

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.768 of 2021

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

... .. Petitioner

Versus

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

... .. Respondents

Appearance :

For the Petitioner/s	:	Mr. Prabhat Ranjan, Advocate
For the Respondent/s	:	Dr. K.N. Singh, ASG
		Mr. Anshuman Singh, Sr.SC
		Mr. Shivaditya Dhani Sinha, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE ASHOK KUMAR PANDEY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 26-06-2025

Heard learned for the petitioner and learned Additional Solicitor General assisted by learned Senior Standing Counsel for the Department of Customs.

2. This writ application has been filed seeking the following reliefs :-

“(i) Quashing of the Seizure Memo dated 22.01.2020 (Annexure 3) whereby the Truck



bearing Registration No. UP – 15DT – 4355 has been seized under Section 110 of the Customs Act for the alleged violation of Section 7, 11, 46 and 47 of the Customs Act, 1962 and Notification No. 9/96 issued under Section 11 of the Customs Act, 1962 read with Section 3(2) of the Foreign Trade (Development and Regulation) Act, 1992;

(ii) Provision Release of the Seized Truck bearing Registration No. UP – 15DT – 4355 during the pendency of the instant Writ application in terms of the application dated 06.02.2020, 10.08.2020, 15.09.2020 and 21.12.2020 (Annexure 4 Series, 6, 9 and 11) pending before the compete authority;

(iii) Restraining the Respondents, from taking any coercive action against the petitioner in connection with the and in consequence of the Seizure dated 22.01.2020 (Annexure 3).

3. Learned counsel for the petitioner submits that the case of the petitioner would be covered by the judgment of this Court in the case of **M/s Ashoke Das and Another versus Union of India and Others** reported in **2025 SCC OnLine Pat 1553**. The Seizure Memo dated 22.01.2020 as contained in Annexure ‘3’ to the writ application has been drawn in identical manner as has been found by this Court in the case of **M/s Ashoke Das** (supra).

4. Attention of this Court has been drawn towards the Seizure Memo (Annexure ‘3’) in which in the column where reason for seizure/detention of goods is required to be filled up, the Seizing Officer has only mentioned as under:-



“Violation of Sections 7, 11, 46 & 47 of Customs Act, 1962 and violation of Notification No. 9/96 (NT) Cus dated 22.1.96 issued under Section 110 of the Customs Act, 1962 read with Section 3(2) of Foreign Trade (Development and Regulation) Act, 1992 and Notification order etc. issued there under.”

5. On earlier occasion, when the writ application was mentioned for consideration, this Court passed the following order:-

Order dated 25.04.2025

“After this Court delivered its judgment in CWJC No. 17756 of 2024 and CWJC No. 17758 of 2024 today, learned counsel for the petitioners has mentioned these matters saying that these writ applications would be covered by the judgment of this Court in case of **M/s Ashoke Das and Another Vs. Union of India and Others (CWJC No. 4918 of 2021)** reported in **2025 SCC OnLine Pat 1553** and also by the judgment of this Court delivered today in the aforementioned writ applications.

2. Mr. Anshuman Singh, learned Senior Standing Counsel for the Department of Customs submits that he would seek instructions. Counter affidavits have already been filed in these writ applications.

3. Learned counsel for the parties have requested this Court to fix a date.

4. List all these cases on 05th May, 2025 within top ten cases for consideration.”

6. Today, when the writ application is taken up for consideration, learned ASG and learned Sr. Standing Counsel for



the Department has informed that the judgment of this Court in the case of **M/s Ashoke Das** (supra) has been acted upon by the Department, to their information no special leave petition to appeal has been filed challenging the judgment of this Court in the case of **M/s Ashoke Das** (supra).

7. In the case of **M/s Ashoke Das** (supra), this Court has in the operative part of the judgment held as under:-

“41. It is apparent from a bare reading of the order of the Hon’ble Supreme Court that it was passed after granting leave against the Division Bench judgments of this Court and the effect of the order of the Hon’ble Supreme Court may be clearly seen. The principle of ‘merger’ will apply. Despite quashing of the seizure memo, it cannot be said that the appellants cannot investigate and proceed in accordance with law under the provisions of the Act of 1962.

42. In the light of the aforementioned discussions, when we examine the seizure memo (Annexure P1), it is found that the Seizing Officer has not complied with the mandate of sub-section (1) of Section 110 of the Act of 1962. The Hon’ble Delhi High Court has, in **Worldline Tradex Private Limited** (supra) categorically held that the power of seizure under Section 110 of the Act has to obviously be exercised for valid reasons. The proper officer has to record his reasons to believe that the goods that he proposes to seize are liable to confiscation. The said reasons for exercise of the power have to be recorded prior to the seizure. The subsequent instruction issued by the Department clearly says that in addition to panchnama reason to believe should be indicated in the seizure memo/order.

43. We find from the records that in the present case, apart from the seizure list, there is no other order of the Seizing Officer showing his reason to believe. The learned co-ordinate Bench of this Court in the case of **Assam Supari Traders** (supra) and **Krishna Kali Traders** (supra) has held that mere mentioning of the sections of the Act of 1962 in the seizure memo would not be sufficient in absence of material information relating to ‘reason to believe.’ We are in agreement with the said view of the learned co-ordinate Bench. We have



been told at the Bar that **Assam Supari Traders (supra)** and **Krishna Kali Traders (supra)** have attained finality as no challenge to these judgments have been taken to the Hon'ble Supreme Court.

44. In result, the seizure memo (Annexure P1) is quashed. So far as the notice to show cause as contained in Annexure P7 to the writ petition is concerned, we refrain from interfering with the show cause notice. We have already recorded the order of the Hon'ble Supreme Court hereinabove in which it has been held that quashing of the seizure memo does not mean the appellants cannot investigate and proceed in accordance with law under the provisions of the Act of 1962. The petitioner, if so advised, may submit his reply to the show cause notice. It is open to the petitioner to file a reply to the show cause notice within six weeks from today whereafter the adjudicating officer shall proceed to pass appropriate order under the provisions of the Act of 1962.

45. All questions with regard to the issuance of show cause notice and impact of quashing of the seizure memo (Annexure P1) shall remain open.”

8. Mr. Prabhat Ranjan, learned counsel for the petitioner submits that a similar order may be passed in this case as the issues involved in the present writ application are fully covered by the judgment of this Court in the case of **M/s Ashoke Das (supra)** which in turn has taken into consideration the judgment of the Hon'ble Supreme Court and learned Co-ordinate Bench on the issues which had fallen for consideration.

9. In view of the stand of the parties recorded hereinabove, this writ application is being disposed of in similar terms as has been done by this Court in the case of **M/s Ashoke Das (supra)**.



10. The Seizure Memo as contained in Annexure ‘3’ is quashed, however, in terms of the observations in paragraphs ‘44’ and ‘45’ in the case of **M/s Ashoke Das** (supra), it is once again held that quashing of Seizure Memo would not mean that the Department cannot investigate and proceed in accordance with law under the provisions of the Customs Act, 1962. Other observations shall also apply in the present case.

11. This writ application stands disposed of.

(Rajeev Ranjan Prasad, J)

(Ashok Kumar Pandey, J)

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AFR/NAFR	
CAV DATE	
Uploading Date	30.06.2025
Transmission Date	

