IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8155 of 2020

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Maa Kamakhya Traders having its Registered Office at 2nd Floor, KTC Building NH-37, Beharbari, Beltola, Guwahati Assam, through its Proprietor Sushil Kumar Dwivedi @ Sushil Kumar, aged about 43 Years, Male, Son of Sri Jai Govind Dwivedi, resident of 2nd Floor, KTC Building NH-37, Beharbari, Beltola, Guwahati, Assam. ... ... Petitioner

Versus

1. The Union Of India through Chief Commissioner, Customs, Central Revenue Building, Birchand Patel, Patna. Bihar.
2. The Commissioner of Customs (Preventive), 5th Floor, Central Revenue Building, Birchand Patel, Patna, Bihar.
3. The Additional Commissioner of Customs (Preventive), 5th Floor, Central Revenue Building, Birchand Patel, Patna, Bihar.
4. The Deputy Commissioner, Customs (Preventive), Division Muzaffarpur, District Muzaffarpur, Bihar.
5. The Inspector Cum Seizing Officer, Customs (P), Imli Chatti, Muzaffarpur, District Muzaffarpur, Bihar.

... ... Respondents

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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

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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 dated 07.09.2020 corresponding to Muzaffarpur Unit Case No. 02/2020

– 21 dated 07.09.2020 (Annexure 5) by which altogether 21577.5 Kgs. Of Betel Nuts contained in 315 Bags valued at Rs.34,52,400/- has been seized under Section 110 of the Customs Act, 1962 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 and Regulation) Act, 1992;

(ii) Provisionally Releasing 21577.5 Kgs of Betel Nuts contained in 315 Bags valued at Rs.34,52,400/- during the pendency of the present writ petition; and

(iii) Restraining the Respondents from coercing the petitioner in the name of investigation during the pendency of the present writ petition.

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 07.09.2020 as contained in Annexure '5' 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 '5') in which in the column where reasons for seizure/detention of goods is required to be filled up, the Seizing Officer has only mentioned as under:-

> "Violation of Section 7, 11, 46 & 47 of Customs Act, 1962 read with Section 3(2) of Foreign Trade (Development and Regulation) Act, 1992."

5. On earlier occasion, when the connected writ application being CWJC No. 8169 of 2024 was mentioned for consideration, this Court passed the following order:-

> **<u>Order dated 25.04.2025</u>**
>
> "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.
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> **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, 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.
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> **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 <u>**Assam Supari Traders** (supra) and **Krishna Kali Traders** (supra) have attained finality as no challenge to these</u>

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 petitioners 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 ‘5’ 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)

SUSHMA2/-

AFR/NAFR	
CAV DATE	
Uploading Date	30.06.2025
Transmission Date	