IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18697 of 2024

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M/s Kumar Brothers having its principal place of business at 76, M.S. Road, Athgaon, P.S. Bharalumukh, Guwahati, Kamru, Assam through its Authorized Signatory Pradeep Shrinath Maurya, aged about 35 years, Male, son of Shrinath Maurya, resident of Jagwanti Palace, near Royal Club, Bharat Nagar, Juna Pardi, P.S. Kalamna, District Nagpur, Maharastra.

... ... Petitioner

Versus

1. The Union of India through the Secretary, Ministry of Finance, Department of Revenue, Central Board of Excise and Customs, New Delhi.
2. The Chief Commissioner of Customs, Central Revenue Building, Birchand Patel Path, Patna.
3. The Commissioner of Customs (Preventive), Head Quarters, 5th Floor, Central Revenue Building, Birchand Patel Path, Patna.
4. The Additional Commissioner cum Adjudicating Authority, Office of the Commissioner of Customs (Preventive), HQRS, 5th Floor, Central Revenue Building, Birchand Patel Path, Patna.
5. The Assistant Commissioner of Customs (Preventive), Division Forbishganj, District Forbishganj, Bihar.
6. The Inspector of Customs/Seizing Officer, Kishanganj Circle Office, District Kishanganj, 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 22.11.2023 corresponding to Kishanganj Unit Case No. 22/KNE/23-24 dated 22.11.2023 (Annexure p/6) whereby 23,9750 Kgs. Of Dried Areca Nuts contained in 350 Bags along with Tata Truck bearing Registration No. UP 36 T – 4477 have been seized under Section 110 of the Customs Act, 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 in the course of Inter State Transportation fro Assam to Delhi;
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> (ii) Quashing of the part of Provisional Release Order No. 18/2024 dated 28.02.2024 to the extent that the Adjudicating Authority has imposed, vide Condition No. 9.III to submit "END USE CERTIFICATE" issued by the Industrial/ Processing Unit with regard to the released Betel Nuts for the reason that the Seized Betel Nuts were found to be substandard and unsafe as per FSSAI Report and, Misapplying the provisions of Food Safety and Standards Act, 2006, the goods have been held to be not fit for sale for direct human consumption rather as a condition for provision release, its sale has been restricted only for Industrial/ Processing Unit;
>
> (iii) Vacation of the Seizure dated 22.11.2023 and consequential discharge of the Banck Guarantee and the Bond furnished by the petitioner to secure the provisional release of the seized goods; and
>
> (iv) Restraining the Respondents from giving effect to or taking any coercive action arising out of

> seizure dated 22.11.2023 during the pendency of the present writ application and/or the withouth the leave of this Hon'ble Court."

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 22.11.2023 as contained in Annexure 'P/6' 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 'P/6') in which in the column where reason for seizure 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 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.
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> **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 'P/6' 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	