

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7999 of 2020

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1. Sukhdeo Singh Son of Dinbag Singh Resident of Nanakpur, Mitauli, Kheri, Mitauli, P.S.- Mitauli, District Kheri, Uttar Pradesh.
 2. Marudhar Assam Road Lines Pvt. Ltd. Through its Director Govind Sarda, aged about 25 years, Male, Son of Daulal Sarda, resident of Uttarayan Villa, B R P Road, Kumar Para, P.S.- Bharauli Mukh, District- Guwahati.

... .. Petitioner/s

Versus

1. The Union of India Through Commissioner of Customs (Preventive), 5th Floor, Birchand Patel Path, Patna, Bihar.
2. The Additional Commissioner cum Adjudicating Authority Customs (Preventive), 5th Floor, Central Revenue Building, Birchand Patel Path, Patna, Bihar.
3. The Assistant Commissioner of Customs (P) Division Muzaffarpur, Imlichatti, District- Muzaffarpur, Bihar.
4. The Inspector of Customs Cum the Seizing Officer Customs (P) Division, Muzaffarpur, District- Muzaffarpur, Bihar.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 3765 of 2020

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1. Bharat Trading Company having its Registered Office at Village Krishnai Bazar, Rakesh Cabin, P.S. Krishnai, District Goalpara, Assam, 783120 through its Authorized Signatory Rakesh Nath Tiwari, Male, aged about 49 years, son of Sri Lal Ji Tiwari, resident of House No. 516K, Baraha Kalan, P.S. Baraha Kalan, District Allahabad (Uttar Pradesh).
 2. Assam Delhi Logistic having its Registered Office at 03, Village/ Town Roumari, Baksa, P.S. Goreswar, District Roumari, Assam through its Authorized Signatory Rakesh Nath Tiwari, Male, aged about 49 years, son of Sri Lal Ji Tiwari, resident of House No. 516K, Baraha Kalan, P.S. Baraha Kalan, District Allahabad (Uttar Pradesh).

... .. Petitioner/s

Versus

1. The Union of India through Chief Commissioner, Customs, Central Revenue Building, Birchand Patel, Patna, Bihar.
2. The Commissioner of Customs (Preventive), 5th Floor, Central Revenue Building, Birchand Patel, Patna, Bihar.
3. The Additional Commissioner of Customs (Preventive), 5th Floor, Central Revenue Building, Birchand Patel, Patna, Bihar.
4. The Assistant Commissioner, Customs (Preventive), Division Forbishganj, District Araria, Bihar.



5. The Inspector cum Seizing Officer, Customs (P), Forbishganj, District Forbishganj, District Araria, Bihar.

... .. Respondent/s

with
Civil Writ Jurisdiction Case No. 7682 of 2020

1. Krishna Kali Traders through its Proprietor Bijay Ghosh, aged about 39 years, Male, Son of Sri Santosh Ghosh, resident of Village Paschim Salkumar, Badaitari, Madarihat, Jalpaiguri, P.S. Jalpaiguri, District Jalpaiguri, West Bengal.
2. M/s Nirmal Kumar Mahavir Kumar, through its Proprietor Rajendra Kumar Golcha, aged about 54 years, Male, son of Sri Keshari Chand Golcha, 2285/27, Gali Hinga Beg, Khari Baoli, P.S. Tilak Bazar, New Delhi. 110006.

... .. Petitioner/s

Versus

1. The Union of India through the Secretary, Ministry of Finance, Government of India, New Delhi.
2. The Chairman, Central Board of Excise and Customs, North Block, Secretariat Building, New Delhi.
3. The Chief Vigilance Officer, Central Board of Excise and Customs, New Delhi.
4. The Commissioner of Customs (Preventive), 5th Floor, Central Revenue Building, Birchand Patel Path, Patna, Bihar.
5. The Additional Commissioner cum Adjudicating Authority, Customs (Preventive), 5th Floor, Central Revenue Building, Birchand Patel Path, Patna, Bihar.
6. The Assistant Commissioner of Customs (Farbishganj), P. Division, Muzaffarpur, Imlichatti, District Muzaffarpur, Bihar.
7. The Inspector of Customs cum the Seizing Officer, Customs (P) Division, Muzaffarpur, District Muzaffarpur, Bihar.

... .. Respondent/s

with
Civil Writ Jurisdiction Case No. 768 of 2021

Ashish Sharma Son of Sri Rajendra Prasad Sharma Resident of 56, Gupta Colony, P.P. Nagar, P.S.- Transport Nagar, District Meeruth, Uttar Pradesh.

... .. Petitioner/s

Versus

1. The Union of India through the Chief Commissioner of Customs Central Revenue Building, Birchand Patel Path, Patna, Bihar.
2. The Commissioner, Customs, (Preventive) Central Revenue Building, Birc-



- hand Patel Path, Patna, Bihar.
- 3. The Additional Commissioner cum Adjudicating Authority, Office of the Commissioner of Customs (Preventive), 5th Floor, Central Revenue Building, Birchand Patel Path, Patna, Bihar.
 - 4. The Assistant Commissioner of Customs (Preventive) Division Farbishganj, Bihar.
 - 5. The Inspector cum Seizing Officer, Customs (Preventive) Division Farbishganj, Bihar.

... .. Respondent/s

Appearance :

(In Civil Writ Jurisdiction Case No. 7999 of 2020)
For the Petitioner/s : Mr. Prabhat Ranjan, Advocate
For the Respondent/s : Dr. K.N.Singh, ASG
(In Civil Writ Jurisdiction Case No. 3765 of 2020)
For the Petitioner/s : Mr. Prabhat Ranjan, Advocate
For the Respondent/s : Mr. S.D.Sanjay, AD SG
(In Civil Writ Jurisdiction Case No. 7682 of 2020)
For the Petitioner/s : Mr. Prabhat Ranjan Dwivedi, Advocate
Mr. Chandan Kumar, Advocate
Mr. Ansh Prasad, Advocate
For the Respondent/s : Dr. K.N. Singh, Sr. Advocate, ASG
Mr. Anshuman Singh, Sr. SC, Customs
Mr. Shivaditya Dhari Sinha, Advocate
Mr. Alok Kumar, Advocate
(In Civil Writ Jurisdiction Case No. 768 of 2021)
For the Petitioner/s : Mr. Prabhat Ranjan, Advocate
For the Respondent/s : Dr. K. N. Singh, ASG

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE S. B. PD. SINGH
CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 05-12-2024

Re: CWJC No. 7682 of 2020

In the instant writ petition, petitioners have prayed for the following reliefs:

“(i) Quashing of the Seizure dated 14.08.2020 (Annexure 6) corresponding to Muzaffarpur Unit Case No. 01/20-21 effected by Respondent No. 7



in exercise of powers under Section 110 of the Customs Act, 1962 whereby 21098.00 kgs of Betel Nuts along with Truck bearing Registration No. UP-31 AT – 1107 has been seized for alleged violation of Section 7, 11, 46 and 47 of the Customs Act, 1962; Section 3 (2) of Foreign Trade (Development and Regulation) Act, 1992;

(ii) Appropriate direction for release of the goods provisionally during the pendency of the instant Writ petition to the petitioners; for which, an application for provisional release has already been filed before the competent authority on 31.08.2020 (Annexure 13);

(iii) Referring the matter to the Vigilance Organization for Central Board of Indirect Taxes and Customs for conducting a free and fair investigation in to the manner in which the present seizure has been effect; and

(iv) Restraining the Respondents from coercing the petitioners in the name of investigation pursuant to the impugned seizure dated 14.08.2020.”

2. During pendency of the present writ petition, petitioners have filed applications insofar as challenging subsequent action of the respondents by filing Interlocutory Applications *i.e.* I.A. No. 1 of 2021 and I.A. No. 2 of 2021.



Subsequent to the seizure memo and *Panchnama*, whatever the action taken by the official respondents cannot be adjudicated in the present case, for the reasons that petitioners have certain efficacious remedy available with them.

3. Brief facts of the case are that both the petitioners are into Areca Nuts business. First petitioner is trading in Areca Nuts business with the title of M/s Krishna Kali Traders, Paschim Salkumar/Badaitari/Falakata/Alipurduar, West Bengal and second petitioner is trading in Areca Nuts in the name of M/s Nirmal Kumar Mahavir Kumar, New Delhi 110006. M/s Nirmal Kumar Mahavir Kumar purchased Areca Nuts of 21,700 kg and its value is a sum of Rs. 39,43,275/- from the first petitioner on 12.08.2020 *vide* Tax Invoice (Annexure - 3). The bank details of the first petitioner is forthcoming in the Tax Invoice. Description of goods indicated in the Tax Invoice are 280 bags of Areca Nuts, Per Bag 71 Kg, Gross Weight 19,880 kg, Net Weight is 19,600 kg plus 30 bags of 71 Kg each. Total 21,700 Kg. For transportation of the aforementioned Areca Nuts, first petitioner approached Marudhar Assam Road Lines Private Limited and booked for transportation of goods in favour of second petitioner on 12.08.2020 in which it is mentioned as Paschim Salkumar (Falakata) to Delhi. Document of transportation of goods refers to GSTIN numbers of both the



parties. Number of bags *i.e.* 310, Waybill Number has been indicated. Actual weight written as 21,700, Weight Charged 22010. Valuation has been indicated as 39,43,275/- Freight charges mentioned as 66,030/-. On the same day, E - Way Bill was generated at about 07:18 pm with place of dispatch as Madarihat, West Bengal – 735220 while incorporating supplier GSTIN No. as 19BINPG0278G1Z3 and place of delivery as Tilak Bazar, Delhi - 110006 with GSTIN No. as 07AFLPG8787J1ZP of recipient. The valuation of the goods is Rs. 39,43,275/-, HSN Code 802 - ARECANUT and Reason for Transportation – Outward - Supply *vide* Annexure - 4. Details of address have been shown in respect of both the petitioners.

4. The Customs officials intercepted and seized the truck bearing No. UP 31 AT 1107 in Muzaffarpur, State of Bihar. The vehicle was taken to the Customs office and the vehicle and Areca Nut goods were seized in the Customs office. For seizure of the truck and Areca Nut goods on 14.08.2020, seizure memo was drawn by the Seizing Officer, Customs (P) Division, Muzaffarpur. Description of goods and vehicle are narrated against column of Areca Nut, total 308 bags of Areca Nut (Betel Nuts) packed in 308 bags, each containing average 68.5 kgs, foreign origin, Quantity of Goods – 21,098.00 valued at Rs. 44,30,580 @ Rs. 210 P. kg.



and valuation of truck is Rs. 26,50,000/- and total valuation is Rs. 70,80,580/- (Rs. Seventy Lakh Eighty Thousand Five Hundred Eighty Only). The Seizure Officer, Customs (P) Division, Muzaffarpur has undertaken the exercise of preparing *Panchnama* (Annexure B *vide* counter affidavit on behalf of respondent Nos. 1 to 7). The subsequent events like summon issued under Section 108 of the Customs Act, 1962 (hereinafter referred to as 'the Act, 1962), representation for provisionally release of the goods by the first petitioner, reminder and other events are not relevant to the case in hand, for the reasons that core issue involved in the present *lis* is whether seizure memo under Section 110 of the Act, 1962 is in accordance with the aforementioned provision or not read with *Panchnama* drawn on 14.08.2020. Further is there compliance to Section 110 (1A), (1B) and (1C) in respect of seizure of truck bearing No. UP 31 AT 1107 or not?

Submission of learned counsel for the petitioners

5. Learned counsel for the petitioners submitted that the seizure memo is not in accordance with law and the matter is squarely covered by Co-ordinate Bench decision in the case of *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 Others reported in **2024 SCC OnLine Pat 6401**.

6. Learned counsel for the petitioners further submitted that respondent – Customs official has failed to comply Section 110 (1A), (1B), (1C) of the Act, 1962 insofar as drawing inventory conveyance (truck) and take certification from the Magistrate, therefore, on legal contentions, petitioners need not exhaust alternative remedy and seizure of memo read with *Panchnama*, it is evident that *Panchnama* was drawn subsequent to drawing up of seizure memo in view of the specific words narrated in the *Panchnama* relating to seizure memo. Petitioners are relying on Notification dated 05.02.1986 and in the notification, Item No. 6 relates to Conveyance, therefore, for the purpose of compliance of Section 110 (1A), (1B), (1C) of the Act, 1962 , Customs Officials have failed to follow the aforementioned provisions read with Notification dated 05.02.1986. Learned counsel for the petitioners relied on Circular dated 08.02.2017 and it was issued pursuant to Delhi High Court Judgement in the case of ***Worldline Tradex P. Ltd vs. Commissioner of Customs and Others*** reported in **(2016) 40 GSTR 141** that *Panchnama* document cannot be read into seizure memo.



Submission of learned counsel for the respondents.

7. Learned senior counsel, Dr. K.N. Singh, ASG raised preliminary issue that the present writ petition is not maintainable since petitioners have statutory remedy of appeal before the appellate authority under Section 128 of the Act, 1962. It is further submitted that second petitioner has no locus to file writ petition along with the petitioner No. 1. In this regard, he has pointed out defect in the affidavit supporting the writ petition.

8. Learned senior counsel submitted that *Assam Supari Traders* case cited *supra* is distinguishable to the case in hand on the score that reason to believe insofar as drawing of seizure memo proceedings, it has to be read with *Panchnama* drawn on the same date. If the contents of the *Panchnama* is taken into consideration, in that event, one has to draw inference that reason to believe before drawing of seizure memo would suffice. On the other hand, in the case of *Assam Supari Traders* cited *supra*, it was not a subject matter relating to consideration of seizure memo read with *Panchnama*. It is further submitted that in the seizure memo dated 14.08.2020 as against the column and reasons for seizure of goods it is mentioned that there are violations of Sections, 7, 11, 46 and 47 of the Act, 1962 read with Section 3 (2) of Foreign Trade (Development and Regulation) Act, 1992 and



Government of India, Ministry of Finance issued under Section 110 of the Act, 1962, Case No. as 01/20-21 dated 14.08.2020. Further, learned senior counsel distinguished with reference to identical provisions like PMLA, IPC, Income Tax Act taken note of in *Assam Supari Traders* case cited *supra* are distinguishable and it depends on circumstances. Under the Customs Act, 1962, at once seizing officer cannot draw an inference whether seized goods are foreign origin or local or country made, therefore, contents of *Panchnama* would suffice in the present case to draw an inference that reason to believe insofar as seizure of memo.

9. Learned senior counsel for the respondents cited the following decisions on the issue of alternative remedy read with Section 128 of the Customs Act, 1962.

(i) *State of Maharashtra vs. Greatship (India)*
reported in (2022) 17 SCC 332.

(ii) *PHR Invent Educational Society vs. UCO Bank and Others* reported in 2024 INSC 297 (Civil Appeal No. 4845 of 2024).

(iii) *State of U.P. vs. Kay Pan Fragrance (P) Ltd.* reported in (2020) 5 SCC 811.

(iv) *Mary Pushpam vs. Telvi Curusumary*
reported in (2024) 3 SCC 224.



(v) *Angou Golmei vs. Union of India* reported in
1994 SCC Online Pat 154.

(vi) *Godrej Sara Lee vs. E&TOCAA* reported in
2023 SCC OnLine SC 95.

On the issue of reason to believe, learned senior counsel
for the respondents cited the following decisions :

(i) *Tata Chemicals Ltd. vs. Commr. Of Customs*
reported in **(2015) 11 SCC 628.**

(ii) *State of Gujarat vs. Mohanlal Jitmalji
Porwal and Another*, reported in **AIR 1987 SC 1321.**

(iii) *Directorate of Revenue vs. Mohd. Nisar
Holia* reported in **(2008) 2 SCC 370.**

(iv) *Noor Aga vs. State of Punjab* reported in
(2008) 16 SCC 417.

(v) *Bikaner-Assam Road Lines India Limited vs.
Union of India* reported in **1999 SCC OnLine Pat 812.**

(vi) *Indru Ramchand Bharvani vs. Union of
India* reported in **(1988) 4 SCC 1.**

(vii) *M.A. Rasheed vs. State of Kerala* reported
in **(1974) 2 SCC 687.**

(viii) *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 Others reported in **2024 SCC OnLine Pat 6401**

To read seizure memo read with *Panchnama*, he has cited the following decision :

(i) *Yakub Abdul Razak Memon vs. State of Maharashtra* reported in **(2013) 13 SCC 1.**

10. Learned senior counsel for the respondents further submitted that the decision of this Court in the case of the ***The Commissioner of Customs (Preventive), Patna vs. Sri. Rajendra Sethiya*** in **Mis. Appeal No. 528 of 2022** (Paragraph Nos. 7 and 13) read with ***Santosh Kumar Murarka vs. Union of India*** in **CWJC No. 5427 of 2022** (Paragraph No. 7) are binding on the issue of reason to believe. He is relying in the case of ***Mary Pushpam vs. Telvi Curusumary and Others*** reported in **(2024) 3 SCC 224**, (Paragraph Nos. 20 and 21). For the purpose of reason to believe by the seizing officer, the other material which was taken note of by him is relating to secret information. There are contradictions on papers like place of dispatch and Way Bill and some of the sacks reveal foreign origin like Bangladesh and Guyana, therefore, the aforementioned details suffice.



Reply of petitioners' counsel

11. The petitioners' counsel in reply to the respondents submission submitted that second petitioner has a locus insofar as challenging the seizure memo in the light of the fact that he had purchased the Areca Nut from the first petitioner as is evident from the Tax Invoice, E-Way Bill, Marudhar Assam Road Lines Private Limited dispatch of goods notes/invoice. There is error crept in the affidavit in not mentioning affidavit sworn on behalf of the second petitioner by the first petitioner and it is *bona fide* mistake. On this score, second petitioner's *locus standi* cannot be turndown.

12. Learned counsel for the petitioners submitted that petitioners have alternative remedy under Section 128 of the Act, 1962 as contended by the respondents, at the same time it goes to the root of the matter to the extent that Seizing Officer has not proceeded in accordance with Section 110 of the Act, 1962. He has to assign the reason for seizure of the goods as well as vehicle. Perusal of seizure memo read with *Panchnama*, it is evident that seizure memo was drawn at first instance, thereafter, *Panchnama* has been written even though date of drawing seizure memo is 14.08.2020. It is also submitted that seizure memo proceedings



and drawing up of *Panchnama* are entirely different proceedings. Therefore, drawing up of seizure memo without assigning reasons, one has to draw inference that there is violation of principle of natural justice. In such circumstances, time and again Courts have held that if there is any violation of statutory rules or violation of principle of natural justice, in such circumstances, the Court can interfere without resorting the petitioner to avail the alternative remedy. On this issue, learned counsel for the petitioners relied on *Godrej Sara Lee Ltd. vs. Excise and Taxation Officer-cum- Assessing Authority and Others* reported in (2023) 109 GSTR 402 and *PHR Invent Educational Society vs. Uco bank and others* reported in 2024 INSC 297, Paragraph No. 29.

13. Learned counsel for the petitioners further submitted that there are no discrepancies in the documents as argued on behalf of the respondents' counsel. He has pointed out Tax Invoice in which GSTIN No. 19BINPG0278G1Z3 and GSTIN No. 07AFLPG8787J1ZP are reflected of both the petitioners. Similarly, in other documents like E-Way Bill and in Marudhar Assam Road Lines Private Limited, there are minor discrepancies insofar as writing number of bags read with weight. Those are with reference to net, gross and, bag weight. Such minor errors



cannot be the reason for drawing an inference that seized Areca Nuts are imported goods. It is also pointed out that place of dispatch mentioned in the Tax Invoice and Way Bill are not tallying is for the reasons that it depends on PIN Code of the place. In the Tax Invoice one of the place shown is as *Badaitari* whereas in the Way Bill it is written as *Madarihat*. Both would fall under one PIN Code. Distance between the aforementioned places are only 20 km and it falls under one postal PIN Code, therefore, *prima facie* there are no discrepancies in the documents insofar as transportation of the goods through truck as contended by the the respondents.

Further submissions on behalf of the respondents

14. Learned senior counsel for the respondents countered the aforementioned contention of the learned counsel for the petitioners and submitted that second petitioner has no locus. The petitioners have not made out a case on the issue of alternative remedy available to the petitioners under Section 128. Further insofar as Areca Nut goods is concerned Section 110 (1A), (1B), (1C) of the Act, 1962 are not attracted.

15. Heard learned counsels for the respective parties.



Analysis

16. On analysis of respective submissions of the learned counsels, following issues are to be considered :

(i) Whether second petitioner has locus in filing the writ petition or not?

(ii) Whether petitioners were required to exhaust alternative remedy under Section 128 of the Act, 1962 or not?

(iii) Whether seizure memo is to be read with *Panchnama* to draw inference that contents of *Panchnama* are the reasons for drawing up seizure memo or not?

(iv) Whether reasons to believe under Section 110 of the Act, 1962 is complied by the Seizing Officer or not?

(v) Whether Section 110 (1A), (1B), (1C) of the Act, 1962 is mandatory insofar as seizing the truck bearing No. UP 31 AT 1107 or not?

17. The second petitioner has a locus to assail the seizure memo dated 14.08.2020 along with the first petitioner for the reasons that there were transactions among the petitioners as is evident from Tax Invoice, Transportation Note and Way Bill. There is minute error committed by the first petitioner in his affidavit supporting writ petition to the extent in not mentioning in



the affidavit that supporting affidavit is on behalf of second petitioner, first petitioner is swearing the affidavit on his own behalf. Such error crept-in inadvertently, therefore, the contention of the respondents that the second petitioner has no locus is too technical. Thus, second petitioner has locus to file the present petition along with first petitioner.

18. The respondents have contended that petitioners have alternative remedy under Section 128 of the Act, 1962. Section 128 of the Act, 1962 reads as under:

“128. Appeals to [Commissioner (Appeals)]

(1) Any person aggrieved by any decision or order passed under this Act by an officer of customs lower in rank than a [Principal Commissioner of Customs or Commissioner of Customs] may appeal to the [Commissioner (Appeals)] [within sixty days] from the date of the communication to him of such decision or order:

[Provided that the Commissioner (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of sixty days, allow it to be presented within a further period of thirty days.]

[(1-A) The Commissioner (Appeals) may, if sufficient cause is shown at any stage of hearing of an appeal, grant time, from time to time, to the parties or any of them and adjourn the hearing of the appeal for reasons to be recorded in writing:



Provided that no such adjournment shall be granted more than three times to a party during hearing of the appeal.]

(2)Every appeal under this section, shall be in such form and shall be verified in such manner as may be specified by rules made in this behalf.”

In support of alternative remedy number of decisions cited on behalf of the respondents, the latest decision is in the case of ***PHR Invent Educational Society*** (cited *supra*), Para – 20. In Paragraph No. 29, principles have been laid down. Principles are that violation of non-compliance of statutory provision, violation of principle of natural justice and other criteria. For the purpose of present case, violation of statutory provision like Section 110 of the Act, 1962 has not been complied in the manner known to the law to the extent of not writing the reasons in support of impugned seizure memo dated 14.08.2020 whereby petitioners have been denied opportunity of availing alternative remedy of appeal ineffectively. The petitioners have cited decision in the case of ***Godrej Sara Lee Ltd.*** cited *supra*. For the purpose of entertaining the writ petition, without exhausting alternative remedy, certain factual aspects are required to be examined whether appeal against particular order or decision, aggrieved person can file effective memorandum of appeal before the appellate authority or not? In the present case, petitioners have



assailed the seizure memo dated 14.08.2020. It is necessary to reproduce seizure memo dated 14.08.2020 and it reads as under:

“SEIZURE MEMO dated 14.08.2020	
Receipt of goods seized/detained under the Customs Act, 1962	
Name of the Unit Circle/Division :	Customs Preventive Division, Muzaffarpur Imali Chatti, Muzaffarpur - 842001
Place of Seizure :	O/o the Deputy Commissioner, Customs (Preventive) Division, Imlichatti, Muzaffarpur.
Date & Time of seizure :	14.08.20 at 19.30 Hrs.
Particulars of conveyance premises/ persons/ from whom goods recovered.	(1) Sri Lakhwinder Singh (Driver of Truck No UP 31AT 1107 Age 42 years, S/o. Sri Ranjit Singh village Rai Siana, P.O. Naurangabad, P.S. District Taran Taran, Punjab 143401 and Current Residential Address H/o - Shri Harivansh Singh, House No. 342, Chand Nagar, P.O. Chand Nagar, New Delhi 110018, Mobbile No. 9873394961 (2) Kallu (Khalasi of Truck No. UP-31AT-1107) Age 36 years, son of Digvijay Singh, village Maigalganj. P.O. Pasigama, P.S. Maigalganj, District Kheri Lakhimpur (Uttar Pradesh).
Name and address of the persons to whom seizure receipt issued	As above.
Reasons for seizure of goods.	<u>Violation of Sections 7, 11, 46, & 47 of the Customs Act, 1962 read with Section 3 (2) of Foreign Trade (Development and Regulation) Act, 1992 and Government of India, Ministry of Finance, issued U/s. 110 of the Customs Act, 1962</u>
Case no and date.	01/20-21 dated 14.08.2020

Underline supplied

Sl. No.	Description of goods and vehicle	Make /origin	Quantity of goods	Value (In Rs.)
1.	Total 308 bags of Arecanut (Betel Nut) (Packed in 308 Bags each containing average 68.5 Kgs.	Foreign origin	21098.00 Kg	Rs. 44,30,580.00 @ Rs. 210/- Kg
2.	Truck No. UP-31AT-1107 Engine No 81D84478340 Chassis No. MAT466623JSE13493	Tata LPT 3118 CR BS IV 8 x 2 Truck	1 (One)	Rs. 26,50,000/-



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20/30

Total		Total Rs. 70,80,580/- (Rs. Seventy Lakh Eighty Thousand Five Hundred Eighty only
Signature of Witnesses sd/- 14.08.2020	Signature/thumb impression of accused Sd/- 14.08.2020	sd/- 14.08.2020 Signature of seizing Officer Customs (P)Division, Muzaffarpur Seal”

Reading of the aforementioned seizure memo dated 14.08.2020, in particularly, column number relating to reasons for seizure of the goods, it has been indicated violation of various Sections, however, merely quoting various Sections does not suffice to draw inference that there are reasons for seizure of the goods, therefore, minimal reasons were required to be written by the Seizing Officer so as to enable the petitioners to prefer effective appeal before the appellate authority under Section 128 of the Act, 1962. Further, Section 110 (1A) (1B) (1C) of the Act, 1962 has not been complied only to the extent of seizure of the vehicle in the light of Notification dated 05.02.1986. It is necessary to reproduce Notification dated 05.02.1986 and it reads as under:

“[Notification No. 31/86-Customs, dated 5-2-1986]

In exercise of the powers conferred by sub-section (1A) of section 110 of the Customs Act, 1962 (52 of 1962), the Central Government, having regard to **the perishable nature, depreciation in the value with the passage of time, constraints of storage space and valuable nature of the goods**, mentioned in the



Schedule hereto annexed, hereby specifies the said goods for the purposes of that sub-section.

THE SCHEDULE

1.	Liquors;
1A	Photographic Films;
1B	Patent or Proprietary medicine; i.e., any drug or medicinal preparation, in whatever form, for use in the internal or external treatment of, or for the prevention of ailments in, human beings or animals, which bears either on itself or on its container or both, a name which is not specified in a monograph, in a Pharmacopoeia or Formulary;
2.	Primary cells and primary batteries including re-chargeable batteries;
3.	Wrist watches including electronic wrist watches; watch movements, parts or components thereof;
3A	Zip fasteners;
4.	All electronic goods including television sets, Video Cassette Recorders, Tape recorders, calculators, computers; components and spares thereof including diodes, transistors, integrated circuits, etc.;
4A	Gold in all forms including bullion, ingot, coin, ornament, crude Jewellery.
4B	Silver in all forms including bullion, ingot, coin ornament, crude Jewellery.
5.	Dangerous drugs and psychotropic substances;
6.	Conveyance;
7.	Man-made yarn and fabric;
8.	Bulk drugs and chemicals falling under Section VI of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975)
9.	Currency, Indian and Foreign.
10.	Diamonds, precious and semi-precious stones
11.	Ball Bearings;
12.	Cellular Phones.
13.	Software; [Inserted vide notification No. 20/2004-Customs (NT), dated 16.02.2004]
14.	Any good seized by the proper officer under section 110 of the customs Act, 1962 (52 of 1962) for which order for provisional release has been passed but provisional release has not been taken by the concerned person within a period of one month from the date of the communication of such order. [Inserted vide notification No. 20/2004- Customs (NT), dated 16.02.2004]
15.	Petroleum products falling under Chapter 27 of the Customs Tariff Act, 1975 (51 of 1975); [inserted vide notification No. 32/2005- Customs (NT), dated 11.04.2005]
16.	Red Sander [inserted vide notification No. 32/2005-Customs (NT), dated 11.04.2005]
17.	Sandalwood [Inserted vide notification No. 25/2008-Customs (NT), dated 07/03/2008]
18.	Fireworks”

Note: The Principal notification No. 31/86 – Customs, dated 5.02.1986 was issued vide G.S.R. 871) dated the 5.02.1986 and was subsequently amended by notification No. 42/89-Customs (NT), dated 30.06.1989; notification No. 7/93-Customs (NT) dated 25.01.1993; notification No. 10/95-Customs (NT), dated 1.03.1995; notification No. 12/96-Customs (NT), dated 11.03.1996; notification No. 72/97-Customs (NT), dated 22.12.1997; notification No. 90/98-Cus (NT), dated 12.11.1998; notification No. 20/2004-Customs (NT), dated 16.02.2004; notification No. 32/2005-Customs (NT),



dated 11.04.2005; notification No. 25/2008-Customs (NT), dated 07.03.2008 & 143/2015-Customs (NT) dated 15.12.2015.

Reading of the aforementioned Notification, **Column No. 6**, relating to **Conveyance**. In the present case truck is mode of Conveyance and it was seized and the Seizing Officer or officials of the Customs were required to comply Section 110 (1A), (1B), (1C). On these factual aspect of the matter the cited decisions on behalf of the respondents to the extent that petitioners have not exhausted the alternative remedy cannot be taken into consideration. Recently Hon'ble Supreme Court in the case of *PHR Invent Educational Society*, (cited *supra*) in Paragraph No. 29, it is held as under:

“29. It could thus clearly be seen that the Court has carved out certain exceptions when a petition under Article 226 of the Constitution could be entertained in spite of availability of an alternative remedy. Some of them are thus:

(i) where the statutory authority has not acted in accordance with the provisions of the enactment in question;

(ii) it has acted in defiance of the fundamental principles of judicial procedure;

(iii) it has resorted to invoke the provisions which are repealed; and

(iv) when an order has been passed in total violation of the principles of natural justice.”



Co-ordinate Bench in *United Spirit Limited and Others vs. State of Bihar and Others* reported in 2024 (2) BLJ 656 (In Paragraph No. 76), elaborately considered alternative remedy while citing number of decisions. Paragraph No. 76 reads as under:

“76. Instead of examining of each and every cited decisions on behalf of the petitioners and learned Advocate General, we thought of taking note of later decision of the Hon'ble Apex Court namely M/s Godrej Sara Lee Ltd. vs. The Excise and Taxation Officer cum Assessing Authority and Ors. reported in 2023 SCC OnLine SC 95 in which it is held that mere availability of an alternative remedy of appeal/revision would not oust the jurisdiction of the High Court under Article 226 of the Constitution of India. The analysis of the aforementioned decision the power is required to be taken note of for the purpose of entertaining the writ petition under Article 226 of the Constitution of India despite the fact that party has a statutory remedy.

"(i) The power under Article 226 of the Constitution of India to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well;

(ii) The High Court has discretion not to entertain the writ petition. One of the restrictions placed on the power of the High Court is an effective alternative remedy is available to the aggrieved person;

(iii) Exceptions to the rule of alternative remedy arises where:

(a) the writ petition has been filed for the enforcement of fundamental right protected by Part-III of the Constitution;

(b) there has been violation of the principles of natural justice;

Underline Supplied

(c) the order or the proceedings are wholly without jurisdiction; or

(d) the vires of legislation is challenged;



(iv) An alternative remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution of India in an appropriate case though ordinarily; the writ petition should not be entertained when an efficacious remedy is provided by a law;

(v) When a right is created by statute which itself prescribes the remedy or procedure for enforcing the right or the liability the short must be had to that particulars statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution of India;

(vi) This rule of the exhaustion of the statutory remedies is a rule of Policy. convenience and discretion;

(vii) In cases where there are disputed question of facts, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interference with."

The aforementioned principles have been taken note by the Apex Court in the case of Magadh Sugar & Energy Ltd. vs. State of Bihar and Ors [2021(4) PLJR 142 (SC) [: 2021 (6) BLJ 356 (SC)]]."

The aforementioned decision of the Hon'ble Supreme Court and Co-ordinate Bench decision assist the petitioners in not exhausting the alternative remedy on principle. Therefore, contention of the respondents that petitioners are required to be relegated to appellate authority stands turndown.

19. The seizure of the memo is to be read with *Panchnama* as contended by the learned senior counsel for respondents. It is submitted that contents of the *Panchnama*



reveals that certain discrepancies in which material information, in particularly, Invoice, Way Bill and Marudhar Assam Road Lines Private Limited, it was submitted that there is variation in mentioning the places like Paschim Salkumar/Badaitari/Falakata/Alipurduar, West Bengal. These are the places where the *Krishna Kali Traders* is trading. In the Invoice, GSTIN number of the petitioners are reflected and also Bill to Party and Ship to Party. Nodoubt, in the E-Way Bill (Annexure 4) place of dispatch has been indicated as Madarihat. This discrepancy is only a technical one to the extent that Postal PIN Code is required, for that purpose E-Way Bill has been obtained in the aforementioned place otherwise distance between Badaitari and Madarihat is hardly 20 km and it is too technical. In respect of weight is concerned, Gross Weight, Net Weight, and Number of Bags, there is slight variation. Hardly if the total Gross Weight and number of bags are taken, there is not much difference. Certain bags containing mark of Bangladesh and Guyana, in this regard, there are no specific material information so as to draw inference that seizing goods were stated to be of foreign origin. There are every chances of re-using of bags. Therefore, these material information reflected in *Panchnama* was required to be taken into consideration while reading seizure



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memo may not be correct in the light of the fact that whatever contents of the *Panchnama* cannot be read into seizure memo in the light of Notification dated 08.02.2017. It is necessary to reproduce Notification dated 08.02.2017 and it read as under:

“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”

20. Reading of the aforementioned Notification, it is crystal clear that *Panchnama* cannot be read into seizure memo as held by the Delhi High Court. After taking note of Delhi High Court decision, the aforementioned Notification has been issued. That apart reading of both the seizure memo and *Panchnama*, one can draw inference that firstly seizure memo has been prepared and secondly *Panchnama* has been drawn, therefore, at the time of writing seizure memo, *Panchnama* was not written or existed. This is evident from reading of *Panchnama*. It is also submitted, on behalf of the respondents, that they had a secret information and on the basis of such secret information the Seizing Officer had proceeded to seize the subject matter of vehicle that suffice the reason. Secret information is only tentative when Section 110 of the Act, 1962 stipulates that reason to believe. In this backdrop, Seizing Officer cannot keep reasons in his mind and he has to disclose minimal reasons in the seizure memo. On this issue Co-ordinate Bench of this Court elaborately considered in the *Assam Supari Traders* case cited *supra*, therefore, the contention of the



respondents that seizure memo is to be read with *Panchnama* is wholly incorrect and contrary to Customs Department Notification dated 08.12.2017.

21. The learned counsel for the petitioners submitted that pursuant to the seizure memo dated 14.08.2020 like seizure of truck and goods, the authorities were required to comply Section 110 (1A), (1B), (1C), in the present case truck bearing No. UP 31 AT 1107 should have been subjected to the above provisions for the reasons that in the Notification dated 05.02.1986 cited *supra* it is not required insofar as seizure of Areca Nuts is concerned, on the other hand, conveyance of Areca Nuts is required to be subject to Section 110 (1A) (1B) (1C). Learned counsel for the respondents submitted that Section 110 (1A) (1B) (1C) of the Act, 1962 is not attracted in the present case. Notification dated 05.02.1986 does not include Areca Nuts. On the other hand, he could not apprise **item No. 6** relating to **Conveyance**. In the present case Seizing Officer has not only seized the Areca Nuts and so also truck bearing No. UP 31 AT 1107 and truck would fall under **Conveyance** under **item No. 6** of the Notification dated 05.02.1986. Therefore, seizure of truck is concerned, Customs Officials have to comply the aforementioned provisions.



22. The learned senior counsel vehemently argued that earlier two decisions *namely The Commissioner of Customs (Preventive), Patna vs. Sri. Rajendra Sethiya* in Mis. Appeal No. 528 of 2022 (Paragraph Nos. 7 and 13) read with *Santosh Kumar Murarka vs. Union of India* in CWJC No. 5427 of 2022 (Paragraph No. 7) of this Court which have been taken note of in the *Assam Supari Traders* case cited *supra* is binding in the light of Hon'ble Supreme Court decision in the case of *Mary Pushpam vs. Telvi Curusumary and Others* reported in 2024 5 SCC 224 (Paragraph Nos. 20 and 21). In the *Assam Supari Traders* case cited *supra*, the Co-ordinate Bench has distinguished on factual aspect of the matter to the extent that the cited decision of this Court are distinguishable on facts of the case for the reasons that there is no analysis of Section 110. Further in *The Commissioner of Customs (Preventive) Patna and Santosh Kumar Murarka* case (cited *supra*), there was no occasion to consider Section 110 (1A) (1B) (1C) of the Act 1962 read with Section 128, therefore, two decisions cited *supra* of this Court by the learned senior counsel for respondents that they are binding in the present case has already been noticed in *Assam Supari Traders* case cited *supra*. Be that as it may, in the present case issues are cited in Paragraph No. 16 of this judgment. These were not the issues



raised by the respective parties in those two decisions viz., *The Commissioner of Customs (Preventive) Patna and Santosh Kumar Murarka* (cited *supra*). Hence, *Mary Pushpam* case (cited *supra*) is distinguishable.

23. In view of the above facts, legal issues and for the reasons stated above, the impugned seizure memo dated 14.08.2020 vide Annexure – 6 is unsustainable and the same deserves to be quashed and set aside and is, accordingly, quashed and set aside.

24. CWJC No. 7682 of 2020 is allowed.

25. Pending application(s), if any, stands disposed of.
There is no order as to costs.

Re: CWJC No. 7999 of 2020; CWJC No. 3765 of 2020;
CWJC No. 768 of 2021

26. Registry is hereby directed to de-link CWJC No. 7999 of 2020; CWJC No. 3765 of 2020; CWJC No. 768 of 2021 and relist these matters on 19.12.2024.

(P. B. Bajanthri, J)

(S. B. Pd. Singh, J)

GAURAV S./-

AFR/NAFR	AFR
CAV DATE	25.11.2024
Uploading Date	05.12.2024
Transmission Date	

