IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17756 of 2024

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A.S. Trading and Company, having its Registered office at House No. 78, Harin Kalita Path, Tokobari, Kamrup, Assam 781009, through its Proprietor Pradeep Shrinath Maurya, aged about 35 years, Male, Son of Shrinath Maurya, Resident of Jagwanti Palace, near Royal Club, Bharat Nagar, Juna Pardi, PS 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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with

Civil Writ Jurisdiction Case No. 17758 of 2024

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Maa Kamakhya Traders having its principal place of business at P.P. No. 308, Dag No. 178, Rupahihat, P.S. Mouaz, Khatuwal Nagaon, 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.

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Versus

1. The Union of India through the Secretary, Ministry of Finance, Department of Revenue, Central Board of Excise and Customs, New Delhi.
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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 Muzaffarpur, District Muzaffarpur, Bihar.
6. The Inspector of Customs/ Seizing Officer, Muzaffarpur, Customs

(Preventive) Division, District Muzaffarpur, Bihar.

... ... Respondents

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Appearance :
(In Civil Writ Jurisdiction Case No. 17756 of 2024)

For the Petitioner	:	Mr. Prabhat Ranjan, Advocate
For the Respondents	:	Mr. Additional Solicitor General
		Mr. Anshuman Singh, Senior SC

(In Civil Writ Jurisdiction Case No. 17758 of 2024)

For the Petitioner	:	Mr. Prabhat Ranjan, Advocate
For the Respondents	:	Mr. Additional Solicitor General
		Mr. Anshuman Singh, Senior SC

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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 : 25-04-2025

The matter has been heard again today.

2. At the outset, it is recorded that learned counsel for the petitioners seeks to withdraw I.A. No. 1 of 2025.

3. There is no objection to the same, hence, I.A. No. 1 of 2025 is dismissed as withdrawn.

4. These two writ applications have been preferred seeking the following reliefs:-

<u>CWJC No. 17756 of 2024</u>

> "(i) Quashing of the Seizure dated 22.11.2023 corresponding to Kishanganj Unit Case No. 21/KNE/23-24 dated 22.11.2023 (Annexure P/4) whereby 23975 kgs of Dried Areca Nuts contained in 350 Bags along with Tata Truck bearing Registration No. UP 83 CT-5704 have been seized under Section 110 of the

Customs Act, for alleged violation of Section 7, 11, 46 and 47 of Customs Act, 1962 read with Section 3 (2) of the Foreign Trade (Development and Regulation) Act, 1992 in the course of Inter State Transportation from Assam to Delhi;

(ii) Quashing of the part of Provisional Release Order No. 17/2024 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 sub standard 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 provisional 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 Bank 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 without the leave of this Hon'ble Court."

CWJC No. 17758 of 2024

"(i) Quashing of the Seizure dated 22.11.2023 corresponding to Muzaffarpur Unit Case No. 11/2023-24 dated 22.11.2023 (Annexure P/6) whereby 25,160 Kgs of Assam Dried Areca Nuts contained in 370 Bags along with Tata Truck bearing Registration No. UP 78 DN-8315 have been seized under Section 110 of the Customs Act, for alleged violation of Section 7, 11, 46 and 47 of Customs Act, 1962 read with Section 3 (2) of the Foreign Trade (Development and Regulation) Act, 1992 & Government of India, Ministry of Finance, Notification No. 09/1996 Cus. (NT) dated 22.01.1996 issued under Section 110 of the Customs Act, 1962 in the course of Inter State Transportation from Assam to Delhi;

(ii) Quashing of the part of Provisional Release Order No. 15/2024 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 provisional 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 Bank 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 without the leave of this Hon'ble Court."

5. For sake of brevity, the facts and documents have been referred by learned counsel for the parties from CWJC No. 17756 of 2024. It is not in dispute that in both the writ applications, the seizure memos have been drawn in the identical manner.

6. We reproduce the seizure memo dated 22.11.2023 enclosed as Annexure- 'P/4' in CWJC No. 17756 of 2024 hereunder for a ready reference:-

"SIEZURE MEMO

Unit Case No. 21/KNE/23-24 circle: Kishanganj Date: 22.11.2023

1. Import/Export	:	Import
2. claimed/Unclaimed	:	Claimed
3. Date, time & place of detention	:	21.11.2023: 22:00 Hrs; Bus Stand, Kishanganj
4. Date, time & place of Seizure	:	22.11.2023 at 14.30 Hrs. Customs (P), Circle, Kishanganj

5. Name & Address of the person (s)
From whom goods recovered : (i)Ravindra Kumer. S/o-Sukhmesh Singh, Vill-Nagla Kindar, Post- Pudari. Thana-Alau Mainpuri UP. 205247 (Driver of Truck bearing Reg. No.: UP-83CT-5074).
(ii) A.S. Trading & Company (GSTIN: 18ARQPM3852R1ZQ), House No.: 78, Harin Kalita Path Tokobari Kamrup Assam-781009-(Consigner).
(iii) AS. Trading & Company (GSTIN: 07ARQPM3852R1ZT), Khasra No. 96/2, Ground Floor, Gali No. 8/1, Wazirabad Village Delhi-110084-[Consignee).
(iv) New India Logistics (Trans ID.: 18AJCPM3079L1ZT), H/No.-78, Tokobari, Kamrup, Guwahati-781009-[Transportor)

6. 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.

SM	Description of Goods	Origin	Quantity	Rate/Unit Price (in Rs.)	Total Value (in Rs.)
01	DRIED ARECA NUTS	Foreign Origin	350 BAGS/Bori Total 23975 KG Approx	@351/- per KG [as per MIP*]	Rs.84,15,225/-
02	TATA LPT 4223 CRE BS IV REG. No.: UP 83CT-5074 ENGINE 1S859B4S230T191J6380 8977 CHASSIS NO.: MAT541205K1J16572	INDIAN	01	@22,00,000/- (as per Current Insurance IDV Value)	Rs.22,00,000
	Total				Rs. 1,06,15,225/
MIP Rs.351/-taken as per Notfn. No. 57/2015-2020 dated 14.02.2023 of DGFT, Dept. of Commerce.					

(Rupees One Crore Six Lakh Fifteen Thousand & Two Hundred Twenty Five Only)

Sd/- 22.11.23
Inspector of Customs/Seizing Officer,
Kishanganj Circle Office
(Kundan Kr)
Insp.

Received a copy
Sd/-
22/11/23
Signature of owner with date

Witness:

1. मुस्ताक 22-11-23

2. राजेन्द्र यादव
22/11/2023"

Submissions on behalf of the Petitioners

7. Learned counsel for the petitioners has contended that the seizure memo records the country of origin of goods as "foreign origin" but on perusal of the same, it would appear that it nowhere says as to which foreign country the goods originated from or on what basis the Proper Officer formed this belief.

8. Learned counsel has taken this Court through Section 110 of the Customs Act, 1962 (hereinafter referred to as the 'Act of 1962') which mandates that the Proper Officer before seizing of the goods shall be obliged to form an opinion as to "reason to believe" that the goods are liable to confiscation. It is his submission that the seizure memos in the present writ applications would not conform to the mandate of Section 110(1) of the Act of 1962. It is his submission that the respondents rely upon the 'panchnama' to support their contention that the seizure is based on the "reasons to believe" but this plea of the respondents has been considered earlier by learned co-ordinate Bench of this Court in **Krishna Kali Traders and Another Vs. Union of India and Others** reported in **2024 SCC OnLine Pat 880** wherein the learned co-ordinate Bench having examined the seizure memo which was identical to the present case held that 'panchnama cannot be read into the seizure memo.'

9. Learned counsel further points out that identical view has been taken by the learned co-ordinate Bench of this Court 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**. The said judgment is binding in the light of the Hon'ble Supreme Court decision in the case of **Mary Pushpam Vs. Telvi Curusumary and Others reported in (2024) 3 SCC 224**.

10. Learned counsel has submitted that, in fact, this Court has followed the views expressed by the learned co-ordinate Bench of this Court in case of Krishna Kali (supra) and Assam Supari Traders (supra). In this regard, learned counsel relies upon the judgment of this Court rendered in the 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**. It is submitted that the reasoning and rationale provided by this Court in the case of **M/s Ashoke Das** (supra) would be equally applicable in the facts of the present case.

11. While hearing these matters yesterday, when we were informed by learned counsel for the petitioners that these writ applications would be covered by the judgment of this Court in the case of **M/s Ashoke Das** (supra), we wanted a specific response to to this by learned Additional Solicitor General. Today, learned ASG assisted by Mr. Anshuman Singh, learned Senior Standing Counsel for the Department of Customs has made detailed submissions.

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

12. At the outset, learned ASG does not dispute on facts that the seizure memos as contained in Annexure 'P/4' in CWJC No. 17756 of 2024 and Annexure 'P/6' in CWJC No. 17758 of 2024 have been drawn in identical manner as were drawn in the case of **M/s Ashoke Das** (supra). The only difference which is pointed out is that in one of the seizure memos, the Proper Officer has shown the seized goods as that of "foreign origin" and in another case, it has been shown as "third country origin". So far as the case of **M/s Ashoke Das** (supra) is concerned, in the said case, the Proper Officer had shown the origin of goods as "third party". We have already extracted the seizure memo in CWJC No. 17756 of 2024 hereinabove. Perusal of the seizure memo would show that the Proper Officer has not at all indicated his "reasons to believe" for recording that the Dried Areca Nuts are of "foreign origin" or that of "third country origin". The reasons for seizure shown are also identically the same which were present in the earlier seizure memos in case of **M/s Ashoke Das** (supra). Thus, the facts with regard to the manner in which the seizure memo has been drawn in these two writ applications are not in dispute.

13. At one stage, learned ASG has submitted that 'panchnama' should be read into the seizure memo. Learned ASG has submitted that the circular of the Department which was issued in the light of the judgment of the Hon'ble Delhi High Court in case of **Worldline Tradex P. Ltd Vs. Commissioner of Customs and Others** reported in **(2016) 40 GSTR 141** provides that whenever goods are being seized, in addition to 'panchnama', the Proper Officer must also pass an appropriate order (seizure memo/order etc.) clearly mentioning the "reasons to believe" that the goods are liable for confiscation. The submission is that the circular letter talks of preparation of 'panchnama' by the Proper Officer and in addition to that, the seizure memo/order is to be drawn mentioning the "reasons to believe". It is for this reason that 'panchnama' which is prepared by the Proper Officer at the time of seizure may be read into the seizure memo.

<u>Consideration</u>

14. This Court called upon learned ASG to take a plea as to whether the 'panchnama' is to be prepared first or the seizure memo? In other words, whether 'panchnama' is the first step towards seizure of the goods or it is the seizure which is first step followed by preparation of 'panchnama'. Learned ASG has, after all deliberations submitted that there is no doubt that 'panchnama' is prepared after the seizure of the goods and, therefore, the seizure is the first step preceding the preparation of 'panchnama'.

15. In this regard, the discussion has also taken place over the scheme of Section 110 of the Act of 1962. Sub-section (1-B) of Section 110 of the Act of 1962 reads as under:-

> "**110. Seizure of goods, documents and things**.-
> (1-B) Where any goods, being goods specified under sub-section (1-A), have been seized by a proper officer under sub-section (1), he shall prepare an inventory of such goods containing such details relating to their description, quality, quantity, mark, numbers, country of origin and other particulars as the proper officer may consider relevant to the identity of the goods in any proceedings under this Act and shall make an application to a Magistrate for the purpose of-
> (a) certifying the correctness of the inventory so prepared; or
> (b) taking, in the presence of the Magistrate, photographs of such goods, and certifying such photographs as true; or
> (c) allowing to draw representative samples of such goods, in the presence of the Magistrate,

> and certifying the correctness of any list of samples so drawn."

16. Since learned ASG accepts the legal position at the Bar that the 'panchnama' is prepared only after the seizure of the goods, this Court would have no iota of doubt that proper officer must form "reason to believe" at the time of seizing the goods and that should reflect from the seizure memo prepared as per sub-section (1) of Section 110 of the Act of 1962.

17. In the case of **M/s Ashoke Das** (supra), this Court has discussed in detail the various case laws and the circular/instruction which was issued by the Department after the judgment of the Hon'ble Delhi High Court in the case of **Worldline Tradex P. Ltd** (supra). This Court would reproduce paragraph '26' of the judgment in **M/s Ashoke Das** (supra) hereunder for a ready reference:-

> "**26.** The learned co-ordinate Bench concluded that panchnama cannot be read into seizure memo. In the said case, it was also held that both the seizure memo and panchnama would show that it was firstly the seizure memo which has been prepared and secondly panchnama has been drawn, therefore, at the time of writing seizure memo, panchnama was not written or existed. The learned co-ordinate Bench clearly opined that the Seizing Officer cannot keep reasons in his mind and he has to disclose minimal reasons in the seizure memo."

18. This Court has further noticed the learned co-ordinate Bench's judgments of this Court in **Om Sai Trading Company & Another Vs. Union of India & Others** reported in **2019 SCC OnLine Pat 2262** which travelled up to the Hon'ble Supreme Court in **SLP(s) No. 11124 of 2021**. In the case of **Om Sai Trading Company** (supra) and other analogous cases which were before the Hon'ble Supreme Court, this Court had been pleased to quash the seizure memos. While disposing of the SLP(s) vide September 15, 2022 order, the Hon'ble Supreme Court observed as under:-

> " **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. .."

19. Having taken note of the order of the Hon'ble Supreme Court in **Om Sai Trading Company** (supra) and other analogous cases, this Court has taken a view in the case of **M/s Ashoke Das** (supra) in paragraph '41' which is 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."

20. The crux of the entire discussions on the case laws and the instruction of the Department may be found in paragraphs '42' and '43' of the judgment of this Court in **M/s Ashoke Das** (supra) which read thus:-

> "**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."

21. Since on facts, there is no dispute that the seizure memos in these two writ applications have been drawn in identical manner in which the earlier seizure memos were drawn by the Department which stood quashed, this Court is of the considered opinion that the legal position as enunciated in the judgment of this Court in **M/s Ashoke Das** (supra) would govern the present case as well.

22. In result, the seizure memos (Annexure 'P/4' in CWJC No. 17756 of 2024 and Annexure 'P/6' in CWJC No. 17758 of 2024) are quashed.

23. This Court has been informed that notice to show cause has been served upon the petitioner. In view of the observations of the Hon'ble Supreme Court which we have noticed hereinabove, we refrain from taking any view on the issue of issuance of the show cause notice. The Hon'ble Supreme Court has observed in its order 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.

24. In the aforesaid view of the matter, the petitioners, if so advised, may submit their replies to the show cause notice whereafter the Adjudicating Officer shall proceed to pass appropriate order under the provisions of the Act of 1962. All questions with regard to issuance of the show cause notice and impact of quashing of seizure memos shall remain open.

25. These writ applications stand allowed to the extent indicated hereinabove.

(Rajeev Ranjan Prasad, J)

(Ashok Kumar Pandey, J)

lekhi/-

AFR/NAFR	
CAV DATE	
Uploading Date	29.04.2025
Transmission Date	