IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

BEFORE:
HON'BLE JUSTICE RAJA BASU CHOWDHURY

WPO/334/2024

BANGARI BHOLA
VERSUS
UNION OF INDIA & ORS.

For the petitioner	:	Mr. Rohit Das, Advocate Ms. Kishwar Rahman, Advocate Mr. Shantanu Mitra, Advocate Mr. Indradip Das, Advocate
For the Customs Authority	:	Mr. K. K. Maiti, Advocate Mr. Tapan Bhanja, Advocate
For the Union of India	:	Mr. Prithu Dudharia, Advocate
Heard on	:	7th May 2024
Judgment on	**:**	**7th May 2024**

RAJA BASU CHOWDHURY, J:

1. Affidavit of service filed in Court today be kept with the record. The present writ petition has been filed, *inter alia*, praying for quashing the seizure of the goods of the petitioner effected vide inventory cum seizure list dated 6th February, 2024. The petitioner claims to be involved in the business of trading in areca nuts (hereafter referred to as "the goods") throughout the State of West Bengal. The petitioner in usual course of business dealings and transactions had procured a total quantity of 5

metric tons of the goods from a supplier based in Imphal, Manipur, under three separate invoices all dated 5th February, 2024. The value of aforesaid consignment was Rs.34,16,765/- (Rupees Thirty Four Lakh Sixteen Thousand Seven Hundred and Sixty Five). According to the petitioner, the aforesaid goods were dispatched from Imphal to Kolkata under cover of separate e-weigh bills all, dated 5th February, 2024 and were booked on an Indigo Airlines Flight from Imphal to Kolkata. Incidentally, upon arrival of the said goods at the Netaji Subash Chandra International Airport, Kolkata (hereinafter referred to as the "said airport") on 5th February, 2024, when the petitioner had attempted to collect the same from the domestic cargo complex of the said airport on 7th February, 2024, he had come to learn that the goods had been detained on the ground that the same had been allegedly imported into India, in contravention of the provisions of the Customs Act, 1962 (hereinafter referred to as the "said Act") and the Foreign Trade Policy, 2023. This was followed by seizure of goods by issuance notice/inventory of seizure dated 6th February, 2024 issued by the Preventive Officer of the Customs Authority.

2. Mr. Das, learned advocate appearing for the petitioner by drawing attention of this Court to the inventory cum seizure list dated 6th February, 2024 submits that the said inventory cum seizure list has not been issued in consonance with the provision of Section 110(1) of the said Act. The said inventory/seizure list does not record the

satisfaction of the proper officer that he has reasons to believe that the goods are liable to confiscation under the said Act. It is further submitted that the preventive officer did not have the jurisdiction at the first instance to initiate any proceeding including, detention and seizure under the provisions of the said Act, within the jurisdictional area of the said airport.

3. By drawing attention of this Court to the notification dated 24th August, 2017 issued by the Government of India, Ministry of Finance (Department of Revenue) (Central Board of Excise and Customs), it is submitted that the Central Board of Excise and Customs in exercise of powers conferred under Section 4(1) of the said Act, and in suppression of notification of the Government of India, Ministry of Finance (Department of Revenue) dated 16th September, 2014 and the other relevant notifications as appearing therein had appointed officers mentioned in column (3) of Table 2 of the said notification to be the Principal Commissioner of Customs or the Commissioner of Customs and the officers mentioned in the column (4) of the table 2 thereof, to be Additional Commissioner or Joint Commissioners or Deputy Commissioners or Assistant Commissioners of Customs, for the areas mentioned in the corresponding entry in column (2) of Table 2. It is submitted that under Table 2 serial no. 10, under the corresponding column nos. (3) and (4) the officers exercising jurisdiction over the areas specified under the corresponding column (2) have been identified. They

are (i)Principal Commissioner of Customs (Port), Kolkata, (ii)Principal Commissioner of Customs (Airport and Air Cargo Complex), Kolkata and, under column no. (4) – Additional Commissioners, or Joint Commissioners, or Deputy Commissioners of Customs working under the control of – (i)Principal Commissioner of Customs (Port), Kolkata, (ii)Principal Commissioner of Customs (Airport and Air Cargo Complex), Kolkata have been appointed as the Commissioner, the Principal Commissioner and/or Joint Commissioner and/or Assistant Commissioner. The corresponding areas of jurisdiction of the aforesaid officers are (i) Ports of Kolkata and Haldia, Netaji Subhash Chandra International Airport, the area under the jurisdiction of Kolkata, Howrah and South Suburban Corporations, so much of the Hooghly river as is downstream of the Northern limit of Kolkata Port, and all lands as are within 10 kilometers of high water mark at spring tide on either side of the river; (ii) The Andaman and Nicobar Islands; (iii) FALTA Special Economic Zone to be the area of jurisdiction of the aforesaid officers.

4. Having regard to the aforesaid, it is submitted that the Preventive Officer did not have the jurisdiction to initiate any proceeding including proceeding under Section 110(1) of the said Act. Since, proceeding initiated by the Preventive Officer is without jurisdiction, *inter alia*, including passing off orders of detention and issuance of inventory/seizure list by the preventive officer the same are nonest and

cannot be acted upon. In support of his aforesaid contention, he has placed reliance on the judgment delivered by the Hon'ble Division Bench of this Court in the case of ***Commissioner of Customs v. Md. Ahmed Ali Khan,*** reported in **2006 SCC OnLine Cal 858**. In any event it is submitted that the petitioner had also made representation for release of the aforesaid goods. Despite such application being made, no steps have been taken by the respondents to release the goods. The above would show that the conduct of the respondents do not appear to be bona fide.

5. Mr. Maiti, learned advocate for the respondent Customs Authority, on the other hand while opposing this petition submits that the respondents have already started an investigation and the same is at a nascent stage. By referring to the provision of Section 110(2) of the said Act, it is submitted that the original period for making an enquiry/ investigation under Section 110(2) of the said Act, has not yet expired. This Hon'ble Court at this stage in exercise of its powers under judicial review ought not to interfere with the inquiry/ investigation. In support of his aforesaid contention, he has placed reliance on a judgment delivered by this Hon'ble Court in the case of ***Sheikh Mohammed Sayeed v. Assistant Collector of Customs,*** reported in **2000 (126) E.L.T. 121 (Cal)**. It is next submitted that the judgment delivered by this Hon'ble Court in the case of ***Commissioner of Customs*** (supra) does not assist the petitioner inasmuch as the said judgment was

delivered by relying on two notifications which had since, been superseded by a subsequent notification. In the said case, two separate notifications were under consideration. In the present case, there is only one notification which is under consideration. By referring to the notification dated 24th August, 2017 and serial nos. (10) and (11) under column 1 of Table no. 2, it is submitted that although, a jurisdiction has been conferred on the Principal Commissioner of Customs (Port, Kolkata and Principal Commissioner of Customs (Airport and Air Cargo Complex), Kolkata in respect of the area of the Airport, the same does not denude the power and authority of the Commissioner of Customs (Preventive), West Bengal from exercising jurisdiction, as he has the jurisdiction over the entirety of the State of West Bengal, the area of jurisdiction of Commissioner of Customs (Preventive), West Bengal has been delineated to be the whole of the State of West Bengal, Sikkim and the Union Territory of Andaman and Nichobar Island. It is still further submitted that in the case of ***Commissioner of Customs*** (supra) what was under challenge was an adjudication order while in this case the order of adjudication is yet to be passed. As such judgment relied on by the petitioner is distinguishable on facts and do not come in aid of the petitioner. The writ petition is premature and should be dismissed.

6. Mr. Dudhoria, learned advocate enters appearance on behalf of Union of India.

7. Heard the learned advocates appearing for the respective parties and considered the materials on record. Since, a jurisdictional issue has

been raised in the present writ petition and since, the learned advocates for the parties have admitted that such issue can be decided on the basis of the materials on record, I have proceeded to hear out the writ petition without calling for affidavits. I find that the short question that falls for consideration before this Court is whether the Preventive Officer at the first instance had the jurisdiction to initiate any proceeding, *inter alia*, including issuance of an order of detention and seizure under Section 110 of the said Act. To appreciate the controversy between the parties, it would be relevant to note that the goods in question had arrived at the said Airport, via Indigo flight bearing no. 6E6716 on 5th February, 2024. It is not in dispute that the Preventive Officer on 5th February, 2024 had arrived at the inbound domestic warehouse of the Airport and had requested the Airlines to provide cargo manifests of the flights coming from North-East and upon scrutinising the manifest as made available to him and on suspecting the said goods to be of foreign origin, had passed an order of detention under Section 110(1) of the said Act on 5th February, 2024 and had, accordingly, handed over the detention notice dated 5th February, 2024 to the Cargo Manager of the Indigo Airlines.

8. It is also not in dispute that 200 gunny bags of areca nuts believed to be of foreign origin which had been detained under detention order dated 5th February, 2024, were ultimately seized on 6th February, 2024 by the Preventive Officer. Since, the contention of the parties is with

regard to the authority and jurisdiction of the Preventive Officer to assume jurisdiction over an area which falls with the said Airport, it would be relevant to consider the Notification dated 24th August, 2017 which has been issued in exercise of power conferred under Section 4(1) of the said Act, in suppression of the previous notifications on the subject. To appropriately appreciate the area of jurisdiction of the Customs Officer, the relevant part of the notification dated 24th August, 2017, including the part of Table 2, is extracted hereinbelow:

> *" G.S.R. (E).- In exercise of the powers conferred by sub-section (1) of section 4 of the Customs Act, 1962 (52 of 1962) and in supersession of notifications of the Government of India in the Ministry of Finance (Department of Revenue) No.77/2014- Customs (N.T.), dated the 16th September, 2014 and No. 78/2014-Customs(N.T.) dated the 16th September, 2014 published vide numbers G.S.R. 654 (E), dated the 16th September, 2014 and G.S.R. 655(E), dated the 16th September, 2014 respectively, except as respects things done or omitted to be done before such supersession, the Central Board of Excise and Customs hereby appoints:-*
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> *(i) the officers mentioned in column (2) of the Table-1 below to be the Principal Chief Commissioners of Customs or Chief Commissioner of Customs, for the areas failing within the jurisdiction of the Principal Commissioner of Customs or Commissioner of Customs, or as the case may be, and the Commissioner of Customs (Appeals), mentioned in the corresponding entry in column (3) of the said Table-I; and*
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> (ii) *the officers mentioned in column (3) of the Table-2 below to be the Principal Commissioners of Customs or*

Commissioners of Customs and the officers mentioned in column (4) of the said Table-2 thereof to be the Additional Commissioners of Customs or Joint Commissioners of Customs or Deputy Commissioners of Customs or Assistant Commissioners of Customs, for the areas mentioned in the corresponding entry in column (2) of the said Table-2.

Sl No.	**Area**	**Designation of Officer**	
(1)	**(2)**	**(3)**	**(4)**
…	…	…	…
(10)	(i) Ports of Kolkata and Haldia, Netaji Subhash Chandra International Airport, the area under the jurisdiction of Kolkata, Howrah and south Suburban Corporations, so much of the Hooghly river as is downstream of the Northern limit of Kolkata Port, and all lands as are within 10 kilometres of high water mark at spring tide on either side of the river; (ii) The Andaman and Nicobar Islands; (iii) FALTA Special Economic Zone.	(i) Principal Commissioner of Customs (Port), Kolkata; (ii) Principal Commissioner of Customs (Airport and Air Cargo Complex), Kolkata.	Additional Commissioners, or Joint Commissioners, or Deputy Commissioners, or Assistant Commissioners of Customs working under the control of – (i) Principal Commissioner of Customs (Port), Kolkata; (ii) Principal Commissioner of Customs (Airport and Air Cargo Complex), Kolkata.
(11)	(i) The whole of the States of West Bengal and Sikkim; (ii) Union Territory of the Andaman and	Commissioner of Customs (Preventive), West Bengal.	Additional Commissioners, or Joint Commissioners, or Deputy Commissioners of

	Nicobar Islands.		Customs working under the control of the Commissioner of Customs (Preventive), West Bengal.

9. From a reading of column 3 of Table 2 under serial no.11 of the aforesaid Notification, it would transpire that the Commissioner of Customs (Preventive), West Bengal has been conferred with the jurisdictional area in respect of the whole of the State of West Bengal and Sikkim and Union Territory of the Andaman and Nicobar Islands. Similarly, upon perusal of column 3 of Table 2 falling under serial no.10, it would transpire that Principal Commissioner of Customs (Port), Kolkata and Principal Commissioner of Customs (Airport and Air Cargo Complex), Kolkata has been conferred with the jurisdictional area of the ports of Kolkata and Haldia, Netaji Subhash Chandra International Airport, the area under the jurisdiction of Kolkata, Howrah and South Suburban Corporations, so much of the Hooghly river as is downstream of the Northern limit of Kolkata Port and all lands as are within 10 kms., of high water mark at spring tide on either side of the river as also Andaman and Nicobar Islands and Falta Special Economic Zone. Thus, a conjoint reading of column 2 under serial nos. 10 and 11 read with corresponding entry in column 3 of Table 2 of the said notification, it would clearly appear that although, jurisdiction has been conferred on the Commissioner of Customs (Preventive) in respect of whole of the State of West Bengal, yet the Principal Commissioner of

Customs (Port), Kolkata and the Principal Commissioner of Customs (Airport and Air Cargo Complex), Kolkata, have been conferred with the jurisdictional area, *inter alia*, including Netaji Subhash Chandra International Airport.

10. The aforesaid would in no uncertain terms make it clear that the Principal Commissioner of Customs (Port), Kolkata and Principal Commissioner of Customs (Airport and Air Cargo Complex), Kolkata, have been conferred with the power to adjudicate all allegations or violation of the Act arising out of those areas and are the sole authorities to decide such issue. The above would become clear from the language employed in the notification which delineates the jurisdiction of the officers of the customs. The very nature of making separate entries for the Port and Airport areas, makes it explicitly clear that sole jurisdiction has been conferred on the Principal Commissioner of Customs (Port), Kolkata and Principal Commissioner of Customs (Airport and Air Cargo Complex), Kolkata to decide all violations in respect of, *inter alia*, Netaji Subhash Chandra International Airport as identified in column 1 under serial No.10 read with column 3 of Table 2 of the aforesaid Notification. As such I am unable to accept the contention of Mr. Maiti that Commissioner of Customs (Preventive) enjoy concurrent jurisdiction with the Principal Commissioner of Customs (Port), Kolkata and Principal Commissioner of Customs (Airport and Air Cargo Complex), Kolkata.

11. The aforesaid also finds support from the judgement delivered by the Hon'ble Division Bench of this Court in the case of ***Commissioner of Customs v. Md. Ahmed Ali Khan*** (supra). It is true that the notification based on which the said judgement was delivered and the notification which forms the subject matter of the present petition are different, yet from the ratio of the aforesaid judgement, and from the language employed in the notifications it would be amply clear that when a specifed authority is conferred with the jurisdiction to consider violation of provisions of the said Act, in respect of a particular jurisdictional area, then it is that particular authority which shall have the sole jurisdiction in respect of the said area notwithstanding the overall jurisdiction of the State may vest with another authority.

12. Although Mr. Maiti, learned advocate, by placing reliance on the judgement delivered by this Hon'ble Court in the case of ***Sheikh Mohammed Sayeed v. Asstt. Collector of Customs*** *(supra)*, has contended that this Court ought not to interfere with the investigation at this stage since, the investigation is yet to be completed, I am of the view that since, the respondent No.5 did not have the jurisdiction to initiate any proceeding including issuance of order of detention and seizure cum inventory list under Section 110(1) of the said Act, the custom authorities cannot be permitted to proceed with an inquiry/ investigation, the initiation whereof is without authority. All

proceedings/steps taken by the custom authorities on the basis thereof are nonest.

13. Having regard to the aforesaid, the question whether by reasons of non-disclosure of the satisfaction that the respondent no.5 had reasons to believe that the goods are liable for confiscation has become academic.

14. Accordingly, the notice/order of detention dated 5th February, 2024, including the order of seizure cum inventory list dated 6th February, 2024, stand quashed. The respondent nos. 2 to 5 are directed to return the goods to the petitioner. The aforesaid order, however, shall not stand in the way of the respondent nos. 2 to 5 from initiating appropriate proceeding against the petitioner by appropriate authority, in accordance with law.

15. Accordingly, the writ petition is disposed of.

16. There shall be no order as to costs.

Later

17. After the aforesaid judgement and order is delivered, Mr. Maiti, learned advocate representing the respondent nos. 2 to 5, prays for stay of operation of the judgment/order to the extent this Court directs return of the goods to the petitioner.

18. Such prayer is considered and refused.

All parties are to act on the basis of the server copy of this order duly downloaded from the official website of this Court.

(**RAJA BASU CHOWDHURY, J.**)

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