Form No. J(2)
Item No. DL/14
ARPAN – A.R. (CT)

IN THE HIGH COURT AT CALCUTTA

In the Circuit Bench at Jalpaiguri

Constitutional Writ Jurisdiction
(Appellate Side)

W.P.A. NO. 596 OF 2025

MD. TASHIN SHAH

Vs.

THE CHIEF COMMISSIONER OF CUSTOMS & OTHERS

BEFORE: THE HON'BLE JUSTICE SAUGATA BHATTACHARYYA

For the Petitioner	: Mr. Bikramaditya Ghosh, Adv. Mr. Ved Rai, Adv. Mr. Mayank Bhandari, Adv. Mr. Vivek Saha, Adv. Mr. Binayak Bandhopadhyay, Adv.
For the Respondents	: Mr. Ratan Banik, Adv. Mr. Spandan Dutta, Adv.
Hearing concluded on	: 17.02.2026
Judgment On	: 17.02.2026

SAUGATA BHATTACHARYYA, J.:

1. Matter is heard in presence of the learned advocates representing the petitioner and the Customs authority.

2. In terms of the order dated 13th January, 2026 passed by a Co-ordinate Bench, which was corrected *vide* order dated 15th January, 2026, order passed by Assistant Commissioner, Naxalbari Customs Division dated 9th February, 2026 is filed today on behalf of the Customs authority and same is taken on record.

3. Learned advocate representing the petitioner submits that *vide* order dated 9th February, 2026 passed by Assistant Commissioner in terms of the judgment dated 14th March, 2023 passed by the Hon'ble Division Bench in CUSTA 22 of 2022, ₹1,45,61,332/- being the tariff value of 82.92 metric tonnes of betel nuts was sanctioned and decided to be paid to the petitioner.

4. However, it is submitted on behalf of the petitioner that in view of pendency of this writ petition, aforesaid sum has not yet been accepted by the petitioner.

5. It is further contended on behalf of the petitioner that in terms of the judgement dated 14th March, 2023 of the Hon'ble Division Bench passed in CUSTA 22 of 2022, amount was not paid to the petitioner within time requiring payment of interest on the amount sanctioned by the concerned authority of Customs department.

6. Mr. Ratan Banik, learned advocate representing the Customs authorities appearing on virtual mode submits that writ petition, at this stage, may not be entertained in view of availability of appeal provision under Section 128 of the Customs Act, 1962. It is submitted that

against the order of the Hon'ble Division Bench dated 14th March, 2023 appeal was preferred before the Hon'ble Supreme Court which was dismissed on 16th February, 2024. After dismissal of the appeal decision has been taken by the Assistant Commissioner on 9th February, 2026 to release ₹1,45,61,332/- in favour of the petitioner in terms of the judgment of the Hon'ble Division Bench dated 14th March, 2023.

7. Whether petitioner has remedy to prefer appeal under Section 128 of the Customs Act, 1962 or not needs to be considered on the anvil of the judgment dated 14th March, 2023 of the Hon'ble Division Bench passed in CUSTA 22 of 2022. Relevant part of the said judgment dated 14th March, 2023 is quoted below:

> *"Now, coming to the issue of return of the goods, admittedly, the goods are perishable in nature and the goods were seized on 1st march, 2016 and the question of returning the goods to the respondent in CUSTA 22 of 2022 at this juncture does not arise as the goods would be unfit for human consumption and it will be against the public interest to direct return of the goods. Therefore, to that extent, the order passed by the Tribunal stands modified giving liberty to the respondent in CUSTA 22 of 2022, namely, Md. Tashin Shah to seek for payment of the value of the goods by making an application before the concerned authority and if such application is made within a period of thirty days from the date of receipt of server copy of this order, the said application shall be processed in accordance with law."*

8. By the said judgment dated 14th March, 2023 order passed by the Tribunal was modified thereby granting liberty to the respondent being the petitioner herein to apply for payment of the value of the goods seized by making an application before the concerned authority with a rider, in the event, such application is made within a specified time, concerned Customs authority shall proceed, in accordance with law. The direction of the Hon'ble Division Bench was not to direct the concerned Customs authority to pay the amount to the petitioner herein but issue was left open to the Customs authority to take steps in accordance with law.

9. Pursuant to the leave granted by the Hon'ble Division Bench, petitioner applied for payment and such application was decided *vide* order dated 9th February, 2026 thereby permitting the petitioner to receive ₹1,45,61,332/-.

10. Had right of the petitioner to receive the amount was crystallized *vide* judgment and order dated 14th March, 2023 in that event, today Court could have considered the prayer of the petitioner for payment of interest but it was left open to be decided by the concerned respondent authorities and same has been ultimately decided *vide* order dated 9th February, 2026 by the Assistant Commissioner based on application made by the petitioner pursuant to leave granted by the Hon'ble Division Bench; said order dated 9th February, 2026 of the Assistant Commissioner is an appealable order under Section 128 of the Customs Act, 1962.

11. As order was passed on 9th February, 2026, petitioner shall be at liberty to prefer appeal under Section 128 of the Customs Act, 1962 before the Appellate Authority claiming interest on the amount which has been decided to be paid to the petitioner.

12. With the above observations, writ petition stands disposed of.

13. Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(SAUGATA BHATTACHARYYA, J.)