

IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

RESERVED ON: 10.07.2024
DELIVERED ON: 16.08.2024

CORAM:

THE HON'BLE MR. CHIEF JUSTICE T.S. SIVAGNANAM

AND

THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA

A.P.O.T NO. 221 OF 2024

(I.A. NO. G.A./02/2024)

COMMISSIONER OF CUSTOMS (PREVENTIVE), WEST BENGAL

VERSUS

BANGARI BHOLA AND OTHERS

Appearance

Mr. K.K. Maiti, Adv.

Mr. Tapan Bhanja, Adv.

....for the Appellant.

Mr. Rohit Das, Adv.

Mr. Shantanu Mitra, Adv.

Mr. Sreyash Basu Dasgupta, Adv.

Mr. Kishwar Rahman, Adv.

Ms. Divya Jyoti Tekriwal, Adv.

Mr. Rishav Mazumder, Adv.

....for the Respondent.

JUDGMENT

(Judgment of the Court was delivered by T.S. Sivagnanam, CJ.)

1. The revenue, the Commissioner of Customs (Preventive), West Bengal is the appellant. They are aggrieved by the order passed in WPO 334 of 2024 dated 07.05.2024 filed by the first respondent herein. In the said writ petition, the first respondent sought for setting aside the inventory cum seizure list dated February 06, 2024 as also the summons dated March 26, 2024. The respondent writ petitioner also sought for a direction upon the appellant to unconditionally release the goods being 200 bags containing five metric tonnes of areca nuts which were seized by the customs authorities under the impugned seizure memo. The facts leading to the filing of the writ petition are as hereunder:-
2. The writ petitioner procured five metric tonnes of areca nuts, from a supplier at Imphal, Manipur under three GST invoices bearing nos. 630, 631 and 632 all dated February 05, 2024. The value of the consignment was declared as Rs. 34,16,765/- and they were despatched by air from Imphal under cover of three e-way bills dated February 05, 2024. The goods arrived at the Netaji Subhas Chandra International Airport, Kolkata on February 05, 2024. When the writ petitioner went to collect the goods from the domestic cargo complex of the International Airport on February 07, 2024, he was informed that the Preventive Officer of customs SRI Unit, the 5th respondent herein visited in-bound domestic cargo warehouse of the International Airport on February 05, 2024 and detained/seized the goods. The reason behind such detention was that the goods were suspected to be of foreign origin and illegally imported into India in contravention of the

provisions of the Customs Act, 1962 and the Foreign Trade Policy, 2023. The goods were seized on February 06, 2024 under Section 110 of the Customs Act (the Act) after which an inventory-cum-seizure list of even date was prepared and reasons were recorded for the seizure.

3. It is stated that the 5th respondent directed the Cargo Manager, Indigo Airlines to call the writ petitioner however he neither appeared nor claimed the goods nor contacted the 5th respondent and therefore the goods were seized under Section 110 (1) of the Act on February 06, 2024. The writ petitioner submitted representations on February 09, 2024 and March 01, 2024 requesting the customs authorities to unconditionally release the seized goods without delay. Subsequently on March 04, 2024, summons was issued to the writ petitioner directing him to appear on March 18, 2024 with relevant documents which were complied with by the writ petitioner and produced the copies of the representations dated February 09, 2024 and March 01, 2024. The second summons dated March 26, 2024 was issued directing the writ petitioner to appear on April 12, 2024, at that stage the writ petition was filed.

4. The writ petitioner contended that the customs authorities have effected the seizure without authority of law and jurisdiction, by placing reliance on the Notification No. 82/2017-Customs (N.T) dated August 24, 2017 issued by the Central Board of Customs and Excise under Section 4(1) of the Customs Act. It was contended that the Principal Commissioner of Customs (Port), Kolkata and the Principal Commissioner of Customs (Airport and Air Cargo Complex), Kolkata and subordinate authorities under their respective control have jurisdiction over ports of Kolkata and Haldia and the

International Airport areas, the areas under the jurisdiction of Kolkata, Howrah and South Suburban Corporations, so much of the Hooghly river as is downstream of the northern limit of the Kolkata Port and all land as are within the 10 kilometres of the high water mark and spring tide on either side of the river, while the Commissioner of Customs (Preventive), West Bengal, the appellant herein and subordinate authorities under his control have jurisdiction over the rest of the State of West Bengal and therefore the purported seizure carried out by the 5th respondent namely the Preventive Officer of customs, SRI Unit within the territorial limits of the International Airport is entirely without jurisdiction and therefore wholly illegal and void ab initio.

5. Further it was contended that the inventory-cum-seizure list, impugned in the writ petition, does not contend any prima facie ingredients which can be said to lead to a reason to believe that the goods of the writ petitioner were of foreign origin and illegally imported into India and therefore the seizure is illegally. On facts the writ petitioner contended that the goods were sourced from Imphal, Manipur within India purchased by way of valid domestic transactions and the copies of the GST invoices e-way bills and air way bills were already submitted and therefore further detention of the goods is not tenable. Further it was contended that the customs authorities cannot seize or detain the goods under Section 110 of the Act on a mere suspicion and as such there was no reason to believe that the consignment was liable to be confiscated under the provisions of the Customs Act. The revenue resisted the prayer sought for in the writ petition and the contentions are advanced by contending that although 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 the Customs (Preventive), West Bengal from exercising jurisdiction, as he has jurisdiction over the entire State of West Bengal, and area of jurisdiction of the Commissioner of the Customs (Preventive), West Bengal has been delineated to be whole of the State of West Bengal, Sikkim and the Union Territory of Andaman and Nicobar Islands.

6. The writ petitioner placed reliance on the decision of the Division Bench of this court in ***Commissioner of Customs Versus Md. Ahmed Ali Khan***¹. In support of their contention that the Commissioner of Customs (Preventive) had no jurisdiction over the International Airport. The revenue sought to distinguish the decision on the ground that the challenge in the case of ***Md. Ahmed Ali Khan*** was to the correctness of the order passed by the Customs Excise and Gold (Control) Appellate Tribunal, Eastern Bench, Kolkata whereas in the instant case, the writ petitioner has challenged the seizure list and the summons and as such, the writ petition is not maintainable. It was further contended that on facts, the case is distinguishable and the writ petition is premature.

7. Further it was contended that the period for making an enquiry/investigation under Section 110(2) of the Act is yet to expire and at this stage this court should not exercise its power of judicial review. The learned writ court was of the view since the jurisdictional issue has been

¹ 2006 SSC Online Calcutta 858; (2006) 204 ELT 36

raised, proceeded to decide the writ petition on the basis of the materials on record, without calling for affidavits. The learned writ court after noting the facts, referred to the notification dated 24.08.2017 and held that in terms of the said notification in column 3 of table 2, serial no. 11, the Commissioner of Customs (Preventive), West Bengal has been conferred with the jurisdictional area in respect of the whole of State of West Bengal, Sikkim and Union Territory and Andaman and Nicobar Islands. In Column 3 of Table 2 in serial no. 10, the Principal Commissioner of Customs (Port) Kolkata and Principal Commissioner of Customs (Airport and Air Cargo Complex), Kolkata have been conferred jurisdictional area of ports of Kolkata and Haldia Netaji Subhas Chandra International Airport, the area under the jurisdiction of Kolkata, Howrah and South Suburban Corporations, so much of the Hooghly river as is the downstream of the northern limit of Kolkata Port and all lands are within the 10 Kms; of high water mark and spring tide on either side of the river as also the Andaman and Nicobar Islands and Falta Special Economic Zone. The learned writ court held that a conjoint reading of column 2 serial no. 10 and 11 and column 3 of table 2 it clearly appears that all though jurisdiction has been conferred on the Commissioner of Customs (Preventive) in respect of the whole of 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 jurisdictional area inter alia, including Netaji Subhas Chandra International Airport. Thus the learned writ court held that in the notification which delineates the jurisdiction of the officers of the customs makes it explicitly clear that sole jurisdiction has been

conferred on the Principal Commissioner of Customs (Port) Kolkata and the Principal Commissioner of Customs (Airport and Air Cargo Complex), Kolkata to decide all violations in respect of inter alia, Netaji Subhas Chandra International Airport. The learned writ court rejected the contention of the revenue that the Commissioner of Customs (Preventive) enjoys concurrent jurisdiction with the Principal Commissioner of Customs (Port), Kolkata and Principal Commissioner of Customs (Airport and Air Cargo Complex), Kolkata. With regard to the decision in **Md. Ahmed Ali Khan**, the learned writ court observed that the notification based on which the said judgment was delivered and the notification in the present case are different yet held that from the language employed in the notifications, it would be amply clear that when a specified authority is conferred with the jurisdiction to consider the violations of the provisions of the Act, in respect of a particular jurisdictional area, then it is that particular authority which shall have sole jurisdiction in respect of the said area notwithstanding the overall jurisdiction of the State may vest with another authority.

8. The learned writ court rejected the contention of the revenue that the court should not interfere with the case which is under investigation by holding that since the preventive officer, respondent no. 5 did not have jurisdiction the customs authorities cannot be permitted to proceed with the enquiry/investigation. Consequently, it held that the question whether the 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. Accordingly, the seizure list/detention order were quashed with a direction to the appellant to release the goods to the writ petitioner along

with an observation that the order passed in the writ petition will not stand in the way of the department initiating appropriate proceedings against the writ petitioner by an appropriate authority in accordance with law.

9. Mr. K.K. Maity, learned Senior Standing Counsel appearing for the appellant assisted by Mr. Tapan Bhanja, learned Junior Standing Counsel contended that in the notification dated 24.08.2017 in Table 2 Serial No. 11, the Commissioner of Customs (Preventive), West Bengal has jurisdiction over (i) the whole of State of West Bengal and Sikkim (ii) Union Territory of Andaman and Nicobar Island. This aspect was not properly appreciated by the learned writ court. Further the learned writ court committed an error in holding that the Principal Commissioner of Customs (Airport and Air Cargo Complex) Kolkata has jurisdiction over the International Airport though in Serial No. 10 of the notification dated 24.08.2017 clearly specifies that the Principal Commissioner of Customs (Airport and Air Cargo Complex), Kolkata and Principal Commissioner of Customs (Port), Kolkata has only jurisdiction over the ports of Kolkata and Haldia and Netaji Subhas Chandra International Airport, the area under the jurisdiction of Kolkata, Howrah and South Suburban Corporations so much of the Hooghly river as its downstream of the Northern Limit of the Kolkata Port and lands are within 10 kilometres of the high water mark had spring tide on either side of the river the Andaman and Nicobar Islands and Falta, Special Economic Zone.

10. It is further submitted that the Dum Dum Airport has been declared as Netaji Subhash Chandra International Airport from 1995 and in terms of the notification dated 25.08.2017, the Principal Commissioner of Customs (Airport and Air Cargo Complex), Kolkata has only jurisdiction over Netaji

Subhash Chandra International Airport and not on the whole airport. Further it is contended that the learned writ court failed to appreciate that the Commissioner of Customs (Preventive), West Bengal has jurisdiction over the whole of the State of West Bengal and therefore the seizure was valid. It was further submitted that there was reason to believe that the goods are of foreign origin which has led to its seizure and when the investigation is yet to be completed the learned writ court ought not to have quashed the seizure list and directed the unconditional release of the goods. Further it is contended that the summons sent to the alleged supplier/trader based at Imphal in the address given in the GST invoice was returned with the postal endorsement "addressee not known". Further as per the supplier/traders GSTIN details they do not have a license to deal with areca nuts.

11. Mr. Maity placed reliance on the Customs Preventive Manual (Central) Volume 1 (General) to explain the powers of the Commissioner (Preventive). It is submitted that in terms of the manual, the Commissioner (Preventive) has jurisdiction and function with all work related to anti-smuggling, surveillance over sea, land and other formation, collection and working out of the intelligence, disposal, marine and preventive wing, court matters, investigations etc. So far as the Commissioner (Airport) he would have jurisdiction and functions all work related to movement of aircrafts, incoming/outgoing passengers and baggage at the airport, anti-smuggling works at airport, import/export of goods by courier mode etc. Further by placing reliance on the said manual, it is submitted that the main function of the preventive department is prevention of smuggling of dutiable,

prohibited and restricted goods. The other relevant directives/information in the Preventive Manual were also referred to. Thus, it was submitted that the impugned order is liable to be set aside and the department should be permitted to continue with their investigation.

12. Mr. Rohit Das, learned advocate appearing for the respondent writ petitioner reiterated the submissions made before the learned Single Bench and has elaborately referred to the reasoning given by the learned writ court and sought to sustain the decision. By referring to the notification dated 24.08.2017, it is submitted that the appellant namely the preventive department of the customs had no jurisdiction to effect the seizure within the territorial limits of the International Airport. Further there was no reason to believe that the goods are of foreign origin and the detention/seizure is illegal. It is further submitted that if a statute requires an authority to exercise powers it is only that authority which can exercise such power and not any other authority. Further the reason to believe that the goods are of foreign origin requires a solid foundation and cannot be on a mere suspicion more particularly when the burden is on the department to show that the goods are of foreign origin. With regard to the Customs Preventive Manual which was relied on by Mr. Maity, it is submitted that it is in the nature of a citizen's charter and the same cannot be relied on by the department to sustain their action.

13. We have elaborately heard the learned advocates for the parties and carefully perused the materials placed on record.

14. Section 110 of the Customs Act, 1962 deals with seizure of goods, documents and things. Subsection (1) states that if the proper officer has

reason to believe that any goods are liable to confiscation under the Act, he may seize such goods. Reasonable belief as to the smuggled goods as enjoined in the Act was explained by the Hon'ble Supreme Court in ***State of Gujarat Versus Mohanlal Gitamalji*** ². It was held that whether or not the officer concerned had seized the article under the "reasonable belief" that the goods were smuggled is not a question on which the court can sit on appeal. The circumstances under which the officer concerned entertains reasonable belief, have to be judged from his experienced eye who is well equipped to interpret the suspicious circumstances and to form a reasonable belief. For the same proposition reference, may be made to the decision in ***Mashir Versus State of Kerala*** ³ and ***Barium Chemicals Limited Versus Company Law Board*** ⁴.

15. The Hon'ble Supreme Court in ***Indu Ramchandra and Other Versus Union of India*** ⁵, held that the conclusions arrived at by the fact-finding bodies, the tribunal or the statutory authorities, on the facts found that the cumulative effect or pre-ponderance of evidence cannot be interfered where the fact-finding body or authority has acted reasonably upon the view which can be taken by any reasonable man, courts will be reluctant to interfere in such a situation. As has been seen from the impugned order, affidavits were not called for from the department, nonetheless in the appeal the authority has stated that the two summons were sent to the suppliers/traders at Imphal, Manipur from whom the writ petitioner is said to have purchased

² (1987) 2 SCC 364

³ (1974) 2 SCC 687

⁴ AIR 1967 SC 295

⁵ (1988) 4 SCC 1

the goods and both the summons were returned undelivered with the postal endorsement “addressee not known”.

16. Further it is contended that from the GSTIN details of the supplier/trader at Imphal, Manipur it is seen that the said supplier does not have license to deal with areca nuts. Further it is submitted that the writ petitioner though was informed did not turn up nor produced any documents to claim the goods and therefore seizure was effected under Section 110 of the Act on the reasonable belief that the goods were illegally imported into India in contravention to the provisions of the Foreign Trade Policy, 2023 and were liable for confiscation under the provisions of the Customs Act. Thus the writ petition cannot contend that the seizure of the goods in exercise of the powers conferred under Section 110 of the Act was without any basis.

17. Having steered cleared of this issue, the only other issues which remains to be considered is whether the appellant authority namely the authority of the Preventive Wing of the customs department had jurisdiction to seize the goods from the domestic cargo complex in the Netaji Subhas Chandra International Airport. Before we go into the notification dated 24.08.2017 we are required to consider as to what is the purpose for which the Preventive Wing of the customs department has been created/notified. We do not agree with the submissions made by the learned advocate for the respondent writ petitioner that the Customs Preventive Manual relied on by Mr. Maity is in the form of a Citizen’s Charter. No doubt in the first page of the Preventive Manual under the column contents pages (i) to (ii) mentions Citizen’s Charter of Customs and Central Excise, however what is important

is the subsequent chapters which deal with powers, duties and responsibilities of the preventive department. Under chapter 1 under sub heading Organizational Set Up, Field Formation has been dealt with. It is stated that to effectively monitor the entire gamut of the customs work along the borders and across the country, Field Formations in the form of land customs stations, customs ports and customs airport, customs area warehousing the boarding stations, exporting processing zones, inland container depots and freight stations etc. have been appointed by the Government under Section 7, 8, 9 and 10 of the Customs Act. Under the heading jurisdiction of the Chief Commissioner of Customs/Central Excise so far as Kolkata there are four Commissioners of Central Excise in Kolkata apart from in Bolpur and Shillong there are two Commissioners of Customs namely Kolkata (Port), Kolkata (Airport), West Bengal and Shillong. The manual further that the set ups to monitor and control the customs work in a specified area or region is known as Commissionerate. A Commissionerate is a full fledged establishment having its own structure of man power, equipment and other paraphernalia to run the administration for effective transaction of customs works. With regard to the division of work, the broad classification of the Commissioner of Customs have been mentioned under which the Commissioner (Preventive) shall have the jurisdiction and will function with regard to all work related to anti-smuggling surveillance over sea, land and other formations, collection and working out of intelligence, disposal, marine and preventive wing, court matters, investigation etc. The Commissioner (Airport) shall have jurisdiction and would function with regard to all works related to movement of aircrafts, incoming/outgoing

passengers and baggage at the airport, anti-smuggling work at the airport, import/export of goods by courier mode etc.

18. In chapter 1 the functions of the preventive department have been set out and it is mentioned that the main function of the preventive department, is prevention of smuggling of dutiable, prohibited and restricted goods. In addition, it also has to aid and supplement of activities of some other departments in enforcing the provisions of the Customs Act and various allied acts relating to arrival and departure of the vessels and aircrafts; discharge, landing and clearance of imported and warehoused goods, shipment and transshipment of goods at the docks, airport and other stations. It is further stated that even in case of regular import/export of goods through the normal trade channel though the procedure connected therewith are attended by the appraising section, it is the preventive wing which ensures the total observance of law by the trade and public by effecting proper checks at the points of entry/exit. There is no aspect of customs functioning with which the preventive service is not directly or indirectly associated. The manual states that the preventive officer of customs is the first to greet any visitor arriving in India and the last he has to see departure from India and in the process, he has to shoulder dual responsibility. On the one hand, he has to conduct himself to the visitor as an ambassador of India. On the other, being a soldier in the economic front, he has to ensure the proper observance of the laws of the land by the visitor. Further a separate sub heading has been devoted for "Proper officers under the Customs Act, 1962" and a tabulated format has been given giving the relevant sections of the Customs Act and the subject to be dealt with by the

officer in brief. In chapter 4 of the table deals with preventive officers and the powers under Section 110 has also been conferred on the preventive officers. Chapter 5 of the manual deals with import and exports buyers under which there are various sub headings one of which is the air cargo complex. There is a reference to both Circular No 69/99-Cus dated 06.10.1999. Under the sub heading I.G.M Register, it is stated that it will be the duty of the Superintendent (Preventive/Cargo) to ensure that each and every flight landed, the master copy of the I.G.M together with the cargo is received in the cargo complex within 24 hours of the landing. He shall also verify the documents relating to transfer of cargo to ACC, Airlines bonds, direct delivery, W/H etc. are attached with the manifest. With regard to the direct delivery of the import cargo it is stated that a special direct delivery cell is created which is manned by the Preventive and Ministerial staff. Under the sub heading clearance of domestic cargo at air cargo complex it is stated that the cargo will be received under the supervision of the Preventive Officer. With regard to the duties of the Preventive Officer/International Airlines Warehouse, it is stated that the preventive officer posted in the warehouse of the airlines has to oversee and monitor the movement of the import/export cargo to and fro from the warehouse. With regard to the preventive officers/domestic carrier airlines warehouse, it is stated that in these warehouses the preventive officers are posted round the clock. The Superintendent (Preventive and Preventive Officers) are also deployed to work and attend various tasks of processing of documents/clearance of import/export cargo through EDI system etc. Thus, it is clear that the preventive officer has overall jurisdiction to discharge various duties and

responsibilities with the main function of the preventing, smuggling of dutiable, prohibited and restricted goods. Bearing this in mind, we proceed to consider the scope of notification which is the subject matter of interpretation before the learned Single Bench.

19. In table 2 of the notification, serial nos. 10 and 11 would be relevant for the case on hand which is quoted hereunder:

SL. NO.	<u>AREA</u>	<u>DESIGNATION OF OFFICER</u>	
(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 watermark 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).
(11)	(i) The whole of the States of West Bengal and Sikkim; (ii) Union Territory of the Andaman and Nicobar Islands	Commissioner of Customs (Preventive), West Bengal	Additional Commissioners, or Joint Commissioners, or Deputy Commissioners of Customs working under the control of the Commissioner of Customs (Preventive), West Bengal.

20. The above notification has been issued by the Central Board of Excise and Customs in exercise of the powers conferred under Subsection (1) of Section 4 of the Customs Act and in supersession of the three notifications all dated September 16, 2014 whereby the Central Board appointed the officers and define the area of jurisdiction. Section 4 of the Customs Act deals with Appointment of Officers of Customs. Subsection (1) states that the Central Government (subsequently substituted with the word “Board” with effect from 11.05.2002) may appoint such persons as it thinks fit to the officers of the Customs. Subsection (2) states that without prejudice to the proceedings of the Subsection(1) the Board may authorize the Chief Commissioner of Customs or the Commissioner of Customs or the Joint or Deputy or Assistant Commissioner of Customs to appoint the officers of Customs below the rank of the Assistant Commissioner of the Customs (as the section stood prior to the substitution by Act 20 of 2002 with effect from 11.05.2002. By virtue of this provision, the Central Government is empowered to delegate to the Board and the superior officers of customs, the power to appoint subordinate officers. Thus, the notification dated August 24, 2017 is a statutory notification.

21. The cardinal principle of interpretation would be to read the notification as such and the interpretation if to be given should be to give effect to the notification in its letter and spirit and not to thwart the purpose for which it has being issued. In any event, the notification issued in exercise of powers under Section 4(1) of the Act is for administrative convenience and the court should seldom step into the realm of

administration and make a hair-splitting exercise when the scope of the notification is called in question. In other words, the interpretation should be purposive interpretation to enable the designated officers to carry out the functions under the provisions of the Customs Act. In terms of clause 10 of the notification, as noted above, the Commissioner of Customs (Preventive), West Bengal shall have jurisdiction (i) over the whole of the State of West Bengal and Sikkim (ii) Union Territory of Andaman and Nicobar Island.

22. The Oxford Dictionary, 10th Edition defines “whole” to mean complete; entire, emphasizing a large extent; a whole range of issues; a thing that is complete in itself and taking everything into account. The Chambers Dictionary Revised 13th Edition defines “whole” to mean not broken; undamaged; not broken up or ground or deprive of any part; containing total number etc; complete; from which no constituents have been removed; the entire thing; something complete in itself. Therefore, the purposive interpretation to the word “whole” that should be given would mean that the Commissioner of Customs (Preventive), West Bengal will exercise all powers throughout the territories of the State of West Bengal and Sikkim and apart from that the Additional Commissioners or Joint Commissioners or Deputy Commissioners or Assistant Commissioners of Customs working under the control of the Commissioner of Customs (Preventive), West Bengal shall also exercise jurisdiction to the whole of the States of West Bengal and Sikkim as well as Union Territory of the Andaman and Nicobar Island.

23. Clause 10 of the notification deals with the jurisdiction of the (i) Principal Commissioner of Customs, (Port), Kolkata (ii) Principal Commissioner of Customs (Airport and Air Cargo Complex), Kolkata and the

Additional Commissioners or Joint Commissioners or Deputy Commissioners or Assistant Commissioners of Customs working under their control. Their jurisdiction is with regard to the ports of Kolkata and Haldia, Netaji Subhash Chandra International Airport, area under the jurisdiction of Kolkata, Howrah and South Suburban Corporations so much of Hooghly river as is downstream of the Northern Limit of Kolkata port and all lands as are within the 10 kilometers of high water mark and spring tide on either side of the river; (ii) the Andaman and Nicobar Islands; (iii) Falta, Special Economic Zone.

24. As noted above the interpretation to be given to statutory notification conferring jurisdiction upon the officers has to be given the true meaning and purpose for which such notification has been issued. If the Commissioner of the Customs (Preventive), West Bengal exercise jurisdiction over the whole of the States of West Bengal and Sikkim apart from the Union Territory of Andaman and Nicobar Islands, it cannot be said that merely because in Clause 10, the Principal Commissioner of Customs (Airport and Air Cargo Complex), Kolkata has been given jurisdiction over Netaji Subhas Chandra International Airport that would denude the jurisdiction of the Commissioner of Customs (Preventive), West Bengal. This interpretation alone will sub-serve the purpose for which the power has been exercised under Section 4(1) and any other interpretation which will thwart the effective implementation of the notification has to be wholly avoided and rejected. Thus, we are of the view that the Commissioner of Customs (Preventive), West Bengal has jurisdiction over the whole of the States of West Bengal and Sikkim and the jurisdiction conferred on the

Principal Commissioner of Customs (Airport and Air Cargo Complex), Kolkata over the Netaji Subhas Chandra International Airport will not take away the powers of the Commissioner of Customs (Preventive), West Bengal who has the jurisdiction over the entire State of West Bengal.

25. So far as the decision in the case of **Md. Ahmed Ali Khan** is concern, as noted by the learned Single Bench, the interpretation was regarding two notifications which were issued on 27.08.1983 at the relevant time, the Airport was Dum Dum Airport and has not been classified as an International Airport. Apart from that, as rightly pointed out by Mr. Maity, the matter arose out of an reference under Section 130 of the Customs Act, unlike the case on hand in which a seizure list has been impugned in the writ petition. Therefore, the writ petition ought to have been rejected at the threshold as being premature. Nevertheless, the learned writ court had dealt with the matter pertaining to the jurisdiction and consequently we were required to go into the correctness of the order and in our considered opinion, the interpretation given to the notification by the learned Single Bench is not tenable.

26. It was contended before the learned writ court that the seizure was without any basis and the authority did not have any reasons to belief that the goods were of foreign origin. However, when we see the inventory cum seizure list of the seized goods dated 06.02.2024, it has been stated that the Cargo Manager of the Indigo Airlines was directed to call the consignee, the writ petitioner to appear. However, the consignee/writ petitioner neither appeared to claim the goods nor contacted the officers concerned. Therefore, the seizing officer has recorded that the consignee neither turned up nor

produced any documents to claim the goods and therefore the goods have been seized under Section 110 of the Customs Act on the reasonable belief that the said goods were illegally imported in India in contravention to the provisions of the Foreign Trade Policy, 2023 and liable for confiscation under the provisions of the Customs Act. Further it is seen that representative samples have been drawn from all the three bags and the seizure-cum-search list incorporating all the facts was prepared in the presence of the two independent witnesses. Therefore, it cannot be stated that the seizure was effected without any reasonable belief that the goods are of foreign origin.

27. In the result, it is held that the seizure by the Preventive Department of the Customs is valid and the seizure is not vitiated for the reasons contended by the writ petitioner and consequently the order passed in the writ petition is set aside and the appeal is allowed. The Customs department are directed to proceed with the investigation and take the matter to the logical end in accordance with law.

(T.S. SIVAGNANAM, C.J.)

I Agree.

(HIRANMAY BHATTACHARYYA, J.)

(P.A- SACHIN)