IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1302 of 2019
In
Civil Writ Jurisdiction Case No.6563 of 2019

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1. M/s Ramesh Kumar Baid and Sons (HUF) Babu Bazar Building Room No. C4A, S.S. Road, Fancy Bazar, Guwahati- 781001 (Assam) through their Karta, Ramesh Rajendraprasad Baid, S/o Shri Rajendra Prasad Baid, Age about 34 years, Male, Resident of Plot No. 419/521, Gurukrupa, Near Lendra Park Ramdaspeth, Nagpur, Maharashtra- 440010.
2. M/s Shubham Logistics 2nd Floor, Kejriwal Complex, S.J. Road, Guwahati- 781001 (Assam).

... ... Petitioners-Appellant/s

Versus

1. Union of India through the Commissioner of Customs (Prev), Patna, 5th Floor, Kendriya Rajaswa Bhawan, Bir Chand Patel Path, Patna- 800001.
2. The Assistant Commissioner, Customs (Prev) Division, Forbesganj, Goryare Chawk, Forbesganj, Dist- Araria (Bihar)- 854318.
3. The Superintendent (Prev.), Customs (Prev) Division, Forbesganj, Goryare Chawk, Forbesganj, Dist- Araria (Bihar)- 854318.
4. The Inspector (Prev.), Customs (Prev) Division, Forbesganj, Goryare Chawk, Forbesganj, Dist- Araria (Bihar)- 854318.

... ... Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Y. V. Giri, Senior Advocate Mr. Amit Kumar Mishra, Advocate Mr. Amit Pandey, Advocate
For the Respondent/s	:	Mr. S.D.Sanjay, Addl. S. G. Mr. Anshuman Singh, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

CAV JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 20-12-2019

What is the meaning of the expression 'reason to believe' and 'liable to confiscation' under Section 110 of the

Customs Act, 1962 (hereinafter referred to as 'the Act') is the question which we are called upon to answer.

2. Section 2 of the Act dealing with the definition (s) does not define either of the expressions 'reason to believe' and 'liable to confiscation'.

3. Chapter XIII (Sections 100 to 110A) *inter alia* deals with the provisions of search, seizure and arrest. Chapter XIV (Sections 111 to 127) deals with the confiscation of goods and imposition of penalty. Section 111 throws some light with regard to the nature of goods which are liable for confiscation.

4. Section 2(25) of the Act defines "imported goods" to mean any goods brought into India from a place outside India but does not include goods cleared for home consumption. Section 2(11) defines "customs area" to mean any area of a customs station or a warehouse and includes any area in which imported goods or export goods are ordinarily kept before clearance by Customs Authorities and "smuggling" in relating to any goods as per sub-section (39) of Section 2 means an act or omission which will render such goods liable to confiscation under section 111 or section 113.

5. Chapter IV of the Act empowers the Central Government to prohibit importation and exportation of any goods

and Chapter IV-A and IV-B deal with the detection of illegally imported goods and prevention of the disposal thereof.

6. Section 111 defines the category of goods brought from a place outside India liable to be confiscated.

7. We are dealing with a case where betel nuts having its origin from a country other than India, are prohibited to be imported in India, and as such by virtue of Section 111, liable to be confiscated, i.e. the meaning of the expression “liable to confiscation”. But what is important and a condition precedent, *sine qua non,* is the belief of the officer seizing the goods of forming an opinion in terms of the statutory expression “reason to believe” of such goods being liable to confiscation.

8. In the instant case, goods having description ‘Full dried Areca Nuts (round in shape and dark brown in colour)’ weighing 20,650 Kgs of a total estimated value of Rs. 58,76,577/- along with the vehicle were seized by the Inspector-cum- S.O., Customs (P), Forbesganj for the reason that “Violation of provision of Notification No.9/96 (NT)-Cus, Dt. 22/01/96, issued under Section 11 of the Customs Act, 1962 read with Section 3(2) of Foreign Trade (Development and Regulation) Act, 1992 and Notifications, order etc. issued thereunder.”

9. Record reveals that petitioners' application for release of the goods stood rejected for the reason that the prescribed authority had got the seized sample of the product tested from the laboratories which was classified as unsafe food.

10. Undisputedly, the goods are owned by the petitioners.

11. Significantly, they were not seized from any of the zones identified and ear-marked as a Warehouse or a Check post notified under the Customs Act. The vehicle was checked at Bhabtiyahi Kosi Mahasetu in Bihar, within the Indian territory.

12. Before us, despite repeated queries, no material stands produced, even *ex-faci*e, indicating that the vehicle carrying goods or the goods, at any point in time, passed through or had its origin outside the territory of India and, more specifically Nepal.

13. The documents produced by the owner indicated the name of the consignor and consignee, both within the territory of India and the vehicle travelled all through the States of Indian Union.

14. The consignor- petitioner no.1, M/s. Ramesh Kumar Baid and Sons (HUF), Babu Bazar Building, Room No.C4A, S. S. Road, Fancy Bazar, Guwahati-781001 (Assam) is registered dealer under the provisions of GST Act and petitioner no.2 M/s.

Shubham Logistics, 2nd Floor, Kejriwal Complex, S. J. Road, Guwahati-781001 (Assam) is transporter of goods and the consignee M/s. Jain Brothers is also a registered dealer under GST Act.

15. With these undisputed facts, before us, learned Additional Solicitor General of the India, Shri S. D. Sanjay invites our attention to the general practice of trade of illegal transportation of such goods from Nepal into India. For entry of such goods imported from anywhere other than India, is prohibited in law. But is it really so? in the instant case. Well except for bald assertion, there is nothing to support such a statement.

16. It is seen that the learned Single Judge by distinguishing its earlier decision rendered in **M/s Ayesha Exports Vs. The Union of India (CWJC No.7589 of 2018)** dealing with the very same issue directing release of the goods on the very same set of facts, dismissed the writ petition holding that there was a report of the laboratory indicating the goods to be not fit for human consumption; that investigation would reveal as to whether the goods were liable for confiscation or not and that there are Circulars and Memorandum issued by the Government.

17. At this stage, we may point out that the endeavour of the learned Single Judge in distinguishing the judgement in **M/s**

Ayesha Exports (supra), in relation to which SLP also stood dismissed, was adventurous, not maintaining comity of judicial consistency. (***See: Sundarjas Kanyalal Bhathija and others v. The Collector, Thane, Maharashtra and others AIR 1990 SC 261***). We find the learned Single Judge to have misconstrued and not fully appreciated the material on record. In fact, one of the Experts opined the product to be unfit on the basis of suspicion. We may notice that the goods were seized in February, 2019 and despite passage of 10 months, the investigation has not revealed the reasons of detention to be fortified in any manner. It is in this backdrop, holding the learned Single Judge to have committed a grave error, we proceed to hear the appeals on merits.

18. The consignor and the consignee are recorded and are identified. The goods are not seized at any notified custom zone or area. Save and except for what is recorded in the seizure memo, there is no other material available on record. The learned Additional Solicitor General has tried to supplement the reasons for formation of 'reason to believe', which also are on mere suspicion, through the affidavit of the authority. In the light of what is laid down by the Apex Court in **Mohinder Singh Gill and another v. The Chief Election Commissioner, New Delhi and others, AIR 1978 SC 851**, it would be impermissible for the

authority to do so. When a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of an affidavit or otherwise, for a bad order, with the passage of time, and supplementing the reasons would become good, which is not how the authorities are required to function, more so, in a case of confiscatory legislation. But assuming hypothetically, accepting the reasons furnished by the officer, even then it is nothing more than a mere suspicion. A general practice in trade cannot be, *ipso facto,* applied and adopted to the instant case, for unless it is shown that the act and the conduct of the petitioner makes him to be a part and parcel of the trading community, based in the area or dealing with the illegal activities of such like nature. There is no track record of past history of the instant petitioners.

19. Public orders made by authorities are meant to have public effect and must be construed objectively with reference to the language used in the order itself.

20. While dealing with the same very provision, Rohinton Fali Nariman J., in **Tata Chemicals Limited Versus Commissioner of Customs (Preventive), Jamnagar, (2015) 11 SCC 628**, has explained the meaning of "reason to believe" by

opining it to be not the subjective satisfaction of the officer concerned, for "*such power given to the officer concerned is not an arbitrary power and has to be exercised in accordance with the restraints imposed by law*" and that such belief must be that of an honest and reasonable person based upon reasonable grounds. Further, if the authority would be acting without jurisdiction or there is no existence of any material or conditions leading to the belief, it would be open for the Court to examine the same, though sufficiency of the reasons for the belief cannot be investigated.

21. In **Assistant Collector of Customs Verus Charan Das Malhotra**, **1971 (1) SCC 697,** Shelat J., has held reasonable believe to be relevant and not extraneous.

22. In **Kewal Krishan Vs. State of Punjab, AIR 1967 SC 737,** Kapur J., while dealing with identical provisions has clarified that confiscatory power based on 'reason to believe' has to be exercised only on the satisfaction based on certain objective material.

23. Earlier in **Hukma v. The State of Rajasthan, AIR 1965 SC 476**, Das Gupta J., clearly opined that burden of proof postulated upon the private party is based on the existence of the satisfaction of 'reason to believe'.

24. While dealing with the expression ‘reason to believe’ in relation to another confiscatory statute, i.e. Narcotic Drugs and Psychotropic Substances Act, 1985, S. B. Sinha J., in **Aslam Mohammad Merchant Versus Competent Authority and others, (2008) 14 SCC 186,** opined that proper application of mind on the part of the competent authority is imperative prior to issuance of a show cause notice, intending to confiscate the goods. Also there has to be some material leading to formation of some opinion or reason to believe for such action cannot be taken on mere *ipse dixit* and roving enquiry is not contemplated in law. Further *“It is now a trite law that whenever a statute provides for “reason to believe”, either the reasons should appear on the face of the notice or they must be available on the materials which had been placed before him.”*

25. In the **Bar Council of Maharashtra versus M. V. Dabholkar and others, (1976) 2 SCC 291**, Krishna Iyer J., has observed that ‘reason to believe’ cannot be converted into a formalised procedural roadblock, it being essentially a barrier against frivolous enquiries.

26. In dealing with the provision of the Income-tax Act, where one invariably finds the expression ‘reason to believe’, the Apex Court in **S. Narayanappa and others v. The Commissioner**

of Income-tax, Bangalore, AIR 1967 SC 523 has held such expression not to mean a purely subjective satisfaction but to be one held in good faith and not merely a pretence. "*To put it differently it is open to the Court to examine the question whether the reasons for the belief have a rational connection or a relevant bearing to the formation of the belief and are not extraneous or irrelevant to the purpose of the section.*"

27. In **Calcutta Discount Co. Ltd. Versus Income-tax Officer, Companies District I, Calcutta and another, AIR 1961 SC 372,** the Court has observed that:

> *"The expression "reason to believe" postulates belief and the existence of reasons for that belief. The belief must be held in good faith: it cannot be merely a pretence. The expression does not mean a purely subjective satisfaction of the Income Tax Officer: the forum of decision as to the existence of reasons and the belief is not in the mind of the Income Tax Officer. If it be asserted that the Income Tax Officer had reason to believe that income had been under assessed by reason of failure to disclose fully and truly the facts material for assessment, the existence of the belief and the reasons for the belief, but not the sufficiency of the reasons, will be justiciable. The expression therefore predicates that the Income Tax Officer holds the belief induced by the existence of reasons*

for holding such belief. It contemplates existence of reasons on which the belief is founded, and not merely a belief in the existence of reasons inducing the belief; in other words, the Income Tax Officer must on information at his disposal believe that income has been under-assessed by reason of failure fully and truly to disclose all material facts necessary for assessment. Such a belief, be it said, may not be based on mere suspicion: it must be founded upon information."

(*Emphasis supplied*)

28. The view stands reiterated in **Income-Tax Officer I Ward, District VI, Calcutta and others Versus Lakhmani Mewal Das, (1976) 3 SCC 757**.

29. In **Bhikhubhai Vithlabhai Patel and others versus State of Gujarat and another, (2008) 4 SCC 144,** while dealing with yet another legislation, i.e. Gujarat Town Planning and Urban Development Act, the Court reiterated that there is nothing like absolute or unfettered discretion and at any rate in the case of expression of a statutory powers. With approval it reiterated the following passage expressed and explained by Prof. Sir William Wade in Administrative Law (9th Edn.) in the chapter entitled "Abuse of discretion" and under the general heading "the principle of reasonableness" which reads as under:

"The common theme of all the authorities so far mentioned is that the notion of absolute or unfettered discretion is rejected. Statutory power conferred for public purposes is conferred as it were upon trust, not absolutely- that is to say, it can validly be used only in the right and proper way which Parliament when conferring it is presumed to have intended. Although the Crowns lawyers have argued in numerous cases that unrestricted permissive language confers unfettered discretion, the truth is that, in a system based on the rule of law, unfettered governmental discretion is a contradiction in terms. The real question is whether the discretion is wide or narrow, and where the legal line is to be drawn. For this purpose everything depends upon the true intent and meaning of the empowering Act.

The powers of public authorities are therefore essentially different from those of private persons. A man making his will may, subject to any rights of his dependents, dispose of his property just as he may wish. He may act out of malice or a spirit of revenge, but in law this does not affect his exercise of his power. In the same way a private person has an absolute power to allow whom he likes to use his land, to release a debtor, or, where the law permits, to evict a tenant, regardless of his motives. This is unfettered discretion. But a public authority may do none of these things unless it acts reasonably and in good faith and upon lawful and relevant grounds of public interest. The whole conception of unfettered discretion is inappropriate to a public authority, which possesses powers solely in order that it may use them for the public good.

There is nothing paradoxical in the imposition of such legal limits. It would indeed be paradoxical if they were not imposed."

30. In **Indian Nut Products and others Versus Union of India and others, (1994) 4 SCC 269**, while dealing with the similar provision, N.P. Singh J. has opined as under:-

> *"10. It is well-settled that if a statute requires an authority to exercise power, when such authority is satisfied that conditions exist for exercise of that power, the satisfaction has to be based on the existence of grounds mentioned in the statute. The grounds must be made out on the basis of the relevant material. If the existence of the conditions required for the exercise of the power is challenged, the courts are entitled to examine whether those conditions existed when the order was made. A person aggrieved by such action can question the satisfaction by showing that it was wholly based on irrelevant grounds and hence amounted to no satisfaction at all. In other words, the existence of the circumstances in question is open to judicial review."*

31. The reason to believe as held in **Sheo Nath Singh v. CIT, (1972) 3 SCC 234,** cannot be basis on mere suspicion, gossip or rumour though belief on an honest basis and on reasonable grounds and the officer may act on direct or circumstantial evidence. However, if the officer were to act without any material

or irrelevant, extraneous material, it would constitute an act without jurisdiction.

32. Sabayasachi Mukharji J., in **Indru Ramchand Bharvani & ors. v. Union of India & Ors. (1988) 4 SCC 1,** has clarified that "the expression 'reasonable belief' has to be adjudged from the perspective of a person having an experienced eye", well equipped to interpret the suspicious circumstances and to form reasonable belief".

33. Kuldip Singh J., in **M/s J. K. Bardolia Mills Versus M. L. Khunger, Dy. Collector and others, (1994) 5 SCC 332** has held failure on the part of the authorities to issue show cause notice obliges the authorities to return the goods without continuance of adjudicatory proceedings in respect thereof.

34. We are proceeding to quash the seizure notice and not relegating the petitioners to an adjudicatory proceedings, and we are also fortified to form such an opinion, in view of the earlier decision rendered by this Court for Co-ordinate Bench in **Bawa Gopal Das Bedi & Sons and others v. Union of India and others, AIR 1982 Patna 152** wherein under similar circumstances, in a writ jurisdiction, the Court quashed similar proceedings rather than making the party undergo the adjudicatory process for the proceedings initiated without any basis.

35. Referring again to the instant case, we notice that the goods as per invoice (page 25-29) originated from the State of Assam on 1st of February, 2019. They were to be transported to the State of Karnataka. Both the places are in India not in any specified/notified area under the Act but are the National Highways in the State of Bihar. On 6th of February, 2019, Inspector/S.O., Customs (P), Forbesganj seized the said goods and the vehicle by assigning the reasons reproduced supra. After drawing samples, vide punchnama dated 6th of February, 2019, Annexure-A to the counter affidavit, they were sent to the laboratory for analysis. The punchnama observed as under:-

> *"The Customs Officer being not satisfied with the documents produced by the truck driver, inspected/examined the goods carried in the truck and found as whole Dried Areca Nuts appearing as small and round shaped and dark brown in colour. The Customs officers informed that these kind of colour and shape of the Dried Areca Nuts are not found in Areca Nuts of Indian origin and those were believed to be of foreign origin. Also the Customs Officer had specific information about illegal importation of foreign origin 'Dried Areca Nuts/ Betal Nuts', thus these kinds of shape, size and colour of Areca Nuts strengthen their belief that those Dried Areca Nuts were actually of foreign origin and were illegally*

> *imported into India. The driver could not produce any documents regarding importation of said Dried Areca Nuts. The truck along with the loaded goods (Dried Areca Nuts) were detained by the Customs Officer."*
>
> (*Emphasis supplied*)

36. The customs authorities sent the samples for analysis to two laboratories. The Expert as per the report used the word 'suspect'. Based thereupon, petitioners' request for release of the seized goods was rejected vide communication dated 29th of March, 2019.

37. Perusing the impugned judgement, we find the Single Judge to have heavily relied upon the contents of the affidavit filed by the Revenue, wherein it stood averred that "the Areca Nuts of Indian origin are normally oval in shape" and it is this which made the Customs Officer forms a reasonable belief that cut dried Areca were illegally smuggled into India. As we have already observed that supplementation of reasons is impermissible in law, more so in the attending facts.

38. Record reveals that the writ petitioners had, in fact, placed on record, copies of the orders passed by different Benches of this Court, including a Division Bench, (CWJC No.317 of 2012, titled as Yamuna Trading Company & Anr. Vs. The Union of India & Ors. decided on 17.01.2013; CWJC No.3784 of 2013 titled as

Salsar Transport Company & Anr. Vs. The Union of India & Ors. decided on 04.03.2013, MJC No.2185 of 2013, titled as the Union of India & ors. Vs. The Salsar Transport Company & Anr, decided on 24.07.2013; CWJC No.7589 of 2018, titled as M/s Ayesha Exports Vs. The Union of India & Ors. decided on 24.01.2019; and LPA No.1186 of 2013, titled as the Union of India & Ors. Versus Salsar Transport Company & Ors. decided on 25.11.2013.

39. Significantly, one of such decision, i.e. CWJC No.7589 of 2018, titled as M/s Ayesha Exports Vs. The Union of India & Ors. decided on 24.01.2019 is by the very same learned Judge in which the goods stood released.

40. Be that as it may, in the instant case, we find the learned Singe Judge to have been swayed with five notifications/circulars/memorandum placed on record by the Revenue. (i) Circular No.3 of 2011 dated 6th January, 2011 issued by the Ministry of Finance in the Department of Revenue, Central Board of Excise and Customs; (hereinafter referred to as 'Circular No.3 of 2011'); (ii) Circular No.35 of 2017 dated 16th August, 2017 providing guidelines for provisional release of seized imported goods pending adjudication (hereinafter referred to as 'Circular No.35 of 2017'); (iii) Circular dated 20th November, 2018 issued by the Food Safety and Standards Authority of India

(A Statutory Authority established under the Food Safety and Standards Act, 2006); (hereinafter referred to as 'Circular dated 20th November, 2018'); (iv) Circular No.30 of 2017 dated 18th July, 2017 issued by Ministry of Finance with regard to re-testing of samples; (hereinafter referred to as 'Circular No.30 of 2017'); and (v) Memorandum dated 4th of June, 2019 issued by the Ministry of Commerce and Ministry, Government of India (hereinafter referred to as 'Memorandum dated 4th of June, 2019').

41. And not having gone into the relevancy of each one of them, without assigning any reason with regard thereto, germane to the issue, by presuming the same to be *ipso facto* applicable, the learned Judge concluded the Department to have lawfully seized the goods and the vehicle.

42. Circular No.3 of 2011 purportedly issued under the provisions of the Prevention of Food Adulteration Act, 1954, does not even deal with the issue in question. Firstly, the Prevention of Food Adulteration Act or its guidelines/Rules does not authorise the Customs Officer to issue any circular or take appropriate action under the provisions of the said Act. The Customs Officers are also not empowered or authorized under the said Act or the Rules framed thereunder. Even the Food Safety and Standards Act, 2006 does not empower the officers to take any appropriate action under

the said provisions. Secondly, the said Circular does not deal with the product in question. It be only observed that there is no live link or tell a tale sign of the product being of a foreign origin or having passed through a territory other than India, much less Nepal.

43. Who were those "customs officers" who informed the seized nuts not to be of Indian origin, as recorded in the Panchnama, is embedded only in the mind of the officer and despite a period of 10 months, has not surfaced on the record. In any event, were they experts in the field, judging the Areca Nuts not to be of Indian origin by visual inspection? Fact, not known to anyone. Mere suspicion cannot be a reason sufficient enough to derive such a conclusion forming a belief 'for reason to believe'.

44. Even otherwise, if the goods are "unsafe food" it is for the authorities under the relevant Act to proceed and take appropriate action, for mere report in that regard would not confer any jurisdiction upon the Customs Officer under the Customs Act.

45. Coming to Circular No.35 of 2017, we notice that it only deals with the manner in which the goods are to be released. Significantly, application for such Circular pre-supposes the goods to be "imported goods", with the parties being *ad- idem* on such fact, which is not the case in hand.

46. Circular dated 20th November, 2018 prescribes the standards of areca nuts under sub regulation 2.3.55 of Food Safety and Standards (Food Products Standards and Food Additives), Regulations, 2011 and also in Chapter 2 of Food Safety & Standards (Contaminants, Toxins & Residues) Regulations 2011. Significantly, the said Circular itself prescribes that areca nut is prone to formation of fungal growth during various stages of its production, storage and transportation and as such the authorized officers are advised to be vigilant and not clear any "imported Betel/Areca Nut consignment" unless it is subjected to 100% sampling and testing. How is this circular even applicable or relevant for determination of the controversy in issue remains unexplained-Any bodies guess. It operates and applies in a totally different fact situation and only where goods are imported and passed through the channel provided under the Customs Act, which is not the case in hand.

47. Circular No.30 of 2017 only lays down the procedure for having the seized goods re-tested. And Memorandum dated 4th June, 2019 only talks of additional laboratories for conducting tests of Areca/betel nut and other products.

48. It is seen that in MJC No.2185 of 2013 titled as the Union of India & Ors. Versus Salsar Transport Company & anr, decided on 24.07.2013, the learned Single Judge of this Court took a view that the Food Safety and Standards (Packaging and Labelling) Regulations, 2011 would be applicable only where the product is sold in a package with inscription of the statutory warning that "chewing of Supari is injurious to health" and such product complying with the Food Safety and Standards (Contaminants, Toxins and Residues) Regulations, 2011 which view stands affirmed by co-ordinate bench of this Court in LPA No.1186 of 2018, titled as The Union of India & Ors. Vs. Salsar Transport Company & Anr. decided on 25.11.2013.

49. We find no reason to take a contrary view, more so, when the goods in question are yet raw, as an unfinished product, meant to be transported to another State for it to be processed and packaged, whereafter, only, eventually sold in an open market and if the goods are actually unsafe food then it is not the provision of the Customs Act which can be invoked, for not falling within its purview.

50. Thus, in view of our aforesaid discussions, we set aside the judgement dated 05.09.2019 passed in CWJC No.6563 of 2019 titled as M/s. Ramesh Kumar Baid and Sons (HUF) & anr.

Versus the Union of India & Ors. by a learned Single Judge of this Court and allow the writ petitioners' prayer of quashing the seizure memo dated 6th of February, 2019, as also all consequential actions seizing the goods and vehicle in question, for such action to be without any basis having no mandate of law.

51. The writ petition stands allowed in terms of the prayer with a further direction to the authorities concerned to forthwith release the goods.

52. The present appeal stands allowed. No order as to costs.

(Sanjay Karol, CJ)

Anil Kumar Upadhyay, J. I agree.

(Anil Kumar Upadhyay, J)

Sunil/-

AFR/NAFR	AFR
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