of dried Areca nuts transportation and sale etc." It has been held that what would constitute the reason to believe are to be recorded and for invoking the powers under Section 110 of the Act of 1962, the Seizing Officer has to record his reason to believe in writing.

23. The learned co-ordinate Bench held that the Seizing Officer is exercising a quasi-judicial functions under the Act of 1962 read with the Act of 1992 and it is amenable to judicial

review, therefore, in not assigning or referring to some material information so as to have nexus to the word ‘reason to believe’, the subsequent events like subjecting certain samples of the seized Areca Nuts to local traders and eliciting their opinion that the seized goods is suspected and it may be of foreign origin, would not be reliable and acceptable in absence of concrete finding that the seized dried Areca nuts is of foreign origin with corroborative evidences.

24. In the case of **Krishna Kali Traders** (supra), the same learned co-ordinate Bench cited its own judgment in the case of **Assam Supari Traders** (supra). In case of **Assam Supari Traders** (supra), the learned co-ordinate Bench had been pleased to set aside the impugned seizure memo dated 02.04.2024, discharged the petitioner from the guarantee and bond furnished by him to secure provisional release of the seized goods. The reasoning and rationale provided in the judgment of **Assam Supari Traders** (supra) remains the same. It has been held that suspected opinion of the local traders that seized dried Areca nuts is a foreign origin is not reliable and acceptable, in other words with a naked eye one cannot draw inference that whether it is Indian origin or foreign origin. The learned co-ordinate Bench found that in the said case, the goods were seized at *Forbishganj*

and not seized from any port or any customs area to form a belief that the goods were being imported into India. It was further observed that even otherwise, there was nothing on record to form a belief that the goods in question were imported without payment of import duty.

25. In the case of **Krishna Kali Traders** (supra), the judgment of the Hon'ble Delhi High Court in the case of **Worldline Tradex P. Ltd** (supra) has been referred to, in which it has been held that panchnama document cannot be read into seizure memo. The Court was informed that pursuant to the judgment of the Hon'ble Delhi High Court in the said case, the Department of Customs had come out with a Circular No. F.No.591/04/2016-Cus(AS) dated 08.02.2017. The said circular is being reproduced hereunder:

"Instruction no. 01/2017-Customs

F.No. 591/04/2016-Cus (AS)
Government of India
Ministry of Finance
Department of Revenue
Central Board of Excise & Customs
(Anti-Smuggling Unit)
***

New Delhi, dated 8th February, 2017

To
All Principal Chief Commissioners/ Chief Commissioners of Customs/Customs (Preventive),
All Principal Chief Commissioners /Chief Commissioners of Customs & Central Excise
All Principal Directors General / Directors General of CBEC.

All Principal Commissioners/Commissioners of Customs/ Customs (Prev).
All Principal Commissioners/Commissioners of Customs (Appeals)
All Principal Commissioners/Commissioners of Customs & Central Excite
All Principal Commissioners/Commissioners of Customs & Central Excise (Appeals).

Subject: Passing of order under Section 110 of the Customs Act, 1962-reg.

Madam/Sir,

Attention is invited to Section 110 of the Customs Act, 1962 and Para 1.1 of Chapter 15 of the Customs Manual 2015.

2. It has been brought to the notice of the Board that in several cases, goods are being held-up/seized by the field formations only under panchnama and separate orders for seizure of goods are not being passed. The Hon'ble Delhi High Court, in a recent order, has held that a panchnama is a statement by panchas (witnesses) and cannot be taken to be an order passed by the proper officer under Section 110 of the Customs Act, 1962

3. Though Section 110 of the Act ibid does not specify passing an order for seizure of goods, it says that where it is not practicable to seize any such goods, the proper officer may serve on the owner of the goods an order that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer.

4. In view of the above, in all future cases, the following may be adhered to:

Whenever goods are being seized, in addition to panchnama, the proper officer must also pass an appropriate order (seizure memo/order etc) clearly mentioning the reasons to believe that the goods go are liable for confiscation.

Where it is not practicable to seize any such goods, the proper officer may serve on the owner of the goods an order that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer. In such cases, investigations should be fast-tracked to expeditiously decide whether to place the goods under seizure or to release the same to their owner.

5. Further, it has been brought to the notice of the Board that in cases where provisional release of seized goods is allowed under Section 110A of the Act ibid, show cause notices are not being

> issued within the stipulated time period on the ground that the goods have been released to the owner of the goods. The provisions of the Customs Act, 1962 are clear that irrespective of the fact whether goods remain seized or are provisionally released, once goods are seized, the time period (including extended time period) stipulated under Section 110(2) of the Act shall remain applicable and has to be strictly adhered to.
>
> 6. The Chief Commissioners/Director Generals are requested to circulate the present guidelines to all the formations under their charge. Difficulties, if any, in implementation of the aforesaid guidelines may be brought to the notice of the Board. Hindi version follows.
>
> (Rohit Anand)
> Under Secretary to the Government of India"

26. The learned co-ordinate Bench concluded that panchnama cannot be read into seizure memo. In the said case, it was also held that both the seizure memo and panchnama would show that it was firstly the seizure memo which has been prepared and secondly panchnama has been drawn, therefore, at the time of writing seizure memo, panchnama was not written or existed. The learned co-ordinate Bench clearly opined that the Seizing Officer cannot keep reasons in his mind and he has to disclose minimal reasons in the seizure memo.

27. It appears on reading of the judgment in the case of **Krishna Kali Traders** (supra) that in the said case, the another learned co-ordinate Bench judgments in the case of **Sh. Rajendra Sethiya** (supra) and **Santosh Kumar Murarka** (supra) were cited on behalf of the Union of India. Both the judgments were taken note of in **Assam Supari Traders'** case and it has been held that

in **Assam Supari Traders**' case, the learned co-ordinate Bench has distinguished on factual aspect of the matter that the cited decision of this Court are distinguishable for the reasons that there is no analysis of Section 110. It has been held that in case of **Santosh Kumar Murarka** (supra), there was no occasion to consider Section 110(1-A) (1-B) and (1-C) of the Act of 1962 read with Section 128, therefore, the two decisions as above cited by learned Senior Counsel for the Respondents have already been noticed in **Assam Supari Traders** (supra) and got distinguished.

28. We have also gone through the judgment in the case of **Sh. Rajendra Sethiya** (supra) and **Santosh Kumar Murarka** (supra). The case of **Sh. Rajendra Sethiya** (supra) came before this Court by way of Miscellaneous Appeal under Section 130 of the Act of 1962. The order-in-original confiscating and imposing penalties under the Act was passed by the adjudicating officer against which the First Appellate Authority reversed the order of the Original Authority and in appeal before the Appellate Tribunal, the Tribunal affirmed the order of the First Appellate Authority. The learned Division Bench of this Court hearing the Miscellaneous Appeal framed a question of law in the following words:-

> "Whether the Appellate Authority on the basis of facts and evidences and circumstances of the case, has completely erred in its findings and came to conclusion overlooking a number of material facts as well as the judgments cited?"

29. In the case of **Sh. Rajendra Sethiya** (supra), the judgments in the case of **Om Sai Trading Company & Anr. Versus Union of India & Ors.** reported in **2019 SCC Online Pat 2262** and **Sheo Nath Singh Versus CIT** reported in **(1972) 3 SCC 234** were cited. The learned Division Bench distinguished the case of **Sh. Rajendra Sethiya** (supra) from that of those cases and held that the dictum in **Om Sai Trading Company** (supra) was on the peculiar facts coming out in that case, (i) of the ownership of the goods being undisputed, (ii) nothing indicating the goods to be sourced from outside from the country and (iii) the laboratory report being extraneous to the Customs Act, which resulted in quashing of the very seizure notice, without even relegating the petitioner to the adjudicatory procedure. In **Sh Rajendra Shetiya** (supra), however, the learned Division Bench found that there were simple admitted facts and looking at the valuation carried out by the Department on interception and detection of goods, it has been found that the valuation was done by a government registered

valuer and it indicates markings on both the gold bars “Valcambi Suisse (995) CHI Essayeur Foundeur”. The gold bars with the recital thereon, was admitted to be that entrusted by the respondent to his employee who was the person intercepted. The seizure memo of 24.07.2017 which was prepared at the DRI Regional Unit, Patna Office clearly indicated violation of Sections 7, 46 and 47 of the Act as the reasons to believe. It is in this background the learned Division Bench was of the view that the reason to believe is very clear from the violations alleged and that in the present case, there can be no challenge to the goods being sourced from outside the country, which is evident from a mere visual inspection.

30. In Santosh Kumar Murarka (supra), the learned co-ordinate Bench held that there was disputed issue as to whether driver of the vehicle had produced relevant document at 21:00 Hours on 19.06.2021 or not. It was found that the RUD-05 E-way Bill was generated on 19.06.2021 at 09:26 PM and seizure was at 09:30 PM. Finding some discrepancies, the learned co-ordinate Bench was of the view that under Article 226 Court cannot examine disputed issues among the parties.

31. We have no iota of doubt that the case in hand before us would stand on a different footing inasmuch as it would appear

on perusal of the seizure/detention memo (Annexure P/1) that the Seizing Officer has not recorded his reasons to believe. There is no contention on behalf of the respondent that the driver of the vehicle had not produced the invoice and the GST- E-way bill dated 25.11.2019 as contained in Annexure-P2. The seizure memo (Annexure P/1) is being reproduced hereunder:-

"**SEIZURE/DETENTION MEMO**

(Receipt of goods seized/detained under the Customs Act, 1962)

Name of the Unit/Circle/Division	1	Customs (Preventive) Division, Muzaffarpur
Place of Seizure/Detention	1	O/o the Deputy Commissioner, Customs (Preventive) Division, Imali Chatti, Muzaffarpur
Date & Time of Seizure/Detention	1	26.11.2019 at 22:00 Hrs.
Particulars of conveyance/premises/Persons from whom goods recovered	1	(1) Shri Radhey Shyam (Driver of Truck No.-UP65CT-0573, aged about 52 Yrs, S/o- Shri Musafir, Village- Barawa Khurd, Thana- Sadat, District-Ghazipur, Pin-275204. (2) Shri Shailander Kumar Gautam alias Chhotu (Khalasi of Truck No. UP65CT-0573), aged about 23 Yrs., S/o- Shri Ramashankar Kumar Gautam, Village- Tarya, Thana- Chaibepur, District- Banaras, UP
Name & address of the persons to whom Seizure/detention receipt issued	1	As above.
Reasons for seizure/detention of goods	1	Section 7, 11, 46 & 47 of Customs Act, 1962; Section 3(2) of Foreign Trade (Development & Regulation) Act, 1992 & Government of India, Ministry of

		Finance, Notification No. 9/96-CUS (NT) dated 22.01.1996 issued under Section 110 of the Customs Act, 1962.
Case No. & Date	1	**13/2019-20 Dated 26.11.2019**

Sl. No.	Description of goods	Make/Origin	Quantity of goods	Value (In Rs.)
1.	Total 245 bags of Arecanut (Betel Nut) (Packed in 245 bags each containing 78.0 kgs.)	Third Country Origin	19188 Kg	Rs.38,37,600/-
3.	Truck No. UP65CT-0573 Engine No. B591803221J63288258 Chasis No. MAT466388C3J26447	Tata Truck	1(One) No.	Rs.12,00,000/-
			Total	Rs.50,37,600/- (Rupees Fifty Lacs Thirty Seven Thousands & Six Hundred Only)

Signature of witnesses Signature/thumb impression of accused Signature of the seizing officer"

32. We have noticed hereinabove that the Central Board of Excise and Customs (Anti-Smuggling Unit) had issued Instruction No. 01/2017-Customs dated 08th February, 2017 in which it has been clearly stated that whenever goods are being seized, in addition to panchnama, the proper officer must also pass an appropriate order (seizure memo/order etc.) clearly mentioning the reasons to believe that the goods are liable for confiscation. The same instruction states in paragraph '5' that in cases where

provisional release of seized goods is allowed under Section 110-A of the Act, show cause notices are not being issued within the stipulated time period on the ground that the goods have been released to the owner of the goods. It is stated that the provisions of the Act of 1962 are clear that irrespective of the fact whether goods remain seized or are provisionally released, once goods are seized, the time period (including extended time period) stipulated under Section 110(2) of the Act shall remain applicable and has to be strictly adhered to.

33. At this stage, we reproduce Section 110(2) of the Act of 1962 as under:-

> (2)Where any goods are seized under sub-section (1) and no notice in respect thereof is given under clause (a) of section 124 within six months of the seizure of the goods, the goods shall be returned to the person from whose possession they were seized :
>
> [2][Provided that the Principal Commissioner of Customs or Commissioner of Customs may, for reasons to be recorded in writing, extend such period

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2. Substituted by Act 13 of 2018, S.92, for the proviso. Prior to its substitution, the provisos read as under: – "Provided that the aforesaid period of six months may, on sufficient cause being shown, be extended by the [Principal Commissioner of Customs or Commissioner of Customs] for a period not exceeding six months.".

to a further period not exceeding six months and inform the person from whom such goods were seized before the expiry of the period so specified:

Provided further that where any order for provisional release of the seized goods has been passed under section 110A, the specified period of six months shall not apply.]"

34. A bare perusal of sub-section (2) of Section 110 would show that where any goods are seized under sub-section (1) and no notice in respect thereof is given under clause (a) of Section 124 within six months of the seizure of goods, the goods shall be returned to the person from whose possession they were seized. At this stage, a perusal of clause (a) of Section 124 of the Act of 1962 would show that it starts with a negative covenant and reads as under:-

"**124.** (a) is given a notice in [3][writing with the prior approval of the officer of Customs not below the rank of [4][an Assistant Commissioner of Customs], informing] him of the grounds on which it is proposed to confiscate the goods or to impose a penalty;

3. Substituted by Act 29 of 2006, S.28, for "writing informing" (w.e.f. 13-7-2006).
4. Substituted by Act 8 of 2011, S.49, for "a Deputy Commissioner of Customs".

35. A conjoint reading of sub-section (2) of Section 110 and Clause (a) of Section 124 of the Act of 1962 would make it clear that where no notice in respect of the seized goods under sub-section (1) of Section 110, is given under Clause (a) of Section 124 within six months of the seizure of the goods or within the extended period under the first proviso to sub-section (2) of Section 110, the goods shall be returned to the person from whose possession they were seized. The effect of not giving notice under Clause (a) of Section 124 within six months of the seizure of the goods is stipulated under sub-section (2) of Section 110 and according to this, the consequence would be that the goods shall be returned to the person from whose possession they were seized.

36. In this case, admittedly the goods have been provisionally released on 16.06.2020 i.e. after a period of six months, twice this period has been extended by three months each. It is on this point that learned counsel for the petitioner has relied upon the judgment of the Hon'ble Supreme Court in the case of **Charan Das Malhotra** (supra). This judgment was rendered in the year 1983, therefore, it refers the then existing provision of Section 110. In the said case, it has been held in paragraph '12' as under:-

> "**12.** There can be no doubt that the proviso to the second sub-section of Section 110 contemplates some sort of inquiry. The Collector, obviously, is expected not to pass extension orders mechanically or as a matter of routine, but only on being satisfied that the exist facts which indicate that the investigation could not be completed for bona fide reasons within the time laid down in Section 110(2), and that therefore, extension of that period has become necessary. He cannot, therefore, extend the time unless he is satisfied on facts placed before him that there is a sufficient cause necessitating extension. The burden of proof in such an inquiry is clearly on the Customs Officer applying for extension and not on the person from whom the goods are seized."

37. The Hon'ble Supreme Court has considered the nature of such a function and power entrusted to and conferred on the Collector by the proviso. It has been noticed that whereas sub-section (1) of Section 110 uses the expression "reason to believe" for enabling the Customs Officer to seize goods, the proviso to sub-section (2) uses the expression "sufficient cause being shown". It is in the light of this provision that the Hon'ble Supreme Court held that it would be seen that sub-section (1) does not contemplate an inquiry at the stage of seizure, the only

requirement being a satisfaction of the concerned officer that there are reasons to believe that the goods are liable to confiscation by reason of their illegal importation even so, such satisfaction as laid down in **S. Narayanappa and Others Vs. The Commissioner of Income Tax, Bangalore** reported in **AIR 1967 SC 523** is not absolutely subjective inasmuch as the reasons for his belief have to be relevant and not extraneous. It was held that the legislature was not prepared to use the same language while giving power to the Collector to extend time and deliberately used the expression "sufficient cause being shown". It has been held that the words "sufficient cause being shown" must mean that the Collector must determine on materials placed before him that they warrant extension of time where an order is made in bonafide exercise of power and within the provisions of the Act which confer such power, the order undoubtedly is immune from interference by a Court of Law, and therefore, the adequacy of the cause shown may not be a ground for such interference but there can be no doubt at the same time that the inquiry is to be held by the Collector as to be on facts that is materials placed before him. In paragraph '15' of the judgment in the case of **Charan Das Malhotra** (supra) , the Hon'ble Supreme Court has observed as under:-

> **"15.** But it may be said that in both those cases there was a civil right involved and the power,

therefore, had to be held quasi-judicial. But in the present case also, the right to restoration of the seized goods is a civil right which accrues on the expiry of the initial six months and which is defeated on an extension being granted, even though such extension is possible within a year from the date of the seizure. Since the Collector has on facts to decide on the existence of a sufficient cause, although his decision as to sufficiency of materials before him may be within his exclusive jurisdiction, it is nonetheless difficult to comprehend how he can come to his determination unless, as the Division Bench of the High Court has said, he has before him the pros and cons of the question. An ex parte determination by the Collector would expose his decision to be one sided and perhaps one based on an incorrect statement of facts. How then can it be said that his determination that a sufficient cause exists is just and fair if he has before him a one sided picture without any means to check it unless there is an opportunity to the other side to correct or controvert it. The difference in the language used in the first sub-section and the proviso to sub-section (2) lends support to the contention that the power in one case may be subjective, and therefore, not calling for an enquiry, and the power in the other is one, the exercise of which necessitates an enquiry into the materials placed before the Collector for his determination. In our view, these considerations lead to the conclusion that the power under the proviso is not to be exercised without an opportunity of being heard given to the person from whom the goods are seized."

38. Since learned counsel for the petitioner has given much emphasis on paragraph ‘15’ of the judgment, we have recorded the same hereinabove but we must hasten to add that the proviso to sub-section (2) of Section 110 of the Act of 1962 as existed at the time of **Charan Das Malhotra** (supra) has been substituted by the Act 13 of 2018. The amended provision only cast a duty upon the Principal Commissioner of Customs or Commissioner of Customs to record reasons in writing for extension of the period of six months to a further period not exceeding six months and inform the person from whom such goods were seized before the expiry of the period so specified. Thus, to this Court, it appears that under proviso to sub-section (2), there is no scheme to provide an opportunity of hearing to the person from whom the goods were seized. All that is required is to record reasons in writing and the same is to be informed to the person from whom such goods were seized before the expiry of the period so specified. The writ petition does not throw much light on this aspect of the matter.

39. We are of the considered opinion that the another submission of learned counsel for the petitioner that in this case, notice under Clause (a) of Section 124 could not have been given

beyond a period of six months of seizure of the goods and within the extended period cannot be accepted and the said argument is liable to fail.

40. At this stage, we find from the order dated September 15, 2022 passed by the Hon'ble Supreme Court in Civil Appeal No. (not mentioned) of 2022 (arising out of SLP(s) No. 11124 of 2021) and other analogous matters, that the Union of India had moved before the Hon'ble Supreme Court for setting aside the order(s) of the Hon'ble Division Bench of this Court in **Om Sai Trading Company** (supra) and other cases of like nature in which this Court had been pleased to quash the seizure memo(s). While disposing of the SLP(s), September 15, 2022 order of the Hon'ble Supreme Court reads as under:-

> " **1.** Leave Granted.
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> **2.** Having heard learned counsel for the parties, in view of the facts of the present case, and as the goods have already been released, we are not inclined to interfere with the decision of the High Court quashing the seizure memo. However, we clarify that the quashing of the seizure memo does not mean the appellants cannot investigate, and proceed in accordance with law under the provisions of the Customs Act, 1962. .."

41. It is apparent from a bare reading of the order of the Hon'ble Supreme Court that it was passed after granting leave against the Division Bench judgments of this Court and the effect of the order of the Hon'ble Supreme Court may be clearly seen. The principle of 'merger' will apply. Despite quashing of the seizure memo, it cannot be said that the appellants cannot investigate and proceed in accordance with law under the provisions of the Act of 1962.

42. In the light of the aforementioned discussions, when we examine the seizure memo (Annexure P1), it is found that the Seizing Officer has not complied with the mandate of sub-section (1) of Section 110 of the Act of 1962. The Hon'ble Delhi High Court has, in **Worldline Tradex Private Limited** (supra) categorically held that the power of seizure under Section 110 of the Act has to obviously be exercised for valid reasons. The proper officer has to record his reasons to believe that the goods that he proposes to seize are liable to confiscation. The said reasons for exercise of the power have to be recorded prior to the seizure. The subsequent instruction issued by the Department clearly says that in addition to panchnama reason to believe should be indicated in the seizure memo/order.

43. We find from the records that in the present case, apart from the seizure list, there is no other order of the Seizing Officer showing his reason to believe. The learned co-ordinate Bench of this Court in the case of **Assam Supari Traders** (supra) and **Krishna Kali Traders** (supra) has held that mere mentioning of the sections of the Act of 1962 in the seizure memo would not be sufficient in absence of material information relating to 'reason to believe.' We are in agreement with the said view of the learned co-ordinate Bench. We have been told at the Bar that **Assam Supari Traders** (supra) and **Krishna Kali Traders** (supra) have attained finality as no challenge to these judgments have been taken to the Hon'ble Supreme Court.

44. In result, the seizure memo (Annexure P1) is quashed. So far as the notice to show cause as contained in Annexure P7 to the writ petition is concerned, we refrain from interfering with the show cause notice. We have already recorded the order of the Hon'ble Supreme Court hereinabove in which it has been held that quashing of the seizure memo does not mean the appellants cannot investigate and proceed in accordance with law under the provisions of the Act of 1962. The petitioner, if so advised, may submit his reply to the show cause notice. It is open to the petitioner to file a reply to the show cause notice within six

weeks from today whereafter the adjudicating officer shall proceed to pass appropriate order under the provisions of the Act of 1962.

45. All questions with regard to the issuance of show cause notice and impact of quashing of the seizure memo (Annexure P1) shall remain open.

46. This writ application stands allowed to the extent indicated hereinabove.

(Rajeev Ranjan Prasad, J)

I agree.

(Shailendra Singh, J)

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AFR/NAFR	AFR
CAV DATE	
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