

GAHC010239482022



**THE GAUHATI HIGH COURT**  
**(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)**

**Case No. : WA/276/2023**

RUKSANA BEGUM CHOUDHURY AND ANR.  
PROPRIETOR OF M/S S.R. ENTERPRISE, AGED ABOUT 25 YEARS, D/O  
ABDUR ROUF CHOUDHURY, R/O VILL- MOHAMMEDPUR PT-1, P.O.-  
RONGPUR SOUTH, P.S.-LALA, DIST- HAILAKANDI, ASSAM, PIN-788164  
REPRESENTED BY THE ATTORNEY HOLDER ABUL KASHIM MAZUMDAR,  
S/O SRI IRFAN ALI MAZUMDAR, R/O VILL- PURBOKITTARBOND PART-1,  
P.O.-AMALA, P.S.-LALA, DIST-HAILAKANDI, ASSAM, PIN-788164

2: ABUL KASHIM MAZUMDAR  
S/O SRI IRFAN ALI MAZUMDAR  
R/O VILL-PURBOKITTARBOND PART-1  
P.O.-AMALA, P.S.-LALA  
DIST-HAILAKANDI  
ASSAM, PIN-78816

VERSUS

THE UNION OF INDIA AND 4 ORS.  
REPRESENTED BY THE SECRETARY TO THE DEPARTMENT OF REVENUE,  
CENTRAL BOARD OF EXCISE AND CUSTOMS, MINISTRY OF FINANCE,  
GOVT. OF INDIA, NEW DELHI-110008

2:THE COMMISSIONER OF CUSTOMS PREVENTIVE  
110 MAHATMA GANDHI ROAD  
NEAR SHILLONG-793001  
MEGHALAYA

3:THE ADDITIONAL COMMISSIONER OF CUSTOMS PREVENTIVE  
NE REGION  
110 MAHATMA GANDHI ROAD  
SHILLONG-793001  
MEGHALAYA

4:THE ADDITIONAL DIRECTOR GENERAL

DRI  
GUWAHATI ZONAL UNIT  
CHRISTIAN BASTI  
GUWAHATI-781006, ASSAM

5:THE ASSISTANT DIRECTOR GENERAL  
DRI  
GUWAHATI ZONAL UNIT  
CHRISTIAN BASTI  
GUWAHATI-781006, ASSAM

6:THE JOINT DIRECTOR  
DRI  
GUWAHATI ZONAL UNIT  
CHRISTIAN BASTI  
GUWAHATI-781006, ASSAM

**Advocate for the Petitioner** : MR. P K GARODIA

**Advocate for the Respondent** : SC, CUSTOMS

**BEFORE**  
**HONOURABLE THE CHIEF JUSTICE**  
**HONOURABLE MR. JUSTICE SUMAN SHYAM**

Date of Hearing : 19.02.2024  
Date of Judgment : 22.02.2024

**JUDGMENT & ORDER**  
**(CAV)**

***(Vijay Bishnoi, CJ)***

This intra-court writ appeal is filed by the appellants being aggrieved with the judgment dated 14.09.2022, passed by the learned Single Judge in WP(C) 2981/2021, whereby the writ petition filed by the appellants was dismissed while observing that the case filed by the appellants is not fit for invoking the extra-ordinary powers under Article 226 of the Constitution of India.

2. In the writ petition, the writ petitioners/appellants challenged the action of seizure of areca nuts by the officials of the respondent customs department on 29.08.2020 while exercising power under section 110 of the Customs Act, 1962 (herein after referred to as "Customs Act"). The appellants had also challenged the validity of the Show Cause Notice dated 26.02.2021, issued by the officials of the respondent customs department while exercising power under section 124 of the Customs Act.

3. The learned counsel appearing for the appellants has vehemently argued that the action of the respondent customs department of seizing the areca nuts while exercising the power under section 110 of the Customs Act is absolutely without jurisdiction and cannot be sustained. It is contended that as per section 110 of the Customs Act, seizure proceedings can be initiated only by a proper officer when he/she has the reason to believe that any goods are liable to confiscation under the Act. It is submitted that in the present case, from the *Panchnama* as well as the Seizure Memo, nothing has been reflected that the officer who seized the areca nuts on 29.08.2020 had the reason to believe that those areca nuts were liable for confiscation under the Customs Act.

4. Learned counsel has further argued that the Central Board of Excise and Customs issued instructions on 08.02.2017 to all the officers of the customs department, whereby it was instructed that whenever goods are being seized, in addition to *Panchnama*, the proper officer must also pass appropriate order clearly mentioning the reasons for believing that the goods are liable for confiscation. It is submitted that though it is settled that the instructions issued by the Central Board of Excise and Customs are mandatory in nature, however, from the Seizure Memo as well as other documents it becomes clear that the proper officer has not indicated the reason to believe that the areca nuts seized

by him were liable for confiscation. It is further contended that in the absence of specific details, the seizure proceedings cannot be sustained under the provisions of the Customs Act.

5. Learned counsel has further submitted that the Show Cause Notice dated 26.02.2021, issued under section 124 of the Customs Act contains incorrect facts, which are baseless and bogus and, therefore, the same are also illegal and not liable to be sustained.

6. Learned counsel for the appellants has submitted that the learned Single Judge has not appreciated the contentions of the petitioners/appellants in right perspective and has dismissed the writ petition as being not maintainable in an illegal manner. In support of the above contentions, learned counsel for the appellants has placed reliance on various pronouncement of the Hon'ble Supreme Court, which were also pressed into service before the learned Single Judge, and has contended that a writ petition filed by the appellants under Article 226 of the Constitution of India against a Show Cause notice is very much maintainable where the person aggrieved with the Show Cause notice demonstrates that the same is illegal and without jurisdiction.

7. It is further contended by the learned counsel for the appellants that the writ petitioners/appellants had successfully demonstrated before the learned Single Judge that the seizure proceedings as well as the Show Cause notices were without jurisdiction and in gross violation of law. However, the learned Single Judge, without appreciating the said aspect of the matter, has dismissed the writ petition in an illegal manner. Learned counsel has therefore argued that the impugned judgment passed by the learned Single Judge is liable to be set aside and the writ appeal filed by the appellants is liable to be allowed and the relief prayed for in the writ appeal be granted.

8. Per contra, the learned counsel appearing for the respondents has submitted that there is no illegality in the impugned judgment passed by the learned Single Judge and, in the facts and circumstances of the case, the learned Single Judge has rightly refused to interfere in the matter while exercising the powers under Article 226 of the Constitution of India.

9. The learned counsel for the respondents has also submitted that from the Seizure Memo and the other relevant proceedings conducted by the proper officer at the time of seizure of the areca nuts, it is clear that he had reason to believe that those areca nuts were liable for confiscation under the Customs Act. It is also submitted by the learned counsel for the respondents that against the Show Cause notice under section 124 of the Customs Act, the appellants have already filed their response and the proceedings in relation to the said Show Cause notice are pending consideration with the competent authority. It is therefore prayed that no case for interference is made out and the writ appeal is liable to be dismissed.

10. We have heard the learned counsel for the parties and have also perused the material available on record.

11. The learned Single Judge, after taking into consideration the arguments advanced on behalf of the parties, has concluded that the scope of challenging a Show Cause notice is very limited and circumscribed. It is the view of the learned Single Judge that challenge to a Show Cause notice can be made if the following conditions are fulfilled, which are: (i) lack of jurisdiction; (ii) lack of competence; (iii) lack of *bona fide* exercise of power, (iv) *mala fide* exercise of power and (v) violation of the principles of natural justice. It is also observed by the learned Single Judge that the aforesaid instances may not be exhaustive and, in a given case, the objective of the Court while dealing with such a

challenge is that whether the person aggrieved has suffered any prejudice because of the same and whether the challenge is an attempt to pre-empt the authorities from taking any action in accordance with law. It is further observed by the learned Single Judge that from the perusal of the material available on record it is clear that the impugned action of the customs authorities was preceded by a subjective satisfaction arrived at by the competent authority based upon information received regarding commission of an offence and the same has also been substantiated by the recovery of 800 bags of areca nuts which have been stated to be of foreign (Myanmar) origin.

12. The learned Single Judge has also thoroughly discussed the judgments of the Apex Court cited by both the parties and while relying on the decisions of the Hon'ble Supreme Court in ***Indru Ramchand Bharvani & Ors. Vs. Union of India & Ors.***, reported in ***(1988) 4 SCC 1*** and ***Phoenix ARC Private Ltd. Vs. Vishwa Bharati Vidya Mandir & Ors.***, reported in ***(2022) 5 SCC 345*** and also other decisions of the Hon'ble Supreme Court, has concluded that the Hon'ble Supreme Court has deprecated the Courts in interfering at the stage of issuance of Show Cause notice and, hence, it is not a fit case for invoking the extraordinary powers under Article 226 of the Constitution of India.

13. The Hon'ble Supreme Court in ***Indru Ramchand Bharvani*** (supra) has observed that reasonable belief as to smuggled goods had been explained by the Hon'ble Supreme Court in ***State of Gujarat vs. Mohanlal Jitamalji Porwal & Anr.***, reported in ***(1987) 2 SCC 364***, wherein the Hon'ble Supreme Court observed whether or not the official concerned has seized the article under "reasonable belief" that the goods are smuggled goods is not a question on which the Court can sit on appeal. The circumstance under which the officer entertains reasonable belief have to be judged from his experienced eye who is

well equipped to interpret the suspicious circumstances to form a reasonable belief.

14. In the present case, the officer concerned acted on the basis of information that huge quantity of areca nuts, smuggled from Myanmar, were lying at Bairabi Railway Station, Mizoram and to be loaded in Railway Parcel Wagons for transporting to Uttar Pradesh. On receiving the said information, he activated the machinery and carried out a raid at the concerned railway station where huge quantity of areca nuts, possibly smuggled from Myanmar, were found. Taking into consideration the above facts, it can be presumed that the officer concerned had the reason to believe that the goods seized were liable for confiscation.

15. In the above circumstances, we are of the opinion that the view expressed by the learned Single Judge in the impugned judgement is one of the possible views, therefore, we are not inclined to interfere. Hence, this intra-court appeal is dismissed.

16. It is noticed that the proceedings regarding the Show Cause notice issued to the appellants is pending since the year 2021 and, therefore, we deem it appropriate to direct the authorities concerned to decide the said proceedings expeditiously, preferably within a period of three months from today.

**JUDGE**

**CHIEF JUSTICE**