IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7085 of 2022

==

Jayesh Agarwal, Son of Sri Sawan Kumar Agarwal, Proprietor of M/s Dadrewa Tea House, Resident of Nehru Road, Khalpara Siliguri, Siliguri Bazar, District- Darjeeling Pin- 734005 (West Bengal).

... ... Petitioner

Versus

1. The Union of India through the Chief Commissioner of Customs (Preventive), 5th Floor, Central Revenue Building, Birchand Patel Path, Patna.
2. The Commissioner of Customs (Preventive), Head Quarters, 5th Floor, Central Revenue Building, Birchand Patel Path, Patna.
3. The Joint/Additional Commissioner cum Adjudicating Authority, Office of the Commissioner of Customs (Preventive), Head Quarters, 5th Floor, Central Revenue Building, Birchand Patel Path, Patna.
4. The Assistant Commissioner, Customs (Preventive) Head Quarters, 5th Floor, Central Revenue Building, Birchand Patel Path, Patna.
5. The Superintendent of Customs/Seizing Officer, Kishanganj, Near Ruidhasa Maidan, District- Kishanganj.
6. The Joint Commissioner of Customs (Preventive) Head Quarters, 5th Floor, Central Revenue Building, Birchand Patel Path, Patna- 800001.

... ... Respondents

==

with

Civil Writ Jurisdiction Case No. 7069 of 2022

==

Hanumalmal Surana @ Hanuman Mal Surana, Son of Sri Mool Chand Surana Proprietor of M/s M.H. Trading, Resident of Pipali Chowk, Nokha Gaon, Bikaner, Nokha Village, Rajasthan.

... ... Petitioner

Versus

1. The Union of India through the Chief Commissioner of Customs (Preventive), 5th Floor, Central Revenue Building, Birchand Patel Path, Patna.
2. The Commissioner of Customs (Preventive), Head Quarters, 5th Floor, Central Revenue Building, Birchand Patel Path, Patna.
3. The Additional Commissioner cum Adjudicating Authority, Office of the Commissioner of Customs (Preventive) Head Quarters, 5th Floor, Central Revenue Building, Birchand Patel Path, Patna.
4. The Superintendent of Customs/Seizing Officer, Forbesganj, Goriyare Chowk, Forbesganj, District- Araria (Bihar).
5. The Joint Commissioner of Customs (Preventive) Head Quarters, 5th Floor, Central Revenue Building, Birchand Patel Path, Patna- 800001.

... ... Respondents

==

Appearance :

(In Civil Writ Jurisdiction Case No. 7085 of 2022)

For the Petitioner/s	:	Mr. Saket Gupta, Advocate Mr. Animesh Gupta, Advocate Mr. Shivam Gupta, Advocate
For the Respondent/s	:	Mr. K.N. Singh, Sr. Adv (ASG) Mr. Shivaditya Dhani Sinha, Advocate

(In Civil Writ Jurisdiction Case No. 7069 of 2022)

For the Petitioner/s	:	Mr. Saket Gupta, Advocate Mr. Animesh Gupta, Advocate Mr. Shivam Gupta, Advocate
For the Respondent/s	:	Mr. K.N. Singh, Sr. Adv (ASG) Mr. Shivaditya Dhani Sinha, Advocate

==

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 24-02-2025

Heard Mr. Saket Gupta, learned counsel for the petitioner(s) and Dr. K.N. Singh, learned Additional Solicitor General for the Department of Customs in both the writ applications.

CWJC No. 7085 of 2022

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

> "a) Quashing/Setting Aside of Seizure Memo dated 19.01.2021 issued in respect of the seizure made by the Intelligence Officers of the Directorate of Revenue Intelligence and in connection with Unit Case No. 97/KNE/2020-21 (Annexure-04) whereby 21,000 kilograms (Net Weight) of White Peas along with one truck bearing registration number WB-59B4437 have been seized for alleged violation of Section 7, 11, 46 and 47 of

the Customs Act, 1962 read with Section 3(2) of the Foreign Trade (Development & Regulation) Act, 1992.

b) Direction to respondents to pay compensation for the intentional spoiling of the whole consignment of 21,000 kg of White Peas amounting to Rs.15,22,500 and rendering it unmarketable and totally unfit for human consumption.

c) Direction to respondents to pay exemplary damages for violation of fundamental rights guaranteed under Article 19 and Article 21 resulting from illegal seizure dated 19.01.2021 and the deliberate spoilage and contamination of the same by not storing the same in proper storage facilities or provisionally releasing the same before spoilage.

d) Cancellation of bond executed of the total value of the goods and also cancellation of bank guarantee of 40% of the value of the goods which was provided by the petitioner for securing the provisional release of goods since the whole of the goods has already been spoiled.

e) Restraining the respondents from taking any coercive action against the petitioner in connection with Seizure Memo dated 19.01.2021.

f) For any ad interim order in terms of prayers above.

g) For any other direction, which your Lordships may deem fit and proper in the facts and circumstances of the case."

Brief Facts of the Case

3. The petitioner is a registered dealer under the Goods and Services Act, 2017 (hereinafter called 'the GST Act' or 'the Act of 2017'). It is dealing in tea, pulses, foodgrains etc. and it is stated that the petitioner is engaged in inter-State/intra-State supply of the same.

4. The petitioner claims that he had purchased White Peas Gota weighing 30,000 kilograms in the name of his proprietorship firm M/s Dadreya Tea House, from M/s S.R. (India) Trade, Jaiswal Compound, West Boragaon, Guwahati, Assam vide Purchase Invoice dated 07.01.2021 amounting to a bill of Rs.19,20,000/-. A copy of the Invoice dated 07.01.2021 has been brought on record as Annexure '2' to the writ application.

5. The purchased goods (White Peas Gota) was transported to the registered office of the petitioner situated at Nehru Road, Khalpara, Siliguri, West Bengal and out of this, 21,000 kilograms of peas packed in 420 bags was sold to M/s K.L. Pulses Centre, 19 Kirti Basu Mukherjee Road, Kolkata under the Invoice No. SALE/088/20-21 dated 18.01.2021. A copy of this invoice has also been enclosed as Annexure '3' to the writ application.

6. In the aforementioned background the consignment of peas headed to M/s K.L. Pulses Centre, Kolkata in a truck with valid documents and bills but while passing through Kishanganj on 19.01.2021 at around 11 O'clock, the said truck was intercepted by the Officers of the Customs Division, Kishanganj Circle in the name of documents verification. The entire documents were presented to the Officials of the Customs Division Kishanganj

Circle. It is stated that without verifying the same, the respondent no. 4 straightaway exercised powers under Section 110 of the Customs Act, 1962 (hereinafter referred to as 'the Act of 1962') and seized the goods and the truck vide Seizure Memo dated 19.01.2021 for alleged violation of Sections 7, 11, 46 and 47 of the Act of 1962 read with Section 3(2) of the Foreign Trade Development & Regulation Act, 1992 and registered the Unit Case No. 97/KNE/2020-21 dated 19.01.2021. A copy of the Seizure Memo arising out of the said Unit Case has been enclosed as Annexure '4' to the writ application.

Provisional Release of seized goods/vehicle

7. From the averments made in the writ application, it appears that the petitioner made representation for provisional release of the White Peas which according to the petitioner were in the nature of highly perishable goods. On 08.03.2021, the respondent no. 5 was pleased to pass an order of provisional release of the seized vehicle valued at Rs. 25 lakhs on an onerous condition of execution of bond for total value of the vehicle but there was no communication with regard to the release of the white peas, therefore, once again the petitioner sent a reminder letter dated 09.03.2021 for release of the seized peas. By this time, the formalities of recording of statements had also been completed.

8. It is the case of the petitioner that after his reminder letter dated 09.03.2021, respondent no. 3 came out with a corrigendum dated 25.03.2021 by which he was pleased to pass an order of provisional release of the seized peas valued at Rs.15,22,500/- on an onerous condition of execution of bond for total value of the peas and cash security/bank guarantee of 40 % of the seizure value of the goods. The provisional release orders have also been brought on record.

CWJC No. 7069 of 2022

9. This writ application has been preferred seeking the following reliefs:-

> "a) Quashing/Setting Aside of Seizure Memo dated 08.06.2021 in respect of the seizure made by the Inspector of the Preventive team of Customs (Prev.) Division, Forbesganj in connection with Unit Case No. 68/FBG/2020-21 (Annexure-04) whereby 24,500 kilograms (Net Weight) of Areca Nuts along with 28 pcs of Saree, 31 pcs of Gamchha, 50 metres of Cloth and One truck bearing registration number RJ-19GB/6843 have been seized for alleged violation of Section 7, 11, 46 and 47 of the Customs Act, 1962 read with Section 3(2) of the Foreign Trade (Development & Regulation) Act, 1992 and notifications/orders issued thereunder.
>
> b) Quash the provisional release order on the basis of which the goods (and truck) have been released after having executed a bond of the full value of the goods and also having submitted a bank guarantee of 30 % of the value of goods.

> c) Make the release order absolute and cancel the bond executed for the full value of the goods as well as cancel the bank guarantee of 30% of the value of the goods.
> d) Restraining the respondents from taking any coercive action against the petitioner in connection with Seizure Memo dated 08.06.2021
> e) For any ad interim order in terms of prayers above.
> f) For any other direction, which your Lordships may deem fit and proper in the facts and circumstances of the case."

Brief Facts of the Case

10. The petitioner is a registered entity under the GST Act. It is dealing in procuring, selling and transporting of areca nuts.

11. The petitioner claims that he had purchased Assamese Local Dried Areca Nuts weighing 24,500 kilograms in the name of his proprietorship firm M/s M.H. Trading Co. from farmers and small traders of the local market. The petitioner claims that the dried Assamese areca nuts being local agricultural produce were purchased in loose form without any invoice and without any applicable GST.

12. The purchased goods (Dried Assamese Areca Nuts) weighing 24,500 kilograms was sold to M/s Shri Radhey Shiva Enterprises at the rate of Rs.200/- per Kg with applicable GST under the Invoice No. 21 dated 06.06.2021. A copy of this invoice has been enclosed as Annexure ‘2’ to the writ application.

13. In the aforementioned background, the consignment of Assamese Local Dried Areca Nuts was being transported in the truck to the consignee M/s Shri Radhey Shiva Enterprises at New Lane Gangashahar, Bikaner, Rajasthan with requisite documents i.e. Invoice and E-way Bill generated by M/s M.H. Trading and a consignment note issued by M/s Ajay Goods Carrier (Transporter). A copy of the E-way Bill has been enclosed as Annexure ‘3’.

14. It is stated that while passing through Galgalia Check Post on 07.06.2021 at around 11:30 hours, the said truck was intercepted by the Officers of Galgalia Police Station in the name of documents verification. The entire documents were presented to the Officers of the Galgalia Police Station but despite presenting all the valid documents, the police officers detained the vehicle on the ground that the goods are suspected to have been smuggled from a third country and informed the Officers of Customs Preventive Division, Forbesganj. It is stated that without verifying the same, respondent no. 4 exercised powers under Section 110 of the Act of 1962 and seized the goods and the truck vide Seizure Memo dated 08.06.2021 (Annexure ‘4’) for alleged violation of Sections 7, 11, 46 and 47 of the Act of 1962 and violation of provision of notification(s) issued under Section 11 of the Act of 1962 read with Section 3(2) of the Foreign Trade Development & Regulation Act, 1992 and registered the Unit Case No. 68/FBG/2020-21 dated 08.06.2021. A copy of the Seizure Memo arising out of the said Unit Case has been enclosed as Annexure '4' to the writ application.

Provisional Release of seized goods/vehicle

15. From the averments made in the writ application, it appears that the petitioner made representation for provisional release of the dried areca nuts. On 02.11.2021, the Joint Commissioner, Customs (Prev.), Patna (respondent no. 5) was pleased to pass an order of provisional release of seized goods Dried Areca Nuts weighing 24,500/- kg valued at Rs.84,52,500/- to its legal owner on execution of bond for full seizure value of the seized vehicle and a cash security/bank guarantee of 30% of the seizure value of the subject goods. The petitioner appeared in Division Office on 22.11.2021 and submitted bond/bank guarantee for release of the goods. Accordingly, the goods were released on 22.11.2021.

Submissions on behalf of the Petitioner(s)

16. The petitioner(s) claims that the seizure of goods vide Annexure '4' to both the writ applications on 19.01.2021 and

08.06.2021 respectively had no basis and the mandatory requirements of sub-Section (1) of Section 110 of the Act of 1962 has not been taken care of by the Seizing Officer. It is pointed out that the seizure memo does not contain ‘reason to believe’ that the goods in question are liable to confiscation under the Act of 1962.

17. It is submitted that words ‘reasons to believe’ has been subject matter of discussions in a number of judicial pronouncements and this Court having discussed this issue in detail has taken a view in the case of **Assam Supari Traders, through its Authorized Representative Cum Power of Attorney Holder Anil Kumar Yadav Vs. Union of India through the Secretary, Ministry of Finance, Department of Revenue and Others** reported in **2024 SCC OnLine Pat 6401** and **Krishna Kali Traders and Another Vs. Union of India and Others** reported in **2024 SCC OnLine Pat 880** that mere mentioning of the Sections of the Act of 1962 in the seizure memo would not satisfy the requirements of showing ‘reason to believe’ as envisaged under sub-Section (1) of Section 110 of the Act of 1962. Similarly, this Court has held that punchnama cannot be read into seizure memo.

18. Learned counsel has placed before this Court a recent judgment of this Court in the case of **M/s Ashoke Das and**

Anr. vs. Union of India and Others (CWJC No. 4918 of 2021) decided on 19.02.2025 in which this Court has recorded its agreement with the view taken by the learned Co-ordinate Bench in the case of **Assam Supari Traders** (supra) and **Krishna Kali Traders** (supra).

19. By filing interlocutory application in both the writ applications, seeking amendment of the writ application(s), the petitioner(s) has not only impleaded the Joint Commissioner of Customs (Preventive) as respondent no. 5 in the writ application(s) but have also brought to the notice of this Court that show cause notice dated 13.07.2021 and 07.12.2021 having Reference No. 168/FBG/21-22 and Reference No. 392/FBG/21-22 respectively have been issued against the petitioner(s) and in the notice, the petitioner(s) have been directed to appear before respondent no. 5. The petitioner(s) have, however, not sought quashing of the show cause notice or the proceeding registered by the respondent who had proceeded to adjudicate the confiscation proceeding. The petitioner(s) prayed for the stay of the confiscation proceeding by way of an interim order and this Court has been pleased to direct vide order dated 21.06.2022 that “in the meanwhile, proceeding shall continue but no final action shall be taken without the leave of the Court.”

20. Learned counsel for the petitioner(s) submits that the case of the petitioner would be covered by the judgments of this Court in the case of **Assam Supari Traders** (supra), **Krishna Kali Traders** (supra) and **M/s Ashoke Das** (supra). It is his submission that once the seizure memo is held invalid and the same is quashed by this Court, the respondents cannot continue with further proceeding towards confiscation of the goods.

<u>Submissions on behalf of the Department</u>

21. Dr. K.N. Singh, learned Additional Solicitor General representing the Department of Customs submits that in view of the judgments in the case of **Assam Supari Traders** (supra), **Krishna Kali Traders** (supra) and **M/s Ashoke Das** (supra), even as the seizure memo (Annexure '4') may be liable to be held invalid and bad in law for not recording 'reason to believe', but it would not result in automatic quashing of the entire confiscation proceeding.

22. Learned ASG has drawn our attention towards the order of the Hon'ble Supreme Court in **SLP(s) No. 11124 of 2021** and other analogous matters (**Union of India & Ors. versus M/S Om Sai Trading Company & Anr.** reported in **2022 SCC OnLine SC 1419)**in which while granting leave, the Hon'ble Supreme Court clarified that the quashing of the seizure memo does not mean the appellant cannot investigate and proceed in accordance with law under the provisions of the Act of 1962.

23. It is submitted that this Court while deciding **M/s Ashoke Das** (supra) has incorporated in paragraph '40' of its judgment, the order of the Hon'ble Supreme Court in SLP(s) No. 11124 of 2021 and other analogous matters and having noticed the same, this Court observed that the principle of 'merger' will apply, In the said case, this Court, though, quashed the seizure memo but did not interfere with the show cause notice and left it open to the parties to argue before the competent authority all questions arising out of issuance of show cause notice. It is, thus, submitted that a similar view may be taken by this Court in the present case also. Learned ASG points out that in these cases, in fact, the show cause notice(s) and the confiscation proceeding(s) have not been challenged.

Consideration

24. We have heard learned counsel for the petitioner(s) and learned ASG for the Department of Customs. Before we proceed to take a view in the matter, it would be appropriate to reproduce the Seizure Memo dated 19.01.2021 and 08.06.2021 which are subject matter of challenge in the present writ applications as under:-

"GOVERNMENT OF INDIA
OFFICE OF THE SUPERINTENDENT, CUSTOMS (P) CIRCLE-KISHANGANJ,
NEAR RUIDHASA MAIDAN, DIST-KISHANGANJ, BIHAR-855107
Phone No. : 06456295430, email-kishanganjcircle@gmail.com

SEIZURE MEMO

Unit Case No. **97/KNE/2020-21** Circle : **Kishanganj** Date : **19.01.2021**

1. Import / Export — Illegal Import
2. Claimed / Unclaimed — Claimed
3. Date, Time & place of detention/Seizure — 11:00 Hrs, 19.01.2021 at Customs Office Kishanganj
4. Name & Address of the person(s) From whom goods recovered: — Ramjan Ali, S/o – Saheb, SK, R/o – Vill – Azmatpur, Sahebnagar, PO – Sabaspur, PS.-Bhagwangola, Dist – Murshidabad, WB-742135 (Driver of Truck No. WB59B 4437).
5. Reasons for Seizure : Violation of Section 7, 11, 46 & 47 of the Customs Act, 1962 read with Section 3(2) of the Foreign Trade (Development & Regulation) Act, 1992.

SN	Description of Goods	Origin	Quantity	Rate/ Unit Price (in Rs.)	Total Value (in Rs.)
01	Foreign Origin 'Peas'	Foreign	420 Bags × 50 Kg = 21,000 Kg	72.50/Kgs	15,22,500/-
02	Truck Regn. No. WB59B4437, Chesis No. MB1KACFD8GPES8445, Engine No. GEPZ108346	India	01 Nos.	25,00,000/-	25,00,000/-
	Total				40,22,500/-

(Rupees Forty Lakh Twenty Two Thousand Five Hundred Only)

6. Remarks/Any relevant information :

Received a copy
(Rajan Ali 19.01.2021)
Signature of owner with date

Sd/-
19.01.2021
(Prashant Prakhar)
Superintendent of Customs / Seizing Officer
Kishanganj Circle Office

Witness
1. Subhash Choudhary
2. Raju Sah"

"**SEIZURE MEMO Dated 08.06.2021**

1. Illegal Import / Export — Illegal Import
2. Claimed / Unclaimed — Claimed
3. Name & Address of the persons From Whom detained or seized: — Shri Shanwar Mal, S/o Shri Mangi Lal, (Driver of Truck No. RJ-19GB-6843, Vill. Tal, Thashil Devgarh, PS+PO Devgarh, Distt. Rajsamand (Rajasthan) 313331.
4. Date & Time of Seizure — 08.06.2021 at 17:00 Hrs
5. Place of Seizure — Detained at Galgalia PS Check Post Dist. Kishanganj and seized at the office of the Assistant Commissioner, Customs (P) Division, Forbesganj.

6. Reasons for detention or Seizure : Violation of Sections 7, 11, 46 and 47 of the Customs Act, 1962 and violation of provision of notification(s) issued under Section 11 of the Customs Act, 1962 read with Section 3(2) of the Foreign Trade (Development and Regulation Act), 1992 and Notifications, order etc. issued thereunder.
7. Particulars of the seized/detained goods

SN	Description of Goods seized	Country of Origin	Quantity in Kgs.	Value per Kg/ per pc. (in Rs.)	Total Value (in Rs.)
1	Dried Areca Nuts (Flattened round shape, dried & dark Brown in colour)	Suspected to be of Third Country Origin	24500.00 Kgs (packed in 490 Jute Bags)	345/- Per Kgs (as per Notification No. 49/2021 CUSTOMS (NT) dated 31.05.2021	84,52,500/-
2	Saree	Bangladesh	28 Pcs	500.00	14,000/-
3.	Gamchha (Cotton Towel)	Bangladesh	31 Pcs	50.00	1,550/-
4.	Cloths	Bangladesh	50 Meters	50,00	2,500/-

7.1 Particulars of the Seized Vehicle

SN	Vehicle type & Registration No.	Value as per Insurance Document (in Rs.)
1	Truck (Open Body) (old & used) Registration No. RJ19GB/6843 Engine No. CBTAA5990L6281 1698 Chassis No. MAT46637292NJ9894	10,04,062/- (as per insurance declared value)

7.2 Total Value of Seized goods and vehicle – Rs.94,74,612/- (Rs. Ninety Four Lakh Seventy Four Thousand Six Hundred Twelve)

Received a copy
Sd/-
Signature of Truck driver

Sd/-
(Baij Nath Prasad)
Inspector/S.O., Customs (P), Forbesgaj

Signature of Witnesses with Address
1. Sd/-
(Sumit Ranjan)
Shri Sumit Ranjan, S/o Shri Anil Das, Age-about 29 years, At-Bhagkohaliya, Ward No. 07, P.O.-Forbesganj, P.S.-Forbesganj, Distt-Araria (Bihar)-854318.

2. Sd/-
(Pappu Sah)
Shri Pappu, S/o Jivachh Lal Sah, Age-about 33 years, R/o At Godiyare Chowk, Ward No. 18, P.O.-Forbesganj, P.S.-Forbesganj, Distt-Araria (Bihar)-854318.”

25. We would also take note of sub-Section (1) of Section 110 of the Act of 1962 hereinbelow:-

> “**110. Seizure of goods, documents and things.-**(1) If the proper officer has reason to believe that any goods are liable to confiscation under this Act, he may seize such goods:
>
> [1][Provided that where it is not practicable to remove, transport, store or take physical possession of the seized goods for any reason, the proper officer may give custody of the seized goods to the owner of the goods or the beneficial owner or any person holding himself out to be the importer, or any other person from whose custody such goods have been seized, on execution of an undertaking by such person that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer:
>
> Provided further that where it is not practicable to seize any such goods, the proper officer may serve an order on the owner of the goods or the beneficial owner or any person holding himself out to be importer, or any other person from whose custody such goods have been found, directing that such person shall not remove, part with, or otherwise deal with such goods except with the previous permission of such officer.]”

1. Subs. by Act 23 of 2019, S.74(i), for proviso. Prior to its substitution, proviso read as under:- “Provided that where it is not practicable to seize any such goods, the proper officer may serve on the owner of the goods an order that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer.”

26. It is evident on a bare reading of the aforementioned provision that before seizing the goods, the seizing official/appropriate official has to form 'reason to believe' that the goods are liable to confiscation under the Act of 1962.

27. The words 'reason to believe' had been subject matter of discussions in the catena of judgments and the same has also been considered by this Court in the case of **Assam Supari Traders** (supra) and **Krishna Kali Traders** (supra). This Court has categorically held that the words 'reason to believe' must reflect in the seizure memo. In the case of **Assam Supari Traders** (supra), the reasons for seizure were recorded exactly in the same manner and words in which the seizure Memos of the present cases mention. This Court held that what has been assigned as reason for seizure is that there are violation of the statutory provisions but in what manner the violation has taken place is not forthcoming in the seizure memo. This Court, *prima facie,* found that the factual aspects of the matter read with documents relating to purchase of goods and its transportation that the traders are registered and that they are fulfilling all the criteria are such that *prima facie* none of the cited provisions would be attracted.

28. In these two writ applications, this Court has gone through the note of the invoice, memo and other documents which have been brought on record by the petitioner(s) as Annexures to the writ application. It is not denied that during the inquiry the driver had produced at least the invoice bearing No. SALE/088/20-21 dated 18.01.2021 (in CWJC No. 7085 of 2022) and Invoice No. 21 dated 06.06.2021 (in CWJC No. 7069 of 2022). The seizure memo (Annexure ‘4’ in both writ applications), however, does not indicate ‘reason to believe’. Taking note of the views expressed by this Court in the identical matters of **Assam Supari Traders** (supra), **Krishna Kali Traders** (supra) and **M/s Ashoke Das** (supra), this Court is of the considered opinion that the seizure memo as contained in Annexure ‘4’ in both writ applications would not satisfy the test of law and it is liable to be held suffering from legal infirmities. We, therefore, quash the seizure memo dated 19.01.2021 and 08.06.2021 (Annexure ‘4’ in both writ applications).

29. The submission of learned counsel for the petitioner(s) that once the seizure memo goes and it stands quashed by this Court, the show cause notice would automatically lose its significance seems to be an argument which has been taken before this Court without there being adequate pleading. The fact remains that the petitioner has not challenged the show cause notice and the confiscation proceeding.

30. At this stage, we would once again take note of the views expressed by the Hon'ble Supreme Court in **SLP(s) No. 11124 of 2021** and other analogous matters (supra) in which the Union of India had moved for setting aside the judgments/orders of the Hon'ble Division Bench of this Court in **Om Sai Trading Company & Anr. Versus Union of India & Ors.** reported in **2019 SCC Online Pat 2262** and other cases of like nature in which this Court had been pleased to quash the seizure memo(s). while disposing of the SLP(s), the Hon'ble Supreme Court passed the following orders on 15th September, 2022:-

> " **1.** Leave Granted.
>
> **2.** Having heard learned counsel for the parties, in view of the facts of the present case, and as the goods have already been released, we are not inclined to interfere with the decision of the High Court quashing the seizure memo. However, we clarify that the quashing of the seizure memo does not mean the appellants cannot investigate, and proceed in accordance with law under the provisions of the Customs Act, 1962. ...."

31. In the case of **M/s Ashoke Das** (supra), we have held that the order of the Hon'ble Supreme Court has been 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 Department of Customs cannot investigate and proceed in accordance with law under the provisions of the Act of 1962.

32. Keeping in view the aforementioned order of the Hon'ble Supreme Court, we refrain from entering into the submissions of learned counsel for the petitioner raised at this stage without adequate pleading and leave it open to be canvased before the Adjudicating Authority.

33. All contentions are left open.

34. Both the writ applications stand allowed to the extent indicated hereinabove.

35. The Adjudicating Authority/Confiscating Authority, as the case may be, shall give a personal hearing to the petitioner(s) through his counsel within six weeks from today. It will be open to the petitioner(s) to appear before the aforementioned authority through his lawyer within the same period.

(Rajeev Ranjan Prasad, J)

(Ramesh Chand Malviya, J)

SUSHMA2/-

AFR/NAFR	
CAV DATE	
Uploading Date	01.03.2025
Transmission Date	