IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10582 of 2024

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Assam Supari Traders having its principal place of business at Rupahi Thana Road, Rupahi Town, P.S.- Rupahihat, District- Nagaon, (Assam), through its Authorized Representative Cum Power of Attorney Holder Anil Kumar Yadav, aged about 34 years, Son of Shibu Yadav, Resident of Tekunamath Ward No. 06, P.O. Bharwari, P.S.- Rosera, District Samastipur, Bihar.

... ... Petitioner/s

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 (Preventive) Division Forbishganj, Circle Kishaganth, District Kishanganj, Bihar-Cum -Seizing Officer.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Prabhat Ranjan, Advocate Mr. Ansh Prasad, Advocate
For the Respondent/s	:	Dr. K.N. Singh, ASG Mr. Anshuman Singh, Sr. SC (Customs) Mr. Devansh Shankar Singh, Advocate Mr. Shivditya Dhari Sinha, JC to ASG

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 25-09-2024

The petitioner has prayed for the following reliefs:

"(i) Quashing of the Seizure dated 02.04.2024 corresponding to Unit Case No. 01/KNE/ 2024 – 25 whereby

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24,288 Kgs of Dried Areca Nuts contained in 352 bags along with ASHOK LEYLAND Truck Bearing Registration No. TN – 29BY 3638, in the course of inter state transportation, has 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;

(ii) Vacation of the Seizure order dated 02.04.2024 and consequential discharge of the Bank Guarantee and the bond furnished by the petitioner to secure the provisional release of the seized goods; and

(iii) Restraining the Respondents from giving effect to and taking any coercive action arising out of Seizure dated 02.04.2024 during the pendency of the present writ application and/or without the leave of this Hon'ble Court."

2. The petitioner is a registered dealer / trader in the name of *M/s Assam Supari Traders.* He is in possession of GST Number *i.e*. GSTIN/UIN No.18ABQFA3393P1ZK issued by the competent authority. He is employed in the business of dried Areca Nuts. He had booked a consignment of 24,288 Kgs of dried Areca Nuts contained in 352 bags invoiced at the rate of Rs. 262.50 per kg inclusive of taxes to one *M/s Rabia Traders,* District - Chikkamangluru, Karnataka having GSTIN/UIN No. 29CSBPA4742E1Z2. This is evident from the invoice no. AST29/2023-2024 dated 30.03.2024. The consignment E-Way Bill No. 811399620869 stated to be generated at 11.30 hours on 30.03.2024 and it was valid up to 16.04.2024.

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3. The aforementioned consignment was dispatched through *Ajay Goods Carrier vide* Truck bearing registration No. TN – 29 BY 3638 with Transport Consignment Note No. D/0323 dated 30.03.2024 was generated. The truck was in-transit from Nagaon, Guwahati, State of Assam to State of Karnataka. It was intercepted and detained by the jurisdictional officer of Forbishganj Customs (Preventive Division) near Paringola Check Post upon specific information received from Customs (Prev.) Patna. Thereafter, an unnumbered detention memo was issued on 02.04.2024. Driver of the Truck who was in possession of the relevant documents and who had placed the same before the authorities, the same were not examined on the spot. On the other hand, Truck was taken to their Circle Office, *Forbishganj* on the pretext of examination of various documents. On the same day, respondent No. 6 invoked Section 110 of the Customs Act, 1962 (for short 'the Act, 1962') and proceeded to draw seizure memo on the alleged allegations relating to violation of Sections 7, 11, 46 and 47 of the Act, 1962 read with Section 3 (2) of the Foreign Trade (Development and Regulation) Act, 1992 (for short, 'the Act, 1992') *vide* seizure memo dated 02.04.2024 with assigned Unit Case No. 01/KNE/24-25.

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4. Pursuant to the seizure memo, petitioner had filed an application for provisional release of the seized goods on 15.04.2024 under Section 110 (A) of the Act 1962 before the Additional Commissioner-cum-Adjudicating Authority along with supporting documents to the extent of claiming ownership of seized goods, thereafter, seized goods were released provisionally with certain conditions. Thus, feeling aggrieved by the seizure memo dated 02.04.2024, petitioner has preferred the present petition.

Petitioner's counsel submission :

5. Learned counsel for the petitioner submitted that there is no compliance to Section 110 of the Act, 1962, in particularly 'reason to believe', is not supported by application of mind read with some *prima facie* materials to the extent of the alleged violation of Sections 7, 11, 46 and 47 of Act, 1962 read with Section 3(2) of the Act, 1992. On this contention alone, impugned seizure memo dated 02.04.2024 is liable to be set aside.

6. It is further submitted that Section 7 of the Act, 1962 relates to *Appointment of Customs Ports, Airports, etc. The central government may, by notification in the official Gazette appoint* ……., Section 11 of the Act, 1962 relates to *Power to Prohibit importation and exportation of goods……,*

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Section 46 of the Act, 1962 relates to *Entry of goods on importation,* Section 47 of the Act, 1962 relates to *Clearance of Goods for Home Consumption* …… and Section 3(2) of the Act, 1992 related to powers to make provisions relating to import and export by which Central Government may also issue order like prohibiting, restraining or otherwise regulating import or export goods etc., are not attracted to the case in hand so as to invoke the aforementioned provisions of law insofar as drawing up of seizure memo and seizure of the goods along with Truck, for the reasons that petitioner had valid documents insofar as purchasing from a genuine trader and it was transporting from a reputed goods carrier. The aforementioned parties are having all legal documents insofar as trading and transportation with all relevant licences as well as tax registration etc. are concerned.

7. Learned counsel for the petitioner submitted that from the counter affidavit one has to draw inference that seized goods of dried Areca Nuts are resembling to the dried Areca Nuts of India and they are good. To that extent, certificate has been issued by the Areca Nuts Research and Development Foundation, Manglore, Karnataka and the same has been admitted by the respondents, therefore, whatever the sample of dried Areca Nuts examined by the local traders on behalf of the official respondents

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and their opinion is that seized dried Areca Nuts are suspected to be foreign, such a conclusion by the respondent authorities is only with a naked eye of the local traders who have opined that seized dried Areca Nuts are stated to be a Foreign Areca Nuts. By merely looking at a product or goods, one cannot draw inference that seized goods are of a Indian origin or foreign. Some standards/yardsticks are required to be undertaken by the official respondents for the purpose of finding out genuineness of the seized Areca Nuts of the Indian origin or foreign. Further corroborative evidence is required as to how the seized goods of dried Areca Nuts were purchased and from whom and further, seller of dried Areca Nuts. Petitioner was a genuine trader. Additionally, opinion of local traders cannot be blindly relied upon for such purpose is not reliable or acceptable.

8. Learned counsel for the petitioner relied on the following decisions of the Courts -

(1) **Angou Golmei vs. Smti Vizovolie Chakhsang and Another[1],** (Paragraph 21) on the point of local traders' opinion are not reliable.

(2) **M/s Om Sai Trading Company and Another vs. Union of India and Others[2],** (Paragraph Nos. 1 to 10) on the point of reason to believe interpretation.

1 1994 1 PLJR 800
2 LPA No. 1153 of 2019

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(3) **Jaimatajee Enterprises vs. the Commissioner of Customs (Preventive) and two Others**[3]**,** (at Page No. 7), Section 110 of the Act, 1962 has been taken note of.

(4) **M/s Maa Kamakhya Traders vs. Commissioner of Customs (Preventive) and 2 Others**[4]**,** Paragraph No. 10 on the point of reason to believe.

(5) **Commissioner of Customs Department, Government of India, Patna vs. Dwarka Prasad Agarwal and Others**[5] on factual aspects and overall submissions are that reasons are not narrated in the seizure memo to overcome 'reason to believe' words, opinion of local traders is unfair and it is not binding on authorities and, authorities have subjected seized dried Areca Nuts to laboratory and findings are that seized goods are of Indian origin.

Submission of Respondents' counsel

9. Learned counsel for the respondents resisted the aforementioned contentions and submitted that there is no infirmity in the seizure memo dated 02.04.2024. The official who has seized the goods need not give reasons and it is sufficient if statutory provision of law is narrated to the extent that the

3 Writ Tax No. 573 of 2020
4 Writ Tax No. 1287 of 2023
5 (2009) 2 PLJR 858

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petitioner has violated. Thereafter, one has to draw inference that reasons for seizure is to the extent that there is a violation of statutory provision on behalf of the petitioner which is reflected in Item No. 6 of the seizure memo dated 02.04.2024 suffice to overcome the contention of the petitioner that seizure memo is not in terms of Section 110 of the Act, 1962.

10. The cited decisions on behalf of the petitioner are not assisting his case. On the other hand, judgments of this Court passed in the case of **Santosh Kumar Murarka vs. Union of India and Others**[6]**,** Paragraph Nos. 8 and 9 and The **Commissioners of Customs vs. Sir Rajendra Sethiya**[7]**,** Paragraph Nos. 11, 13 and 17, suffice to the extent of compliance to Section 110 of the Act, 1962. It is also submitted that while imposing certain conditions, subject matter of seized dried Areca Nuts goods have been released in favour of the petitioner on 25.06.2024. Consequently, he has to face further proceedings in the matter, therefore, the petitioner has not made out a case so as to interfere with the reliefs sought in the present writ petition and it is liable to be dismissed.

6 CWJC No. 5427 of 2022
7 MA No. 528 of 2022

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Analysis

11. The Customs Bill, 1962 was discussed by the competent persons in which certain discussions were held among the members of the Committee *like* :

"Sri. Morarka - kindly reading the clause that any person who knowing or having reason to believe…..; this is the qualification.

Sri Das Gupta – knowing we agree. But having 'reason to believe' is a different thing.

Sri Morarji Desai - supposed the man has been fined once for smuggling, then he has 'reason to believe'. Otherwise, the prosecution will have to prove that he has 'reason to believe'. We will go further.

Sri. Morarji Desai – he has to give his reasons in writing before he seizes the goods.

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Sri Shah – that it is the only point so far as that is concerned. The other point is that when an officer takes action on the ground of 'reasonable belief' or having 'reason to believe' he should immediately give the grounds of his belief to the person concerned.

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The aforementioned extract of discussion is with reference to **CB No. 147 – Loksabha – the Customs Bill, 1962 (report of the Select Committee)** (presented on the 5th November, 1962)" From the aforementioned discussion among the members of the committee, it is evident that reasons / grounds are to be assigned while invoking Section 110 of the Act, 1962.

12. Before adverting to the merits of the case it is necessary to examine the word 'reason to believe' which is the foundation for seizure of goods by the customs authorities under Section 110 of the Act, 1962. 'Reason to believe' is an integral part of issuance of search warrant. 'Reason to believe' is the most significant safeguard available to the authorising officer to conduct search. The phrase is made up of two words 'reason' means cause and 'believe' means to accept as true or have faith in it. In *P Ramanath Aiyar's* (*supra*) concise law dictionary defines in the following words : 'Reason to believe' - *A person said to have 'reason to believe' a thing if he has sufficient cause to believe that thing.* Identical provision of 'reason to believe' is forthcoming under Section 5 (1) of Prevention of Money Laundering Act, 2002 (hereinafter referred to as 'PMLA Act') and it reads as under :

(1) Where the Director or any other officer not below the rank of Deputy Director authorised by the Director

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for the purposes of this section, has reason to believe (the reason for such belief to be recorded in writing), on the basis of material in his possession, that –

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(a) any person is in possession of any proceeds of crime; and

(b) such proceeds of crime are likely to be concealed, transferred or dealt with in any manner which may result in frustrating any proceedings relating to confiscation of such proceeds of crime under this Chapter,

he may, by order in writing, provisionally attach such property for a period not exceeding one hundred and eighty days from the date of the order, in such manner as may be prescribed:

Provided that no such order of attachment shall be made unless, in relation to the scheduled offence, a report has been forwarded to a Magistrate under section 173 of the Code of Criminal Procedure, 1973 (2 of 1974), or a complaint has been filed by a person authorised to investigate the offence mentioned in that Schedule, before a Magistrate or court for taking cognizance of the scheduled offence, as the case may be, or a similar report or complaint has been made or filed under the corresponding law of any other country:

Provided further that, notwithstanding anything contained in [2][first proviso], any property of any person may be attached under this section if the Director or any other officer not below the rank of Deputy Director authorised by him for the purposes of this section has reason to believe (the reasons for such belief to be recorded in writing), on the basis of material in his possession, that if such property involved in money-laundering is not attached immediately under this Chapter, the non-attachment of the property is likely to frustrate any proceeding under this Act.]

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> [3] *Provided also that for the purposes of computing the period of one hundred and eighty days, the period during which the proceedings under this section is stayed by the High Court, shall be excluded and a further period not exceeding thirty days from the date of order of vacation of such stay order shall be counted.];*

Intent of the Parliament in the above provision is crystal clear that 'the reason for such belief to be recorded in writing', therefore one has to draw inference that 'reason to believe' is conclusive and it must be supported by reasons to be recorded.

13. Similarly Section 26 of the Indian Penal Code, 1860 reads as under:

> ***26. "Reason to believe"*** *- A person is said to have "reason to believe" a thing, if he has sufficient cause to believe that thing but not otherwise.*

14. The 'reason to believe' word has been interpreted by the Hon'ble Supreme Court in the case of **N. Nagendar Rao and Company**[8] that even though formation of opinion may be subjective but It must be based on material on the record. It cannot be arbitrary, capricious or whimsical.

15. The expression 'reason to believe' under Section 26 of the I.P.C. is understood in the sense of sufficient cause to believe that thing but not otherwise. In **M/s Phoolchand Bajrang Lal**

8 1994 (9) TMI 316 SUPREME COURT

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and another vs. Income Tax Officer and Another[9] the Supreme Court in the context of Indian Income Tax Act, 1961 explains the expression as under:

> *"Since, the belief is that of the Income-tax Officer, the sufficiency of reasons for forming the belief, is not for the Court to judge but it is open to an assessee to establish that there in fact existed no belief or that the belief was not at all a bona fide one or was based on vague, irrelevant and non-specific information. To that limited extent, the Court may look into the conclusion arrived at by the Income-tax Officer and examine whether there was any material available on the record from which the requisite belief could be formed by the Income-tax Officer and further whether that material had any rational connection or a live link for the formation of the requisite belief."*

16. In the case of **Income Tax Officer, I Ward, DIST, VI, Calcutta and Others vs. Lakhmani Mewal Das**[10]**,** the Supreme Court held that there should be a live link or close nexus between the material before ITO and the formation of his belief that assessee has escaped assessment.

17. In the case of **Aslam Mohammad Merchant vs. Competent Authority**[11]**,** the entire legal position has been explained elaborately by the Hon'ble Supreme Court as under:

> *"28. It is, however, beyond any doubt or dispute that a proper application of mind on the part of the*

9 [1993] 203 ITR 456 (SC)
10 1976 SCR (3) 956
11 (2008) 14 SCC 186

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competent authority is imperative before a show cause notice is issued. Section 68 H of the Act provides for two statutory requirements on the part of the authority namely (i) he has to form an opinion in regard to his 'reason to believe' and (ii) he must record reasons therefor. Both the statutory elements, namely, 'reason to believe' and 'recording of reasons' must be premised on the materials produced before him. Such materials must have been gathered during the investigation carried out in terms of Section 68 E or otherwise. Indisputably, therefore, he must have some materials before him. If no such material had been placed before him, he cannot initiate a proceeding. He cannot issue a show cause notice on his own ipse dixit. A roving enquiry is not contemplated under the said Act as properties sought to be forfeited must have a direct nexus with the properties illegally acquired.

29. It is now trite law that whenever statute provides for 'reason to believe', either the reason should appear on the face of notice or they must be available on the materials which had been placed before him. We have noticed herein before that when the authority was called upon to disclose the reasons, it was stated that all the reasons were contained in the show cause notices themselves. They, however, in our opinion, do not contain any reason so as to satisfy the requirement of Sub-Section (1) of Section 68 H of the Act."

18. 'Reason to believe' cannot be a rubber stamping of the opinion already formed by a competent officer. The Officer who is supposed to write down his minimum reasons to believe has to be independently apply his mind. It should not be a mechanical reproduction of the words in the statute. When an officer

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exercising *quasi judicial* function, such a decision peruses such reasons to believe. It must be apparent to the reviewing authority that the officer penning the reasons has applied his mind to the material information available on record and has, on that material, arrived at his reasons to believe. Application of mind to the officer must be discernible. Reasons have to be made explicit. It is only the reason that can enable the reviewing authority to discern how the officer found his reasons to believe. As explained in **Oriental Insurance Company vs. Commissioner of Income Tax[12],** - the *prima facie* formation of belief should be rational, coherent and not *ex facie* incorrect and contrary to what is on record. A rubber-stamp reason can never take the character of 'reasons to believe', as explained by the Hon'ble Supreme Court in the case of **Union of India vs. Mohanlal Capoor[13].** In **Dilip N. Shroff vs. Joint Commissioner of Income Tax[14]**, the Hon'ble Supreme Court deprecated the practice of issuing notices in a standard proforma manner - without material particulars.

19. In the case of **Sabh Infrastructure vs. Assistant Commissioner of Income Tax[15],** the Delhi High Court specifically held that it is also now well settled that the reasons to

12 (2015) 378 ITR 421 (Delhi)
13 (1973) 2 SCC 836
14 (2007) 6 SCC 329
15 (2017) 398 (ITR) 198 (Delhi)

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believe have to be self explanatory. The reasons cannot be, thereafter, supported by any extraneous material.

20. The Hon'ble Supreme Court in the case of **Oryx Fisheries (P) Ltd. vs. Union of India**[16]**,** Para 41, the legal position was summarized in a *quasi* judicial exercise of power and such *quasi* judicial functions are amenable to judicial review, in other words, recording of reasons is mandatory while exercising *quasi* judicial functions, it reads as under:

> *"41. In M/s Kranti Associates (supra), this Court after considering various judgments formulated certain principles in para 51 of the judgment which are set out below :*
>
> *a. In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.*
>
> *b. A quasi-judicial authority must record reasons in support of its conclusions.*
>
> *c. Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.*
>
> *d. Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.*
>
> *e. Reasons reassure that discretion has been exercised by the decision maker on relevant grounds and by disregarding extraneous considerations.*
>
> *f. Reasons have virtually become as indispensable a component of a decision making process as observing principles of natural justice by judicial, quasi-judicial and*

16 (2010) 13 SCC 427

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even by administrative bodies. g. Reasons facilitate the process of judicial review by superior Courts.

h. The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the life blood of judicial decision making justifying the principle that reason is the soul of justice.

i. Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

j. Insistence on reason is a requirement for both judicial accountability and transparency.

k. If a Judge or a quasi-judicial authority is not candid enough about his/her decision making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

l. Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or `rubber-stamp reasons' is not to be equated with a valid decision making process.

m. It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision making not only makes the judges and decision makers less prone to errors but also makes them subject to broader scrutiny.

n. Since the requirement to record reasons emanates from the broad doctrine of fairness in decision making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence.

o. In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore,

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for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "Due Process".”

21. The failure to disclose right at the beginning, ‘reason to believe’ in the seizure memo read with Section 110 of the Act, 1962 would not be a mere irregularity but an illegality in not assigning some material information and reasons in support of violation of any statutory provision. A violation thereof would vitiate the entire proceedings and cause the order of provisional attachment to be rendered illegal.

22. For seizure of goods, unless there are strong and compelling reasons to believe that goods is ‘imported’, one cannot draw inference that officer who had seized goods believe it to be foreign goods etc. It will be an instrument of oppression, misuse and arbitrariness clothing officers with uncanalized, draconian and arbitrary powers thereby rendering opinion itself violative of Article 14 of the Constitution.

23. In the present case core issues are as under:

(a) Whether is there any compliance to Section 110 of the Act, 1962 to the extent of not assigning the reasons in support of ‘reason to believe’ or not?

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(b) Whether local traders' opinion on the seized dried Areca Nuts to the extent of foreign origin could be reliable and acceptable or not?

(c) Whether opinion formed by the dried Areca Nuts Research and Development Foundation, Mangalore, Karnataka to the extent of 'this resembled to the Areca Nuts of India and Nuts are good' is reliable or not?

(d) Whether documents relating to transit of seized goods are doubtful or suspicious or not.

24. In the light of the aforementioned analysis of the word 'reason to believe', impugned seizure memo dated 02.04.2024 as against Item No. 6, Inspector of Customs / Seizing Officer Kishanganj Circle Office written as under:

> ***"6. Reason for seizure :*** *Violation of Sections 7, 11, 46 and 47 of the Customs Act, 1962 read with Section 3 (2) of the Foreign Trade (Development and Regulation) Act, 1992."*

25. Except the aforementioned conclusion, it is not supported by materials or reasoning. What has been assigned as reason for seizure is that there are violation of aforementioned statutory provisions. In what manner is not forthcoming in the seizure memo. The aforementioned statutory provisions have been cited in Paragraph No. 6 of seizure memo. *Prima facie*, none of the cited provisions are attracted in the present case, having regard

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to the factual aspect of the matter read with documents relating to purchase of goods and its transportation and traders are registered and they are fulfilling all the criteria for purchase of dried Areca nuts transportation and sale etc. What should constitute the ‘reason to believe’ that are to be recorded - In this context, it must be seen that even for invoking powers under Section 110 of the Act, 1962, seizing officer has to record his ‘reason to believe’ in writing. At least few material information is to be recorded in support of seizure memo and merely mentioning that petitioner has violated certain provisions of the Act, 1962 read with the Act, 1992 are not sufficient, for the reasons that seizing officer is exercising a *quasi judicial* functions under the Act 1962 read with the Act, 1992 and it is amenable to judicial review, therefore, in not assigning or referring to some material information so as to have nexus to the word ‘reason to believe’, the seizing officer should have recorded in writing in specific reasons in the light of existing documents. Subsequent events like subjecting certain samples of the seized Areca Nuts to local traders and their opinion is suspected to be seized goods is foreign origin and Indian origin is not reliable and acceptable in the absence of concrete finding that the seized dried Areca Nuts is of the foreign origin with corroborative evidences. Perusal of the records, it is evident that

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no material information is in support of ‘reason to believe’ could be drawn inference, therefore, *prima facie* there are no violation of any of the provisions of the Act, 1962 read with the Act, 1992. Local traders’ opinion is not authenticated or any standard adopted so as to rely on their opinion. In fact, Ministry of Agriculture and Farmer Welfare and ICAR are of the opinion that formation of opinion of Areca Nuts with a naked eye to the extent that seized Areca Nuts seems to be foreign origin is not reliable and acceptable. Therefore, Inspector of Customs / seizing officer in the seizure memo dated 02.04.2024 has merely stated against reasons for seizure at item No. 6 of the Seizure Memo that transit of goods are in violation of Sections 7, 11, 46, 47 of the Act, 1962 read with Section 3 (2) of the Act, 1992 is not sufficient in the absence of material information in the light of above discussion relating to ‘reason to believe’ with reference to Income Tax Act, I.P.C. and PMLA Act. In other words the word ‘reason to believe’ is conclusive and not supported by valid reasons. Report of the Select Committee dated 5th November, 1962 is evident that reasons or grounds must support seizure memo (*vide* para 11 of this judgment). Similarly, analysis at paragraph Nos. 12 to 24 of this judgment.

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26. Respondents have relied on two decisions *namely* ***Santosh Kumar Murarkaj vs. Union of India and others*** (cited *supra*) and ***Commissioners of Customs vs. Sir Rajendra Sethiya*** (cited *supra*), they are not assisting in view of the fact that there is no detailed discussion or analysis insofar as the word 'reason to believe' and how it has to be dealt with, therefore, the cited decisions are not assisting the respondents. On the other hand, petitioner who has cited decisions on the point of reasons to believe cited *supra* assist his case. Consequently, assigning reasons or grounds is mandatory while preparing seizure memo. Further, it is to be noted when driver of the truck was having certain documents like invoice and transportation documents, the same has not been reflected in the impugned seizure memo to the extent of its genuineness or any opinion on those material information and he has totally side tracked. On this score itself, the impugned seizure memo dated 02.04.2024 (Annexure - P 5) is liable to be set aside.

27. Suspected opinion of the local traders that seized dried Areca Nuts is a foreign origin is not reliable and acceptable, in other words, with a naked eye one cannot draw inference that whether it is Indian origin or foreign origin. In the present case, admittedly, the goods were seized at *Forbishganj* and not seized

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from any port or any customs area to form a believe that the goods were being imported into India. The Ministry of Agriculture and Farmer Welfare as well as ICAR were of the view that there is no mechanism available to trace the country of origin of ‘Areca Nuts’ and there is no laboratory test available for the same and further on the basis of examination by naked eye, it cannot be conclusive determined with regard to origin of the ‘Areca Nuts’. The ICAR also expressed their opinion that without their being a samples available from the country origin, it was not possible to determine the country origin of the seized ‘Areca Nuts’. In this backdrop it is difficult to comprehend as to how the basis of examination by naked eye and the opinion of the local traders can lead to forming of an opinion that the goods in question *namely* the ‘Areca Nuts’ are suspected to be foreign origin. Even otherwise there is nothing on record to form a belief that the goods in question were imported without payment of import duty (even if it is assumed for the sake of argument that the goods are of foreign origin). The opinion of the local traders that seized Areca Nuts suspected to be foreign origin failed the test *Wednesbury Principles* as no reasonable person can reach the conclusion of country of origin of Areca Nuts by mere perusal from naked eye as well as the opinion of the local traders. Some ways to assess the quality of Areca Nuts

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like glossy appearance, Kernel colour, fiber characteristics, texture, grading, moisture contents, weight etc., are needed. In fact, reading of paragraph Nos. 6 to 16 of the counter affidavit filed on behalf of the respondent Nos. 1 to 5, it is evident that seized Areca Nuts was subjected to test report from Areca Nuts Research and Development Foundation, Manglore, Karnataka. Paragraph 13 reads as under:

> *"That it is further humbly stated that, the test report regarding Identification of Country of Origin has been received from Arecanut Research & Development Foundation, Mangalore, Karnataka wherein it was reported that 'this resemble to the areca nuts of India and nuts are good'."*

28. Having regard to the cited report 'this resembled to Areca Nuts of India and Nuts are good' which supports the petitioner's version, therefore, suspected opinion of the local traders that seized Areca Nuts is a foreign origin is not reliable and acceptable, on the other hand it is of Indian origin.

29. Corroborative materials are evident like paragraph Nos. 15 to 18 of the counter affidavit filed on behalf of the respondent Nos. 1 to 5, reveals that there is genuineness of various documents insofar as transportation of seized goods from Nagaon, Guwahati, State of Assam to State of Karnataka. Except certain issues relating to GST which has been quoted in paragraph No. 18

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(i) on behalf of the official respondent in their counter affidavit, such observation would not assist the respondents in support of their seizure memo. Even on this count, petitioner has made out a case so as to interfere with the main seizure memo dated 02.04.2024 *vide* Annexure - P 5. That apart impugned seizure memo did not indicate any alleged fraud or mention any grounds, did not set out any intelligible reasons.

30. It is necessary to elaborate rationale behind passing reasoned orders : Recording of reasons in support of the conclusions arrived at in a judgment or order by the Courts in our judicial system has been recognized since the very inception of the system. Right to know the reasons for the decisions made by the Judges is an indispensable right of a litigant. Even a brief recording of reasoned opinion justifying the decision made would suffice to withstand the test of a reasoned order or judgment. A non-speaking, unreasoned or cryptic order passed or judgment delivered without taking into account the relevant facts, evidence available and the law attracted thereto has always been looked at negatively and judicially de-recognized by the courts. Mere use of the words or the language of a provision in an order or judgment without any mention of the relevant facts and the evidence available thereon has always been treated by the superior courts as

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an order incapable of withstanding the test of an order passed judicially. Ours is a judicial system inherited from the British Legacy wherein objectivity in judgments and orders over the subjectivity has always been given precedence. It has been judicially recognized perception in our system that the subjectivity preferred by the Judge in place of objectivity in a judgment or order destroys the quality of the judgment or order and an unreasoned order does not subserve the doctrine of fair play as has been declared by the Apex Court in the matter of **Andhra Bank v. Official Liquidator**[17]. For a qualitative decision arrived at judicially by the courts, it is immaterial in how many pages a judgment or order has been written by the Judge as has been declared by the Apex Court in the matter of **Union of India v. Essel Mining & Industries Ltd.**[18].

31. Even Administrative Orders to be reasoned: Even in administrative orders, recording of reasoned opinions in favour of the orders passed by the authorities is sine qua non for a proper and justifiable administrative order. The Hon'ble Supreme Court has, in the matter of **(i) State of Rajasthan v. Rohitas and Others**[19]**,** & **(ii) Ran Singh vs. State of Haryana**[20]**,** has ruled that order disposing of an application necessarily requires recording of

17 2005 (3) SCJ 762
18 (2005) 6 SCC 675
19 2008(61) ACC 678 (SC)
20 2008 (62) ACC 848 (SC)

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reasons in support of the conclusions arrived at in the order irrespective of whether such an order is passed in exercise of judicial or administrative powers vested in the court or the authority and failure to give reasons amounts to denial of justice. Reasons in support of the conclusion arrived at by the court or the authority in the order can be equated to heartbeats of every conclusion and without the same it becomes lifeless as expressed by the Apex Court in the Case of :

(i) Union of India Vs. Ibrahim Uddin[21], (Para 44).

(ii) Raj Kishore Jha v. State of Bihar & Others[22].

32. The Hon'ble Supreme Court in the case of **Eva Afro Feeds Private Ltd. vs. Punjab National Bank[23]** in paragraph Nos. 30 to 32 held as under:

> *"**30. In S. N. Mukherjee versus Union of India[24]**, this Court opined that the requirement to record reason can be regarded as one of the principles of natural justice which governs exercise of power by administrative authorities. The rules of natural justice are not embodied rules. The extent of their application depends upon the particular statutory framework whereunder jurisdiction has been conferred on the administrative authority. Except in cases where the requirement of recording reasons has been dispensed with expressly or by necessary implication, an administrative authority exercising judicial or quasi-judicial functions is required to record the reasons for its decision. This Court held as follows: -*

21 (2012) 8 SCC 148
22 2003 (4) ACC 1068 (SC)
23 Civil Appeal No. 7906 of 2021
24 (1990) 4 SCC 594

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39. The object underlying the rules of natural justice "is to prevent miscarriage of justice" and secure "fair play in action". As pointed out earlier the requirement about recording of reasons for its decision by an administrative authority exercising quasi-judicial functions achieves this object by excluding chances of arbitrariness and ensuring a degree of fairness in the process of decision-making. Keeping in view the expanding horizon of the principles of natural justice, we are of the opinion, that the requirement to record reason can be regarded as one of the principles of natural justice which govern exercise of power by administrative authorities.The rules of natural justice are not embodied rules. The extent of their application depends upon the particular statutory framework whereunder jurisdiction has been conferred on the administrative authority. With regard to the exercise of a particular power by an administrative authority including exercise of judicial or quasi-judicial functions the legislature, while conferring the said power, may feel that it would not be in the larger public interest that the reasons for the order passed by the administrative authority be recorded in the order and be communicated to the aggrieved party and it may dispense with such a requirement.It may do so by making an express provision to that effect as those contained in the Administrative Procedure Act, 1946 of U.S.A. and the Administrative Decisions (Judicial Review) Act, 1977 of Australia whereby the orders passed by certain specified authorities are excluded from the ambit of the enactment. Such an exclusion can also arise by necessary implication from the nature of the subject matter, the scheme and the provisions of the enactment. The public interest underlying such a provision would outweigh the salutary purpose served by the requirement to record the reasons. The said requirement cannot, therefore, be insisted upon in such a case.

40. For the reasons aforesaid, it must be concluded that except in cases where the requirement has been dispensed

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with expressly or by necessary implication, an administrative authority exercising judicial or quasi-judicial functions is required to record the reasons for its decision.

31. This Court in ***State of Orissa versus Dhaniram Luhar***[25] *reiterated the importance of furnishing reasons in decision making, be it administrative, quasi-judicial or judicial. It was in that context that this Court opined that reason is the heartbeat of every conclusion, and without the same it becomes lifeless. Reasons are live links between the mind of the decision-taker and the decision or conclusion arrived at. Reasons substitute subjectivity by objectivity.One of the salutary requirements of natural justice is spelling out reasons for an order made; in other words, a speaking out. This is what has been opined in paragraph Nos. 7 and 8:*

> *7. Reason is the heartbeat of every conclusion, and without the same it becomes lifeless. (See Raj Kishore Jha v. State of Bihar [(2003) 11 SCC 519 : 2004 SCC (Cri) 212 : (2003) 7 Supreme 152] .)*
>
> *8. Even in respect of administrative orders Lord Denning, M.R. in Breen v. Amalgamated Engg. Union [(1971) 1 All ER 1148 : (1971) 2 QB 175 : (1971) 2 WLR 742 (CA)] observed: "The giving of reasons is one of the fundamentals of good administration." In Alexander Machinery (Dudley) Ltd. v. Crabtree [1974 ICR 120 (NIRC)] it was observed: "Failure to give reasons amounts to denial of justice." "Reasons are live links between the mind of the decisiontaker to the controversy in question and the decision or conclusion arrived at." Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the "inscrutable face of the sphinx", it can, by its silence, render it virtually impossible for the courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision.Right to reason is an indispensable part of a sound judicial system; reasons at least sufficient to indicate an application of mind to the matter before court.*

25 (2004) 5 SCC 368

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Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made; in other words, a speaking-out. The "inscrutable face of the sphinx" is ordinarily incongruous with a judicial or quasi-judicial performance."

32. Again, in ***East Coast Railway versus Mahadev Appa Rao***[26]*, this Court observed that arbitrariness in the making of an order by an authority can manifest itself in different forms. Non-application of mind by the authority making the order is only one of them. Application of mind is best demonstrated by disclosure of mind by the authority making the order and disclosure is best done by recording the reasons that led the authority to pass the order in question. Absence of reasons either in the order passed by the authority or in the record contemporaneously maintained is clearly suggestive of the order being arbitrary, hence legally unsustainable. The above observations of this Court find place in paragraph No.23 which is extracted hereinunder:*

23. Arbitrariness in the making of an order by an authority can manifest itself in different forms. Non-application of mind by the authority making the order is only one of them. Every order passed by a public authority must disclose due and proper application of mind by the person making the order. This may be evident from the order itself or the record contemporaneously maintained. Application of mind is best demonstrated by disclosure of mind by the authority making the order. And disclosure is best done by recording the reasons that led the authority to pass the order in question. Absence of reasons either in the order passed by the authority or in the record contemporaneously maintained is clearly suggestive of the order being arbitrary hence legally unsustainable."

26 (2010) 7 SCC 678

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The aforementioned decision is also aid the petitioner's case.

ORDER

33. In the above analysis, the petitioner has made out a case so as to interfere with the impugned seizure memo dated 02.04.2024 and the same is set aside. Consequently, bank guarantee is discharged and the bond furnished by the petitioner to secure provisional release of the seized goods within a period of three months from the date of receipt of copy of this order.

34. CWJC No.10582 of 2024 is allowed.

(P. B. Bajanthri, J)

(Alok Kumar Pandey, J)

GAURAV S./-

AFR/NAFR	**AFR**
CAV DATE	12.09.2024
Uploading Date	25.09.2024
Transmission Date	

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