

**IN THE HIGH COURT OF MANIPUR
AT IMPHAL**

WP(C) No. 180 of 2010

M/S AL-Baari & Sons through its proprietor Md. Abdul Barik, aged about 66 years, S/O Md. Mohiddeen, a resident of Muslim Nagar, Ward No. 5, P.O and P.S. Moreh, Chandel District, Manipur.

... PETITIONER

-VERSUS-

1. The Union of India through its Secretary, Finance, Government of India.
2. Directorate of Revenue Intelligence, Kolkata through its Additional Director General.
3. The Deputy Director, Directorate of Revenue Intelligence, Silchar.
4. The Deputy Director, Directorate of Revenue Intelligence, Guwahati.
5. Intelligence Officer, Directorate of Revenue Intelligence, Imphal.
6. The Commissioner of Custom (Preventive), N.E. Region, Shillong, Meghalaya.
7. The Superintendent of Customs Preventive Force, Moreh, Manipur.

8. The State of Manipur through its Principal Secretary/Secretary, Forest & Environment, Government of Manipur.
9. The Conservator of Forest/Admn. & Plg., Government of Manipur.
10. The State of Maharashtra through its Commissioner (Forests), Government of Maharashtra.
11. The Chief Conservator of Forests (T), Thane, Government of Maharashtra.

... RESPONDENTS

WP(C) No. 351 of 2010

M/S AL-Baari & Sons through its proprietor Md. Abdul Barik, aged about 66 years, S/O Md. Mohiddeen, a resident of Muslim Nagar, Ward No. 5, P.O and P.S. Moreh, Chandel District, Manipur.

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6. The Commissioner of Custom (Preventive), N.E. Region, Shillong, Meghalaya.
7. The Superintendent of Customs Preventive Force, Moreh, Manipur.
8. The State of Manipur through its Principal Secretary/Secretary, Forest & Environment, Government of Manipur.
9. The Conservator of Forest/Admn. & Plg., Government of Manipur.
10. The State of Maharashtra through its Commissioner (Forests), Government of Maharashtra.
11. The Chief Conservator of Forests (T), Thane, Government of Maharashtra.

... RESPONDENTS

WP(C) No. 159 of 2011

M/S AL-Baari & Sons through its proprietor Md. Abdul Barik, aged about 66 years, S/O Md. Mohiddeen, a resident of Muslim Nagar, Ward No. 5, P.O and P.S. Moreh, Chandel District, Manipur.

... PETITIONER

2. In these writ petitions, the petitioner has challenged the show cause notice dated 8.1.2010; the investigation report dated 8.1.2010 and the order of Commissioner of Customs dated 7.4.2011.

3. Since the issue involved in the writ petitions is interlinked with each other, all three writ petitions were heard together and disposed of by this common order.

4. Mr. HS Paonam, the learned senior counsel for the petitioner submitted that the petitioner is a proprietorship firm and they have procured red sanders from M/s. Shree Durga Enterprises, Mumbai under three invoices in the format against C Form vide letter dated 13.6.2009 and, under the said three invoices, the total quantity of the red sander has been indicated as 49467.4 kgs. The petitioner is yet to make full payment of the red sander so procured from M/s. Shree Durga Enterprises. The goods under three invoices were released and transported through M/s. Anand Roadlines from Mumbai to Manipur and M/s. Anand Roadlines was also issued with consignor and consignee's copies dated 13.6.2009. The transportation of the said goods was done on three transit passes dated 13.6.2009 issued by the competent authority of originating State of Maharashtra through the State of MP, UP, Bihar, West Bengal, Assam, Meghalaya, Nagaland up to the

destination of Moreh and the other transit passes issued by different States after paying all taxes and fees.

5. The learned senior counsel submitted that the Chief Conservator of Forest had confirmed the genuineness of the transit pass issued by the Range Forest Officer, Khalapur dated 9.7.2009 and had permitted change of transportation of red sanders from three trucks of M/s. Anand Roadlines to five Manipur trucks bearing Nos.MN-01 7108, MN-01 7126; MN-01 7252, MN-01 8125 and MN-01 5736 vide letter dated 15.7.2009 when change of transportation was felt necessary at Mao due to road condition in playing by three big trucks. No occasion has ever occurred to question the legality of the procurement of transportation of red sanders of the petitioner's firm. The Divisional Forest Officer, Senapati Forest Division had also informed the Beat Officer, Mao Beat Office vide letter dated 21.7.2009 for affixing the Government seal on the original transit passes issued by Mirzapur Forest Division, UP for further transportation through Mao Beat Office up to the destination of Moreh. Accordingly, the goods were transporting from the original three trucks to five Manipur trucks at Mao smoothly by paying requisite taxes and fees to the respective check posts up to the office of the Range Officer, Kakching.

6. The learned senior counsel would submit that while things stood thus, to the shock and surprise of the petitioner, the five trucks of goods were detained by the personnel of Assam Rifle at Khudengthabi in Chandel District in purported instruction received from the Directorate of Revenue Intelligence (DRI), Zonal Office, Kolkata and despite showing relevant documents including the transport pass, the goods have been seized on 8.8.2009. Challenging the legality of the seizure of red sanders transported under the transit pass, the petitioner had filed W.P.(C) No.504 of 2009 for release of the goods. By the interim order dated 18.9.2009, this Court directed the respondents therein to immediately release the red sanders seized under inventory dated 8.8.2009 to the petitioner on execution of an indemnity bond against the invoice value which is not different from the recent pricing of red sanders by the Forest Department. Aggrieved by the order dated 18.9.2009, writ appeal, being W.A.No.310 of 2009, was preferred and, by the order dated 19.10.2009, a Division Bench of this Court directed to conclude the investigation within a period of eight weeks and not to give effect of the order dated 18.9.2009 passed in W.P.(C) No.504 of 2009.

7. The learned senior counsel further submitted that the respondent DRI could not complete their investigation within the

time granted by the Division Bench of the Gauhati High Court in W.A.No.310 of 2009 and they have filed Miscellaneous Case No.3439 of 2009 seeking to grant further eight weeks time to complete the investigation. The Division Bench, vide order dated 21.12.2009, granted four weeks time from the expiry of the earlier granted time for completing the investigation. After coming to know the Miscellaneous Case filed by the respondent authorities, the petitioner has filed an affidavit controverting the statement made in the Miscellaneous Case and prayed for discontinuation or non-extension of the time for completing the investigation. When Miscellaneous Case No.3439 of 2009 was listed on 19.1.2010, the DRI authority by making a statement to the effect that the investigation has already been completed has not pressed the said Miscellaneous Case. Thus, in terms of the earlier order, it is to be seen as to whether the second confiscation proceedings of the seized goods may be initiated again.

8. According to the learned senior counsel, the impugned show cause notice dated 8.1.2010 was issued, thereby ordering confiscation of the seized goods of the petitioner and directed the petitioner to submit an explanation within 30 days from the date of the receipt of the notice. Since the impugned show cause notice was issued based on the investigation report, on 10.2.2010, the

petitioner has submitted a letter to the DRI authority requesting to furnish the copy of the investigation report. However, no response has been received by the petitioner. Since the red sander being perishable goods, the petitioner has submitted an application to the Commissioner (Custom) NE Region, Shiling for releasing the seized goods under Section 110A of the Customs Act, 1962. The said application was made for the reason that exercise of power under Section 110A is an independent power notwithstanding the other proceeding which may be taken up by the other authority.

9. The learned senior counsel urged that while the DRI authority is claiming to have completed the investigation on one hand, they are pressurising personal attendance of the petitioner at DRI, Guwahati for the purpose of giving statement in connection with the investigation on the other hand. The learned CJM, Chandel has enlarged the proprietor of the petitioner on bail vide order dated 5.3.2010 after satisfying the cooperation extended as well as the health condition of the proprietor. The alleged completion of the investigation by the DRI is wholly incorrect as the procedure adopted is in connection with those persons who are believed to have not extended cooperation in the investigation under Section 108 of the Customs Act. The issuance of the impugned show cause notice, which is based on the investigation report, is an arbitrary

exercise of power by the respondent DRI disregarding the settled principle of law qua the impermissibility of taking up a second confiscation proceedings of the goods which had already been subjected to another confiscation proceeding under the Customs Act. Therefore, the impugned show cause notice is liable to be quashed.

10. Adding further, the learned senior counsel submitted that the respondent DRI has filed an additional affidavit in W.P.(C) No.180 of 2010 along with the investigation report, wherefrom the petitioner found that the said investigation report is not supported by any forwarding letter nor any kind of letter indicating as investigation report except endorsing with the signature of the then Deputy Director, DRI, Guwahati dated 8.1.2010. Nothing can be ascertained as to the nature of the document as investigation report. The said investigation report cannot be acted upon in view of the fact that it is merely summary in nature without any supporting documents, inasmuch as the report has failed to take note of the fact that the transportation of the red sander was done on the basis of the transit pass issued by the competent authority of the State of Maharashtra, which was subsequently authorised by the Forest Department, Government of Manipur. That apart, the finding of the

investigating authority stated at para (i) of the investigating report lacks legal support and, therefore, the same is liable to be quashed.

11. The learned senior counsel next submitted that while issuing notice returnable in W.P.(C) No.180 of 2010, the Court passed an interim order for not giving effect to the show cause notice dated 8.1.2010 and further directed the concerned respondent to consider and dispose of the application filed by the petitioner for provisional release of the seized red sander. Despite the request made by the petitioner and its counsel, the concerned authority, namely the Commissioner of Customs (Preventive) has not considered the provisional release of the seized goods.

12. It is submitted that on 7.3.2010, the petitioner has received a communication from the Commissioner of Customs preventing provisional release of the seized goods stating that no evidence was produced in support of the ownership as well as the payment, if any made. On 4.10.2010, the petitioner submitted an application to the Commissioner of Customs enclosing supporting documents seeking provisional release of the seized goods. Since the same has not been considered, the petitioner had filed W.P.(C) No.655 of 2010 to reconsider the application dated 4.10.2010 and the said writ petition was disposed of directing the respondents

therein to consider the application/representation dated 4.10.2010 afresh in terms of the observation made in the order. The petitioner was called for enquiry and he had also appeared through its representative and submitted all the documents. However, without considering the documents produced by the petitioner, the Commissioner has issued the impugned order dated 7.4.2011 thereby declining to release the seized goods on the ground that instead of submitting reply to the show cause notice dated 8.1.2010, the petitioner has filed the writ petition. According to the learned senior counsel, the said ground taken by the Commissioner of Customs is erroneous and without looking into the factual aspects of the matter, the Commissioner of Customs has issued the impugned order dated 7.4.2011 and, therefore, the same is liable to be set aside.

13. Per contra, Mr. Th. Sanachouba, the learned counsel for the respondent DRI submitted that the seizure was effected on the basis of an intelligence collected and developed by the Directorate. At the time of interception and seizure, only one invoice of M/s.Shree Durga Enterprises of Mumbai was produced, however, the same does not cover all the seized goods in question and that the said invoice is forged one. The subject goods were meant for illegal export to Myanmar through the route not specified

under Section 7(1)(C) of the Customs Act, 1962 read with the provisions of Foreign Trade (Development and Regulation) Act, 1992, thereby rendering the same liable for confiscation.

14. The learned counsel further submitted that M/s. Shree Durga Enterprises is a proprietorship concern of Umesh Dhan Singh and the said Umesh Dhan Singh clarified that his firm did not carry out any transaction with the petitioner and had not procured any red sander logs and, as such, the issue of storage and transportation did not arise. M/s. Shree Durga Enterprises and the petitioner are not the seller and buyer respectively and, in fact, M/s. Shree Durga Enterprises did not have title to the goods and so cannot pass on the same to the petitioner. The invoice dated 13.6.2009 issued by M/s. Shree Durga Enterprises in the name of the petitioner is a forged one.

15. The learned counsel would submit that though the learned Single Judge in W.P.(C) No.504 of 2009 ordered release of seized goods, in the appeal, being W.A.No.310 of 2009, preferred, it has been ordered that the seized goods will abide by the final decision to be taken by the revenue authorities on conclusion of the investigation. Pursuant to the order of the Division Bench several opportunities were given to the petitioner, however, the petitioner has not extended co-operation in the investigation. Since the

petitioner has failed to appear before the investigating agency, the DRI has filed a Criminal (Complaint) Case No.18 of 2009 before the CJM, Chandel, wherein warrant of arrest was issued and, thereafter, the petitioner and another accused namely S.K.Jain appeared and were enlarged on bail.

16. The learned counsel next submitted that on completion of the investigation as directed by the Division Bench, the investigation report has been submitted before the Court and consequently, the show cause notice was also issued. According to the learned counsel, the show cause notice issued is nothing but after completion of the investigation. The issuance of show cause notice to the petitioner has not caused any prejudice to the petitioner and the petitioner is bound to reply the same.

17. The learned counsel urged that after completion of the investigation following the seizure of the red sanders, sow dust etc. submitted the investigation report dated 8.1.2010 stating that it appears that the seized red sanders valued at Rs.1,95,62,750/- were meant for illegal export to Myanmar through a route not specified under the provisions of the Customs Act and, therefore, all the named persons are liable for imposition of penalty under Section 114 of the Customs Act and also liable for prosecution

under Section 135(1)(c)(C) of the Customs Act. The investigation report is completely based on the show cause and not vice versa as has been alleged by the petitioner. In the course of investigation, the voluntary statement of Umesh Dhan Singh was recorded wherein he himself stated to be the sole proprietor of M/s.Shree Durga Enterprises and he does not know any person by name Suresh Kumar Jain claiming to be the partner of the said firm. The petitioner has no right to challenge the investigation report dated 8.1.2010 of the DRI and, therefore, there is no illegality in the report as well as the show cause notice.

18. The learned counsel for the respondent Customs submitted that from the investigation report submitted by the Deputy Director, Director of Enforcement it appears that M/s.Shree Durga Enterprises is a proprietorship concern of Umesh Dhan Singh and that the letters addressed to the petitioner under the signature of Suresh Kumar Jain are forged. The same was clarified by Umesh Dhan Singh that his firm did not carry out any transaction with the petitioner and had not procured red sander logs and, therefore, the storage and transportation did not arise. At the time of seizure, only one invoice has been produced and the same does not cover all the seized goods in question. He would submit that from the intelligence report developed by the DRI, about 50 MT of red sander wood in

the form of logs, chip etc. were being attempted to be illegally exported out of India to Myanmar through Moreh, Manipur. The red sander woods recovered from the trucks did not tally with the documents found accompanying with the goods and there was no market of such huge quantity of red sander woods in the area and it was reasonable belief that DRI officers that the consignment of red sander wood, buttend etc. so recovered were brought near international border is an attempt to illegally export the same to Myanmar. 48.2 MT of red sander logs, 1.015 MT of red sander butt ends, 41 kg. of red sander chips and 150 kg. of red sander saw dust were seized.

19. The learned counsel further submitted that on 26.2.2010, the petitioner submitted an application to the Commissioner of Customs (P) Shillong requesting for releasing the seized red sander woods to the prevailing rate in the State of Manipur. Another representation dated 4.10.2010 was received from the petitioner in which a further request has been made for releasing the seized goods provisionally subject to the condition as may be imposed by the authorities in compliance of the order passed in W.P.(C) No.180 of 2010. Accordingly, the representation of the petitioner has been considered and disposed of on 3.6.2010. Further, as per the direction given in W.P.(C) No.655 of 2010 dated

1.2.2011, the representation of the petitioner dated 4.10.2010 was considered and disposed of vide the impugned order dated 7.4.2011 on the ground that about 50 MT red sander wood in the form of logs, chips etc. were being attempted to be exported out of India to Myanmar. Though there is a provision for release of seized goods provisionally, the ownership of the same has not been proved beyond doubt.

20. The learned counsel for the respondent Customs added that red sander is highly endangered plant species as per CITES and, as such, its export is prohibited. Such goods cannot be redeemed in favour of individuals who are smuggling it. Since the allegations against Md. Abdul Bark, proprietor of M/s.A1-Baari and Sons, Moreh, Manipur and Suresh Kumar Jain brought on record by the investigation remains to be disproved, the request for provisional release of the seized goods by Md. Abdul Bark cannot be acceded to.

21. The learned counsel for the respondent Forest Department submitted that three transit passes dated 13.6.2009 for the quantity of red sanders worth 16100.60 kg., 16289.20 kg. and 17077.60 kg. respectively were originally issued by the then Range Forest Officer, Khalapur, Maharastra for transportation from Raigad

to Moreh, Manipur. The registration numbers of the trucks were also mentioned on the transit passes. As per the documents made available to the Forest Department by the petitioner, Mirzapur Forest Division, UP issued transit passes in lieu of the original transit passes for Moreh during transport. On the back side of the lieu transit passes issued by the Mirzapur Forest Division, the seals of various forest check posts in various States through which the said consignment had passed are available. On reaching Mao Gate at the border of Manipur, the petitioner applied to the Forest Department on 29.6.2009 to issue him lieu transit passes for 51.5 MT (51,500 kg.) for further transportation to Moreh and vide letter dated 30.6.2009 the petitioner requested the Forest Department for allowing them to carry the same consignment on five trucks as the owner of the previous three trucks who was from Gauhati was not willing to enter in Manipur due to law and order problem.

22. The learned counsel further submitted that on 7.7.2009, the Forest Department sought confirmation on the genuineness of the three transit passes from the concerned Chief Conservator of Forests, who in turn, vide letter dated 9.7.2009, confirmed to the Forest Department, Manipur that the said transit passes were genuine. After obtaining confirmation from the Maharashtra Forest Department, vide letter dated 15.7.2009 directed

the Divisional Forest Officer, Senapati Forest Division to allow passage of the three consignments of red sanders on the basis of the three transit passes. No lieu transit pass was issued by the Forest Department. However, it was permitted to change the consignment on five trucks. On enquiry, it has come to the notice that the consignee did not comply with the orders of the Forest Department and committed an offence. The consignee had not arranged the five trucks for shifting at Mao Beat Office, instead, the consignee had shifted the consignment from 3 trucks to five trucks at some other place enroute from Mao to Moreh. The petitioner has not intimated about such shifting to any other Divisional Forest Office falling NH-39 from Mao to Moreh. Thus, the actions of the consignee were not as per the directions issued by the Department.

23. This Court considered the rival submissions and also perused the materials available on record.

24. Admittedly, there were three challenges made in these writ petitions. Firstly, the petitioner has challenged the show cause notice dated 8.1.2010. Secondly, the investigation report dated 8.1.2010. Thirdly, the order dated 7.4.2011 of the Commissioner of Customs thereby rejecting the representation of the petitioner dated 4.10.2010.

25. As far as the impugned show cause notice dated 8.1.2010 is concerned, according to the respondent DRI, the same was issued based on the investigation report and it cannot be contended that the show cause notice was issued behind the back of the petitioner and that too without giving copy of the investigation report to the petitioner.

26. It is an admitted fact that earlier the petitioner had filed W.P.(C) No.504 of 2009 for release of the seized goods and upon hearing the respective counsel, the Imphal Bench of Gauhati High Court passed the following interim order on 18.9.2009:

“In the circumstances, I am satisfied that a case for an interim order is made out and accordingly it is directed that respondent Nos.2, 3 and 4 shall immediately release the Red Sanders (Sandle Wood) seized under inventory dated 8.8.2009 (Annexure-A/11 to the petition) to the petitioners on execution of an indemnity bond against the invoice value which is not different from the recent pricing of Red Sanders (Sandle Wood) by the Forest Department of Manipur as is evidence in the communication dated 3.1.2009 (Annexure-13) to the additional affidavit.”

27. Aggrieved by the said interim order, the DRI has preferred an appeal, being W.A.No.310 of 2009. The Division Bench of the Principal Seat at Guwahati High Court, by the judgment and order dated 19.10.2009, ordered as under:

“Having regard to the above contentions and after considering the submissions made by Mr.Sarma, learned counsel appearing for the respondent-writ petitioner, we are of the opinion that the present matter can be disposed of by permitting the appellant to conclude their investigation into the matter within a period of next eight weeks. During this period, the release order passed on 18.9.2009 shall not be given effect to. The seized goods will abide by the final decision to be taken by the Revenue authorities in the matter, on conclusion of the investigation. Appeal stands disposed of.”

28. Thus, from the above order, it is clear that the plea of the respondent DRI that the show cause notice was issued based on the investigation report submitted is highly doubtful. Since the respondent DRI could not complete the investigation as ordered by the Division Bench, it has filed Miscellaneous Case No.3439 of 2009 seeking extension of time. By the order dated 27.1.2010, the Division Bench granted another four weeks time. Thus, from the

above also, it is clear that as on the date of issuance of the show cause notice, the investigation has not been completed.

29. According to the petitioner, the show cause notice dated 8.1.2010 was served on the petitioner on 27.1.2010. The contention of the respondent DRI as recorded in the judgment and order dated 19.10.2009 states that the revenue authorities were investigating into the matter. If really, the investigation was completed before the date of issuance of the impugned show cause notice i.e. 8.1.2010, there is no necessity on the part of the respondent DRI in filing Miscellaneous Case No.3439 of 2009 seeking extension of time. Further, if really, the respondent DRI prepared the investigation report on 8.1.2010 impugned in W.P.(C) No.351 of 2010, why the respondent DRI filed Miscellaneous Case praying for further eight weeks' time to complete the investigation has not been explained/clarified.

30. As could be seen from the records, upon receipt of the show cause notice, on 10.2.2010, the petitioner submitted an application before the Additional Director General of DRI for supply of the investigation report so as to enable the petitioner to submit the statement of defence in writing in reply. According to the petitioner, till date the investigation report has not been supplied to

the petitioner. However, the petitioner was able to see the investigation report when the respondent DRI filed the copy of the same along with the additional affidavit filed in W.P.(C) No.180 of 2010 .

31. The petitioner has also assailed the investigation report contending that nothing can be ascertained as to the nature of the said document. According to the petitioner, it is merely summary in nature without any supporting documents and the said report failed to take note of the fact that transportation of the red sander was done on the basis of the transit pass issued by the competent authority of the State of Maharashtra.

32. On a perusal of the alleged investigation report dated 8.1.2010, this Court finds that the same is not a investigation report. As rightly submitted by the petitioner, it is a summary report. Assuming that the same is investigation report, it should contain the enclosures, namely the supporting documents. Admittedly, the report dated 8.1.2010 does not contain any list of persons examined and the documents gone through by the investigating agency. If really, the respondent DRI treated the report dated 8.1.2010 as an investigation report, they could have immediately forwarded the same to the concerned authorities for action with a copy to the

affected persons, namely the petitioner. Failing to do so, clearly indicates that the report dated 8.1.2010 is not an investigation report. Therefore, this Court is of the view that it is quite strange and may not be possible on the part of the respondent DRI to issue the show cause notice dated 8.1.2010 when the investigation report dated 8.1.2010 was submitted by the Deputy Director thereby exposing the mala fide and the artificial cause invented by the respondent DRI in their attempt to have a second confiscation proceeding of the seized goods under the Customs Act.

33. At this juncture, the learned counsel for the respondent DRI submitted that goods once subjected to confiscation proceedings can again be subjected to confiscation proceedings if there arises allegation of another violation of the law. The goods once released cannot get any immunity from further proceedings only on the ground that the same has been released.

34. On a perusal of the order dated 11.8.2008 of the Customs Excise and Service Tax Appellate Tribunal, West Regional Bench at Mumbai in Appeal No.C/552/08, it is seen that the red sanders which were procured from M/s.Shree Durga Enterprises through its partner Suresh Kumar Jain have already been subjected to a confiscation proceeding under Section 110 of

the Customs Act and the same has been released by the order of the CESTAT on condition of making revenue payment of Rs.1 lakh and the enforcement of the order has also been endorsed by the Mumbai High Court in W.P.(C) No.396 of 2009 dated 21.4.2009.

35. The learned senior counsel for the petitioner submitted that the red sander procured by the petitioner's firm which is out of the red sander amounting to 41.52 MT of Suresh Kumar Jain having been subject matter of confiscation proceedings, the same procedure cannot be done as it amounts to double jeopardy, hence, making the illegal seizure unsustainable in the eye of law. This Court finds some force in the said submission made by the learned senior counsel for the petitioner. Though the respondent DRI contended that the seized goods are for the purpose of export, nothing has been produced to establish the same. On the other hand, it is the plea of the petitioner that red sanders were allowed to be purchased and transmitted.

36. According to the petitioner, the red sanders in question was legally procured by the petitioner from M/s.Shree Durga Enterprises, Mumbai under three invoices in the prescribed format against C Form vide letter dated 13.6.2009. Under the three invoices, total quantity of red sander has been indicated as 49467.4

kgs. Upon receipt of the invoices, the petitioner made a request to M/s.Shree Durga Enterprises for allowing payment of the bill amount whole instalments within a period of two months with effect from the date of receiving f the consignment. According to the petitioner, they are yet to make full payment of the red sander so procured from M/s.Shree Durga Enterprises. The goods were transported through M/s.Anand Roadlines from Mumbai to Manipur and in this regard, the letters for releasing and transportation of the goods were exchanged by the petitioner and the M/s.Anand Roadlines. The Chief Conservator of Forest had also confirmed the genuineness of the transit pass issued by the Range Forest Officer, Khalapur. It has also permitted change of transportation of red sanders from three trucks of M/s.Anand Roadlines to five Manipur trucks on 15.7.2009 when change of transportation was felt necessary at Mao due to road condition. No occasion ever occurred questioning the legality of the procurement of transportation of red sanders of the petitioner.

37. There is no dispute that the goods were transported by transferree from the original three trucks to five Manipur trucks at Mao smoothly by paying taxes and the required fees to the respective check posts up to the officer of Range Officer, Tengnoupal, Government of Manipur. While so, on 8.8.2009, the

five trucks carrying the goods were detained by the Assam Rifles at Khudengthabi in Chandel District on the basis of the purported instruction of the DRI Zonal Office, Kolkatta and, according to the petitioner, despite showing the relevant documents including the transit pass, the goods have been seized. In this regard, the Forest Department filed affidavit-in-opposition stating as under:

“..... On reaching Mao Gate (Senapati Forest Division) at the border of Manipur States, the petitioner applied to the forest Department, Manipur vide letter dated 29.6.2009 to issue him lieu TPs for 51.5 Metric Tonnes (51,500 kg) for further transportation to Moreh, District Chandel, Manipur. Subsequently the petitioner organisation vide letter dated 30.6.2009 also requested this Forest Department for allowing him to carry the same consignment as per the said three TPs on 5 (five) trucks as the owner of the previous three trucks who was from Gauhati, was not willing to enter in Manipur due to law and order problem.

The Forest Department, Government of Manipur vide letter dated 07.07.2009 sought confirmation on the genuineness of the said 3 (three) TPs from the concerned Chief Conservator of Forests, Thane (Maharashtra),

who in turn vide letter No. Desk-8/Vigi/284/2009-10 dated: 09.07.2009 confirmed to the Forest Department (Government of Manipur) that the said TPs were genuine and issued under directions of this office.”

38. The affidavit of the Forest Department further states that after obtaining confirmation from the Maharashtra Forest Department, the Forest Department of Government of Manipur directed the Divisional Forest Officer, Senapti Forest Division to allow passage of the three consignments of red sanders on the basis of the three transit passes after affixing the seals on the original transit passes. The Forest Department of Manipur stated that no lieu transit pass was issued. However, the Forest Department, Government of Manipur, stated that it was permitted to change the consignment on five trucks of Manipur. When the Forest Department, Government of Manipur, after verifying the genuineness of the transit passes issued by the Forest Department of Government of Maharashtra permitted passage and also permitted to change the consignments on five trucks, it cannot contend that the consignee did not comply with the directions of the Forest Department and had not arranged the five trucks for shifting at Mao Beat Office, instead the consignee had shifted the

consignment from three trucks to five trucks at some other place enroute from Mao to Moreh. The Forest Department cannot take a different stand at its whims and fancies.

39. The red sanders in question were detained by the Assam Rifles on 2.8.2009 at Khudengtabi i.e. about 11 km. before reaching Moreh and the same was seized on 8.8.2009 by the Customs authority by preparing an inventory under Section 110 of the Customs Act, 1962. In the present case, the petitioner had raised various legal issues qua jurisdiction to invoke the power of seizure as provided under Section 110 of the Act, as the Act does not contemplate second confiscation of an article which has already been confiscated and released by the orders of the Court and that there is no material to establish and suggest that the goods in question were meant for export outside India. In fact, *prima facie*, the petitioner has established that the goods in question were purchased under valid transaction and transported up to Moreh under the transit passes issued by the Forest Department of Government of Maharashtra which has been confirmed as genuine by the Forest Department, Government of Manipur.

40. It is pertinent to note that the respondent authorities in order to resort to the proposed proceedings have construed that

Suresh Kumar Jain is disowned by the proprietor of M/s.Shree Durga Enterprises as one of the partners in his business thereby projecting it as illegal procurement. In fact, while coming to such conclusion, the respondent authorities, more particularly, the respondent DRI has overlooked the fact that Suresh Kumar Jain is not refrained by any legal impediment in selling the red sander to any other third party having regard to the fact that the competent Court in the State of Maharashtra has not accepted about Suresh Kumar Jain as person who violated relevant law of export of red sander. In other words, the contention of Suresh Kumar Jain that red sander procured by him was not for the purpose of export had already been accepted by the competent Court. Therefore, the procurement of red sander by the petitioner firm from Suresh Kumar Jain has not infringed any prohibitive law under the Customs Act in any manner. Therefore, the show cause notice being an act to do indirectly which is no longer permitted to do directly is unsustainable in the eye of law.

41. From the available materials produced before this Court and the pleadings of the parties, it appears that the petitioner has been able to establish that the reds sanders in question were procured under valid transaction and in this regard transit passes were issued for transportation from Mumbai to Moreh which was

also verified and found genuine by the Forest Department, Government of Manipur. Thus, the issuance of show cause notice was in fact an arbitrary exercise of power disregarding the settled principle of law qua the impermissibility of taking up a second confiscation proceeding, inasmuch the documents relied by the respondent authorities, particularly, the investigation report on basis whereof the show cause notice was issued, has not been furnished to the petitioner despite the request made by the petitioner. Nothing has been produced by the respondent DRI to show that they have furnished the copy of the investigation report to the petitioner. As stated supra, it is the duty of the respondent DRI to furnish the copy of the investigation report when they intend to serve show cause notice. Thus, this Court is of the view that the impugned show cause notice and the investigation report are not sustainable in the eye of law.

42. Coming to the impugned order dated 7.4.2011 passed by the Commissioner of Customs, the learned senior counsel for the petitioner argued that the same is against the spirit of the provision of Section 110(A) of the Customs Act whereby an independent power is vested with the officer concerned for releasing the seized goods provisionally during the pendency of the adjudication proceeding. The learned senior counsel further

submitted that the prayer of the petitioner has been declined by the Commissioner on the ground that the petitioner instead of submitting reply to the impugned show cause notice has filed the writ petition.

43. This Court in the previous paragraphs held that the impugned show cause notice issued to the petitioner and the investigation report impugned in W.P.(C) Nos.180 of 2010 and 351 of 2010 are not sustainable in the eye of law.

44. In the impugned order dated 7.4.2011, the Commissioner of Customs took a stand that instead of submitting reply to the show cause notice dated 8.1.2010 with supporting documents to challenge the charges, the proprietor of the petitioner has submitted an application for provisional release of the seized goods. In the impugned order dated 7.4.2011, the Commissioner has also observed that the invoice issued to the petitioner by M/s.Shree Durga Enterprises was a forged one and no transaction was carried out between the firms. As such, there is nothing on record to substantiate that the petitioner procured any red sander wood from Maharashtra as claimed by them. Admittedly, the said observation made by the Commissioner of Customs is without any concrete evidence. When the Forest Department of the

Maharashtra as well as the Manipur endorsed that the goods in question were transported from Mumbai to Moreh via Manipur and in that regard during enquiry the petitioner has produced materials, without appreciating such materials, the Commissioner has arrived at such a finding. The finding of the Commissioner that in the absence of any corroborative evidence on record it was not possible to consider the petitioner as the legal owner of the red sander logs, buttend, chips and saw dust under seizure is unsustainable in view of the finding arrived at by this Court in this order that the show cause notice dated 8.1.2010 and the investigation report dated 8.1.2010 are not sustainable in the eye of law, as on the date of issuance of the show cause notice by the respondent DRI, no such investigation report was available. That apart, the alleged investigation report dated 8.1.2010 relied on by the respondent DRI is not the investigation report and is summary in nature.

45. On 13.4.2010, the petitioner through its counsel sent a representation to the DRI and the Commissioner of Customs by enclosing the interim order dated 9.4.2010 passed in W.P.(C) No.180 of 2010 requesting release of the goods in exercise of power under Section 110A of the Customs Act. On 3.6.2020, the Commissioner of Customs passed an order stating that the seized goods cannot be released to the petitioner. On 4.10.2010, the

petitioner again submitted a representation to the Commissioner of Customs for releasing the seized goods provisionally subject to the condition as may be imposed by the said authority. Since the said representation dated 4.10.2010 has not been considered, the petitioner has filed W.P.(C) No.655 of 2010 before the Gauhati High Court. By the order dated 1.2.2011, the Gauhati High Court disposed of the said writ petition. The operative portion of the order reads thus:

“Accordingly, this writ petition is disposed of with a direction to the respondent No.2 to consider afresh of the representation dated 04.10.2010 (Annexure-A/12) and take appropriate decision within a period of 2 (two) months from the date of receipt of a certified copy of this order. It is also made clear that respondent No.2 shall be guided by the observation made by this Court in the order dated 08.04.2010 passed in W.P.(C) No.180 of 2010, while determining the market price of Red Sanders wood.”

46. Thereafter, on 2.3.2011, the petitioner submitted another representation thereby enclosing all the orders passed in the writ petitions instituted by the petitioner to the Commissioner of Customs for releasing the seized goods provisionally.

47. In paragraph 1.9 of the impugned order dated 7.4.2011, the Commissioner stated that as under :-

“1.9 Md. Abdul Barik, Proprietor of M/s.Al-Baari & Sons submitted an application dated 02.03.2011 to the Commissioner of Customs (Preventive) NER, Shillong along with enclosures in support of his claim. He inter alia mentioned that the transit pass on the basis of which transportation of the Red Sanders in question was made from the State of Maharastra to Manipur is clarified as genuine by the competent authority. He added that having regard to the attended circumstances and in view of the Hon’ble High Court’s Order passed on 01.02.2011 in W.P. (C) No.655 of 2010, necessary orders may be passed for releasing the seized goods in accordance with Section 110-A of the Customs Act, 1962.”

48. After stating so, in paragraph 2.1, the Commissioner observed as under:

“2.1 I have gone through the case records and submissions made by Md. Abdul Barik, Proprietor of M/s.Al-Baari & Sons regarding his claim for ownership of the seized Red Sander logs, butt ends, chips and saw dust.

I find that in the subject case, the investigation has been completed and show cause notice under Section 124 of the Customs Act 1962 has already been issued on 08.01.2010. Adjudication proceedings by the Department has been pending not due to any delay by the Department but due to the dilatory tactics adopted by the party, i.e. M/s.AI-Baari & Sons. A show cause notice issued under Section 124 of the Customs Act 1962 contains the grounds for taking action against the notice by the Department and provides opportunity to the notice to make representations against the grounds/charges mentioned in the show cause notice besides according the notice with an opportunity of being heard in person. However, in the instant case Md. Abdul Barik, Proprietor of M/s.AI-Baari & Sons instead of submitting any reply to the show cause notice challenging the grounds for seizure of the Red Sanders wood and exhausting the Departmental adjudication and appellate procedures available to him under the provisions of the Customs Act 1962 has preferred to file writ petitions before the Hon'ble High Court."

49. The main ground for rejection of the representation/application dated 04.10.2010 of the petitioner by the Commissioner of Customs is issuance of the show cause notice dated 8.1.2010 to Md. Abdul Barik that the documents accompanying the subject goods are not valid documents, as Umesh Dhan Singh, Proprietor of M/s.Shree Durga Enterprises, Mumbai has denied to have ever dealt with red sander woods and no transaction of the subject goods has taken place between M/s.Shree Durga Enterprises, Mumbai and M/s.Al-Baari & Sons, Moreh. When in paragraph 1.9 of the impugned order dated 7.4.2011, the Commissioner stated that the petitioner has filed documents in support of his claim, the Commissioner subsequently cannot say that the documents accompanying the subject goods are not valid documents. There is no elaborate discussion about the documents that were produced by the petitioner during enquiry before the Commissioner of Customs. In the order impugned, the Commissioner simply stated that opportunity was afforded to the petitioner and the petitioner had produced documents in support of his claim. But the documents which were produced by the petitioner during enquiry have not been duly considered by the Commissioner of Customs and the impugned order was issued merely citing that a show cause notice has been issued to the petitioner by the DRI.

Such a finding arrived at by the Commissioner of Customs is not sustainable.

50. At this juncture, it is pertinent to point out that there is a statutory provision under Section 110(A) of the Customs Act, 1972 enabling the Commissioner of Customs to release the seized goods pending adjudication. Section 110A of the Customs Act mentions that “any goods, documents or things seized under Section 110 may, pending the order of the adjudicating officer, be released to the owner on taking a bond from him in the proper form with such security and conditions as the Commissioner of Customs may require”. The plain reading of Section 110A of the Act clearly indicates that seized goods can be granted provisional release pending adjudication to the owner of the said goods and not to any other person. Thus, the claim for provisional release of the seized goods by the petitioner is to be proved beyond reasonable doubt. While issuing the impugned order dated 7.4.2011, the Commissioner of Customs has not considered the claim of the petitioner that it had made part payment for the consignment of wood under seizure. Further, all the documents produced by the petitioner to substantiate its claim have not been discussed in the impugned order by the Commissioner of Customs.

51. On overall consideration of the facts and circumstances of the case, this Court is of the view that the order passed by the Commissioner of Customs is unsustainable in the eye of law.

52. For all the reasons stated above, this Court is inclined to pass the following orders:

- (i) W.P.(C) Nos.180 and 351 of 2010 and 159 of 2011 are allowed.
- (ii) The impugned show cause notice and the investigation report dated 8.1.2010 of the respondent DRI impugned in the writ petitions are set aside.
- (iii) The impugned order dated 7.4.2011 passed by the Commissioner of Customs is also set aside.
- (iv) The Respondents No. 2 to 7 are hereby directed to immediately release the Red Sanders (Sandal Wood) seized under inventory

dated 08.08.2009 within two weeks
from the date of receipt of this order.

(v) No costs.

JUDGE

FR/NFR

Sushil