

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.13176 of 2023**

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Fariyad Alam, Son of Shekh Reyaz, Resident of village - Basantpur, P.O. and P.S. - Mainatand, District - West Champaran, Bihar - 845306.

... ... Petitioner

Versus

1. The Union of India through Ministry of Homes, P.S. Khan Market Government of India, New Delhi.
2. The Commandant, 47 BN, Seema Suraksha Bal, P.S. - Basantpur, Mainatand, Raxaul.
3. The Assistant, Sub-Inspector, S.S.B., 47 BN. P.S. Basantpur, Maintarnd, District - West Champaran.
4. The Principal Commissioner, Department Customs, 5th Floor, Central Revenue Building, Bir Chand Patel Marg, Bailey Road, P.S. - Kotwali, Patna - 1.
5. The Deputy Commissioner, Department of Customs (P) Division, P.S. - Mainatarnd, Motihari.
6. The Superintendent, Department of Customs, P.S. - Bettiah.

... ... Respondents

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**Appearance :**

For the Petitioner	:	Ms. Archana Meenakshee, Advocate
		Mr. Rohit Singh, Advocate
		Mr. Ranaveer Prawar, Advocate
For the UOI	:	Dr. K.N. Singh, ASG
		Mr. Anshuman Singh, Sr. SC
		Mr. Alok Kumar, CGC
		Mr. Shivaditya Dhari Sinha, Advocate

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**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD  
and  
HONOURABLE MR. JUSTICE ASHOK KUMAR PANDEY  
ORAL JUDGMENT  
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)**

**Date : 24-06-2025**

Heard Ms. Archana Meenakshee, learned counsel for the petitioner and Dr. K. N. Singh, learned ASG assisted by Mr. Anshuman Singh, learned Senior Standing Counsel for the Department of CGST/CX.



2. The petitioner in this case is challenging the Seizure Memo dated 21.04.2023 (Annexure 'P/6' to the writ application) whereby and whereunder 35 bags of wheat containing 55 Kgs each have been seized by one Sunil Dutt Gaurola, Assistant Sub-Inspector, 47 Battalion, Shashtra Seema Bal, Bihar and handed over to the Assistant Commandant 'A' COY, 47<sup>th</sup> Battalion, SSB, Bihar. The petitioner has also prayed for the provisional release of the seized vehicle along with the consignment of 35 bags of wheats.

3. At the outset, it is recorded that in course of hearing of the writ application on 23.06.2025, learned counsel for the petitioner has specifically submitted that she would confine her submissions in this case only with regard to the seizure of the wheat. Since the order of confiscation has been passed during pendency of the writ application and the order of confiscation was brought on record by the respondents with their counter affidavit, the petitioner filed an interlocutory application seeking quashing of the Adjudication Order No. 107/CUS/DC/MTH/2023-24 dated 22.12.2023 which is Annexure 'C' to the supplementary counter affidavit of respondent nos. 4, 5 and 6. A copy of the said order has been annexed as Annexure 'P/7' to the Interlocutory Application



No. 1 of 2025. In the interlocutory application, the petitioner has prayed for the following reliefs:-

“(i) To quash order-in-original No.107/CUS/DC /MTH/2023-24 DATED 22.12.2023 whereby adjudicating authority has confiscated the seized goods valued at Rs.46,200/- and seized conveyance valued at Rs.3,20,000/- under section 113 and 115 of the Customs Act, 1962 as per averment of respondent no.4,5 and 6 in paragraph 5 of their supplementary counter affidavit.

(ii) To set aside the e-auction order of the instant seized goods vide no. MSTC/PTN/Customs dated 1.2.2024 involving Rs.31,678/ as sales proceeds as per the averment of Respondent no.4,5 and 6 in paragraph 8 of their supplementary counter affidavit.

(iii) To grant petitioner the seizure value of the seized goods valued at Rs.46,200/- as per the averment of Respondent no.4,5 and 6 in paragraph 5 of their supplementary counter affidavit.”

**4.** This Court, vide its order dated 13.05.2025, allowed the petitioner to amend the writ application. Respondent nos. 4, 5 and 6 have also filed a counter affidavit to the interlocutory application. This Court has recorded in it's order that the statements made in the interlocutory application and the prayers made in paragraph '4' of the application shall form part and parcel of the writ application.

**5.** It has been noticed that initially when the counter affidavit was filed on behalf of the respondent nos. 4, 5 and 6, the



State Respondents have brought on record the Seizure Memo prepared on 24.01.2023 at 06:10 Hours under signature of the Officer who has signed for Assistant Commandant ‘A’ COY, 47<sup>th</sup> Battalion, SSB, Bihar. The Seizure Memo contains the signature of two persons as witness, namely, Javed and Naimul Hoda of Village Basantpur, District-West Champaran.

**6.** The Seizure Memo contains reason for seizure which reads as under:-

“Violation of section 7, 11, 46 and 47/50 & 51 of custom act, 1962 read with section 3(2) of the foreign trade (development and regulations) act, 1992 & government of India, ministry of finances, 1962”

**7.** As regards the Seizure Memo, learned counsel for the petitioner submits that from the Seizure Memo, it would appear that the reasons for seizure as required to be shown in the Seizure Memo in terms of Section 110 of the Customs Act, 1962 (hereinafter referred to as the ‘Act of 1962’) has not been duly shown. Relying upon the judgment of this Court in the case of **M/s Ashoke Das vs. Union of India & Ors. (disposed of on 19.02.2025 vide C.W.J.C. No. 4918 of 2021), Jayesh Agarwal Vs. Union of India (C.W.J.C.No. 7085 of 2022 disposed of on 24.02.2025) and A.S. Trading and Company vs. The Union of India (C.W.J.C. No. 17756 of 2024 disposed of on 25.04.2025)**, learned counsel for the petitioner submits that the identical kind of



seizure memos in those cases have been quashed by this Court and the same has attained finality. It is pointed out that from the proforma for seizure, it would appear that Sunil Dutt Gaurola who is an Officer in the Rank of Assistant Sub-Inspector seized the wheats on 21.04.2023 at 06:10 Hours in Basantpur Village Pillar no. 415/26 when the wheats were allegedly being smuggled from India to Nepal. In column 12 of the proforma for seizure, the Assistant Sub Inspector Rank Officer has informed that the seized items have been handed over to Custom Bettiah and the petitioner has been shown as the person arrested. The name of the SSB Personnel involved in the process as mentioned in column 15 has not been disclosed rather it is mentioned as “Enclosed Annexure-‘B’ ” but there is no such enclosure. However, in the left hand side of the proforma, seal of Assistant Commandant, ‘A’ COY, 47<sup>th</sup> Battalion, SSB, Bihar has been affixed and someone put his initial signature thereon for the Assistant Commandant.

**8.** Learned counsel has brought to the notice of this Court that Annexure ‘P/9’ which is a letter written by the petitioner to the Deputy Commissioner, Customs, Motihari wherein he prayed for release of the wheats. He has submitted that the wheats were being carried on tractor with trolley from Basantpur, Mainatand to Bettiah with valid GST Invoice but it was seized by



an Assistant Sub-Inspector who stopped the tractor asking him to exchange pleasantries. When the petitioner did not agree to exchange pleasantries, he was manhandled and the tractor loaded with 35 bags of wheats were seized by ASI who was not competent and had no jurisdiction to effect the seizure under Section 110 of the Act of 1962. He prayed for release of the wheat bags. It is submitted that the respondents did not take any action on the letter of the petitioner as contained in Annexure 'P/9' to the writ application.

**9.** The petitioner has enclosed copy of the invoice with its GSTIN/UIN and PAN. The petitioner has also enclosed bill supply and these documents have been enclosed as Annexure 'P/2' and 'P/3' series. Learned counsel submits that vide Notification No. 99/2014-CUSTOMS (N.T.), the Central Government has, in exercise of its power under Section 6 of the Customs Act entrusted to the Officers and Subordinate Officers of the Sashastra Seema Bal constituted under Section 4 of the Sashastra Seema Bal Act, 2007, the functions specified in the corresponding entry in 3<sup>rd</sup> column of the table and they have been authorised to exercise all function of an Officer of Customs within the local limits of the areas specified in the schedule. So far as the functions under Sections 100, 102, 106, 107 and 110 of the Act of 1962 is



concerned, all inspectors and Sub-Inspectors Rank Officers have been entrusted with the function. Therefore, it is submitted that the seizure effected by an Assistant Sub-Inspector Rank Officer was beyond his jurisdiction and authorisation.

**10.** So far as the legality of the Seizure Memo is concerned, learned ASG assisted by learned Sr. Standing Counsel for the Department of CGST & CX does not dispute that the identical kind of seizure memos have been quashed by this Court after holding that merely writing of sections of the Customs Act in the seizure memo would not be a compliance of the mandate of Section 110 of the Act of 1962. It is not disputed that what has been held by this Court in the case of **M/s Ashoke Das (supra)** with regard to legality of the seizure memo would hold the field in the present case as well.

**11.** Learned ASG has, however, attempted to demonstrate that the seizure was effected by the Assistant Commandant, 47<sup>th</sup> Battalion, SSB but on the queries made by this Court on the face of the letter written by the ASI Rank Officer to the Customs Officials, it could not be denied that as per the said letter, ASI along with his five constables was on duty and he had intercepted the tractor loaded with wheats, he had arrested the driver of the vehicle and seized the vehicle and 35 bags of wheats



which he handed over to the Customs Officers. In fact, it is evident from the proforma of inspected goods that it has been prepared by the ASI. Section 110 of the Act of 1962 reads as under:-

**“110. Seizure of goods, documents and things.—(1)** If the proper officer has reason to believe that any goods are liable to confiscation under this Act, he may seize such goods:

<sup>1</sup>[Provided that where it is not practicable to remove, transport, store or take physical possession of the seized goods for any reason, the proper officer may give custody of the seized goods to the owner of the goods or the beneficial owner or any person holding himself out to be the importer, or any other person from whose custody such goods have been seized, on execution of an undertaking by such person that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer;

Provided further that where it is not practicable to seize any such goods, the proper officer may serve on the owner of the goods an order that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer.

<sup>2</sup>[(1-A) The Central Government may, having regard to the perishable or hazardous nature of any goods, depreciation in the value of the goods with the passage of time, constraints of storage space for the goods or any other relevant considerations, by notification in the Official Gazette, specify the goods or class of goods which shall, as soon as may be after its seizure under sub-section (1), be disposed of by the proper officer in such manner as the Central Government may, from time to time, determine after following the procedure hereinafter specified.

(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

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1. Substituted by Act 23 of 2019, S. 74(i), for proviso. Prior to its substitution, proviso read as under: – “Provided that where it is not practicable to seize any such goods, the proper officer may serve on the owner of the goods an order that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer.”.

2. Inserted by Act 80 of 1985, S. 8 (w.e.f. 27-12-1985).



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.

(1-C) Where an application is made under sub-section (1-B), the Magistrate shall, as soon as may be, allow the application.]

<sup>1</sup>[(1-D) Where the goods seized under sub-section (1) is gold in any form as notified under sub-section (1-A), then, the proper officer shall, instead of making an application under sub-section (1-B) to the Magistrate, make such application to the Commissioner (Appeals) having jurisdiction, who shall, as soon as may be, allow the application and thereafter, the proper officer shall dispose of such goods in such manner as the Central Government may determine.]

(2) Where any goods are seized under sub-section (1) and no notice in respect thereof is given under clause (a) of section 124 within six months of the seizure of the goods, the goods shall be returned to the person from whose possession they were seized:

<sup>2</sup>[Provided that the Principal Commissioner of Customs or Commissioner of Customs may, for reasons to be recorded in writing, extend such period to a further period not exceeding six months and inform the person from whom such goods were seized before the expiry of the period so specified:

Provided further that where any order for provisional release of the seized goods has been passed under section 110-A, the specified period of six months shall not apply.]

(3) The proper officer may seize any documents or things which, in his opinion, will be useful for, or relevant to, any proceeding under this Act.

(4) The person from whose custody any documents are seized under sub-section (3) shall be entitled to make copies thereof or take extracts therefrom in the presence of an officer of customs.

<sup>3</sup>[(5) Where the proper officer, during any proceedings under the Act, is of the opinion that for the purposes of protecting the interest

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1. Inserted by Act 13 of 2021, S. 94.

2. Substituted by Act 13 of 2018, S. 92, for the proviso. Prior to its substitution, the provisos read as under: – “Provided that the aforesaid period of six months may, on sufficient cause being shown, be extended by the [Principal Commissioner of Customs or Commissioner of Customs] for a period not exceeding six months.”.

3. Inserted by Act 29 of 2019, S. 74(ii).



of revenue or preventing smuggling, it is necessary so to do, he may, with the approval of the Principal Commissioner of Customs or Commissioner of Customs, by order in writing, provisionally attach any bank account for a period not exceeding six months; Provided that the Principal Commissioner of Customs or Commissioner of Customs may, for reasons to be recorded in writing extend such period to a further period not exceeding six months and inform such extension of time to the person whose bank account is provisionally attached, before the expiry of the period so specified.]”

**12.** It has been held by this Court in several judicial pronouncements that the ‘reason to believe’ as required under Section 110 of the Act of 1962 is a *sine quo non* for effecting the seizure and it must be recorded by the Seizing Officer. Since there is no contest on this point that the seizure memo does not contain any ‘reason to believe’, we have no hesitation in quashing the seizure memo as contained in Annexure ‘P/6’ to the writ application and Annexure ‘B’ to the counter affidavit filed on behalf of respondent nos. 4, 5 and 6. The seizure memos are, therefore, quashed as far as the same relates to the wheats of 35 bags containing 55 Kgs each.

**13.** This would take us to an another issue which come up for consideration. It is evident that during pendency of the writ application, the adjudication order has been passed. A copy of the adjudication order (Annexure ‘P/7’ to the Interlocutory



Application) has been brought on record which has been taken as part and parcel of the writ application.

**14.** It is not disputed that on 12.12.2023, the petitioner had put his appearance. He had earlier appeared on 03.10.2023 and filed a petition in which he had stated that he was given only two days for appearance in compliance of the summons which is against the principles of natural justice. He informed the Superintendent, Motihari, Customs (P) Division that he had challenged the seizure memo before the Patna High Court in CWJC No. 13176 of 2023 which is likely to be heard very soon, therefore, any action may be taken only after outcome of the said case. From the records, it is further evident that on 12.12.2023, the petitioner once again submitted a letter to the Deputy Commissioner, Customs (P), Division, Motihari in which he informed that he had filed a writ application in the Patna High Court challenging the competency of the Seizing Officer in his case. He asserted that the seizure was effected by the A.S.I. of the SSB on the spot which has been countersigned by the senior in his camp office in forwarding the case records to the Customs.

**15.** This Court called upon the learned ASG and the officers present in the Court to inform as to what order has been passed by the Adjudicating Authority i.e. the Deputy



Commissioner, Customs (P), Division, Motihari on the letter/petition dated 12.12.2023 received by the Adjudicating Officer in his office on 13.12.2023. There is no response to this query and the respondents have not pointed out any order on the record on the letter-petition of the petitioner.

**16.** All that is stated in the adjudication order is that summon dated 27.09.2023 was issued to the owner of the vehicle Smt. Rajkumari but she did not appear for further investigation on the scheduled date. In the impugned order of confiscation/adjudication, it is stated that the summons dated 29.09.2023 and 30.09.2023 were issued by the Superintendent, Customs, (P) Division, Motihari under Section 108 of the said Act to the Noticee No. 1 to appear before him on 03.10.2023 for further investigation but he did not appear on the scheduled date. Petitioner in this case is the Noticee No. 1. Whereafter, another summon dated 30.09.2023 was also issued for appearance on 03.10.2023 but he did not appear on the scheduled date. However, one letter was received from the noticee on 03<sup>rd</sup> October, that he had challenged the legality of seizure before the Patna High Court.

**17.** In the impugned order, it is further recorded that Noticee No. 1 did not appear in any of the personal hearings dated 09.11.2023, 06.12.2023 and 14.12.2023 and he did not submit



anything in his defence. This Court, however, finds that this observation of the Adjudicating Authority is not correct. It is evident from the records that in his response letter-petition dated 12.12.2023 which was received in the office of the Adjudicating Authority well within time on 13<sup>th</sup> December, 2023, the petitioner had specifically stated that the seizure was effected by an A.S.I. of SSB on the spot which was countersigned by the officer in Camp Office in forwarding the case record to the Customs. This aspect of the matter has not at all been considered by the Adjudicating Authority.

**18.** This Court finds that the Adjudicating Authority has recorded in the concluding paragraph that (i) as per Seizure Memo and Panchnama prepared by SSB, the said goods/conveyance were intercepted by the SSB at 06:10 Hrs on 21.04.2023 near Indo-Nepal Border Pillar No. 415/26 in the Indian side; (ii) Voluntary statement of the said Noticee No. 1 was recorded before the competent authority of the SSB on the date of seizure under Section 107 of the said Act wherein the said Noticee No. 1 interalia stated that while he was taking the said goods from India to Nepal to sell in Nepal on 21.04.2023 through Border Pillar No. 415/26 without any valid documents, the patrolling party of SSB



intercepted Mahindra Tractor with Trolley Reg. No. BR05G 5339 loaded with goods and also he was caught by them.

**19.** On perusal of the records, it is not clear as to who recorded the statement of the petitioner under Section 107 of the Act of 1962. Neither the name nor the designation of the said competent authority has been disclosed on the record. The averment in the impugned order that the Seizure Memo and Panchnama were prepared by the SSB and the said goods/conveyance were intercepted by the SSB is a vague statement. The impugned order of confiscation nowhere states that the Seizure Memo and Panchnama were prepared by a competent authority in the rank of Inspector or Sub-inspector. It is further found that the confiscation order was passed on 22.12.2023. The computerised sheet has been placed before this Court to show the day-to-day development which took place in the office of the respondents. It appears that the dates were fixed in the office of the Superintendent and the Deputy Assistant Commissioner and Inspector till 27.09.2023. On 04.10.2023, Anand Kumar, the Superintendent has recorded “DSCN is prepared and uploaded in Draft Tab. Put up for kind perusal and approval please.” On the said date, Ashish Ranjan Inspector wrote “Amended DSCN put for kind perusal and approval please.” Thereafter, the date mentioned



is 26.12.2023, 23.01.2024, 12.07.2024, 11.09.2024, 07.05.2025 and 20.06.2025. There is no mention of the date 22.12.2023 when the impugned order of confiscation was passed.

**20.** Learned ASG submits that a copy of the impugned order was sent to the petitioner *vide* speed post dated 03.01.2024, however, in the I.A., the petitioner has stated that he was not apprised and was not aware of any of the development regarding adjudication order and auction proceeding. This Court further finds that while responding to the statement of the petitioner, though it is stated in paragraph '12' of the supplementary counter affidavit to the I.A. that he had been given three opportunities *vide* letters dated 08.11.2023, 28.11.2023 and 08.12.2023 for personal hearing before deciding the case or passing the order-in-original but he did not appear on any of the dates fixed for personal hearing, this Court finds that in the counter affidavit to the I.A. filed on 09.05.2025, for the first time, it is stated that the copy of the confiscation order was served on the petitioner *vide* speed post dated 03.01.2024.

**21.** It is a matter of record that this writ application was taken up for consideration before the learned Writ Court on 16.10.2023 while learned counsel for the appearing respondent sought time for filing counter affidavit. It is evident that much



before passing of the adjudication order, the writ application had already been taken up for consideration and at the instance of the respondents, it was adjourned for filing of the counter affidavit. In all fairness, equity and justice, once the matter got sub-judice in the High Court in the present writ application, the respondent authorities were not required to act in haste. Any action taken in haste is an indication of unfair play in action and it may be held to be a malafide exercise of power. On 07.02.2024, when the writ application was taken up for consideration, this Court was not informed about passing of the order dated 22.12.2023 by the Deputy Commissioner, Customs (P), Division, Motihari. In fact, this Court has recorded the submissions of learned counsel for the respondents in paragraph '3' of its order dated 07.02.2024 which reads as under:

“3. Learned counsel appearing on behalf of the respondents has stated that as the petitioner is ready to provide adequate securities/sureties and to abide by the reasonable terms and conditions that may be imposed by the Deputy Commissioner, Customs (P) Division, Motihari, he has no objection if this Court directs the Deputy Commissioner, Customs (P) Division, Motihari to release of vehicle bearing Registration No. BR05G5339 and food grains in favor of the petitioner subject to providing adequate securities/sureties to the extent value of the food grains and also subject to the petitioner abiding by other terms and conditions that may be imposed by the Deputy Commissioner, Customs (P) Division, Motihari.”



**22.** In view of the stand of the Respondents, this Court issued the following directions:-

“**4.** Having regard to the above facts and circumstances of the case and also the judgments of this Hon’ble Court referred above, this Court directs the Deputy Commissioner, Customs (P) Division, Motihari to release of vehicle bearing Registration No. BR05G5339 and food grains of the petitioner, which are subject matter of the present writ petition, subject to the condition that the petitioner shall make available adequate and sufficient securities/sureties (not in cash or bank guarantee) to the satisfaction of the Deputy Commissioner, Customs (P) Division, Motihari to the extent of the value of the food grains which may be assessed and that the petitioner undertakes to abide by any other condition that may be imposed for the purpose of future proceedings by the Deputy Commissioner, Customs (P) Division, Motihari.

**5.** Learned counsel for the petitioner undertakes on instruction from the petitioner that if the food grains are released in his favor, in course of trial he will not raise any question with respect to the seizure of the food grains and no identification issue shall be raised in course of trial. Further, the photographs of the jute bags containing the rice which may be exhibited in course of trial and the samples of the seized food grains if obtained in accordance with law shall not be questioned by the petitioner and he will not claim any benefit out of this order in the pending proceedings and pursuant to the release of the food grains in his favor.

**6.** Let the Deputy Commissioner, Customs (P) Division, Motihari pass an appropriate order after valuation of the food grains and other conditions to which the petitioner would be required to abide by. Such orders be passed within two weeks from the date of receipt/communication of this order. The release of the vehicle and food grain shall be subject to the final order likely to be passed by the Court in the preset CWJC.

**7.** Post this matter on 27.03.2024 for filing counter affidavit.”



**23.** At this stage only, the respondents have informed this Court that the goods in question have been auction sold. In the second supplementary counter affidavit, the respondents have stated that options were provided to the owner of the goods to redeem the seized goods and conveyance on payment of redemption fine Rs.7,000/- and Rs.25,000/- respectively under Section 125 of the Act of 1962. So far as the tractor is concerned, it is stated that the said conveyance was released on deposit of Rs.5,000/- penalty on 09/10.04.2024. But with regard to 35 bags of wheat, it is stated that the goods have been e-auctioned vide No. MSTC/PTN/Customs (Hqrs)Patna/298/Central Revenue Buiding/23-24/45503 dated 01.02.2024. The respondents have not disclosed the date of actual sale and delivery of wheats to the auction purchase.

**24.** It is evident from the records that the respondents themselves claimed to have dispatched the order of confiscation on 03.01.2024 but even before expiry of 30 days period from the date of dispatch of the copy of the impugned order of confiscation, the respondents held e-auction and sold the wheats for Rs.31,678/-.

**25.** At this stage, this Court would reproduce Section 125 of the Customs Act, 1962.

**“125. Option to pay fine in lieu of confiscation.—(1)**  
Whenever confiscation of any goods is authorised by this



Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods <sup>2</sup>[or, where such owner is not known, the person from whose possession or custody such goods have been seized,] an option to pay in lieu of confiscation such fine as the said officer thinks fit: <sup>3</sup>[Provided that where the proceedings are deemed to be concluded under the proviso to sub-section (2) of section 28 or under clause (i) of sub-section (6) of that section in respect of the goods which are not prohibited or restricted, <sup>4</sup>[no such fine shall be imposed]:

Provided further that], without prejudice to the provisions of the proviso to sub-section (2) of section 115, such fine shall not exceed the market price of the goods confiscated, less in the case of imported goods the duty chargeable thereon.]

<sup>5</sup>[(2) Where any fine in lieu of confiscation of goods is imposed under sub-section (1), the owner of such goods or the person referred to in sub-section (1), shall, in addition, be liable to any duty and charges payable in respect of such goods.]

<sup>6</sup>[(3) Where the fine imposed under sub-section (1) is not paid within a period of one hundred and twenty days from the date of option given thereunder, such option shall become void, unless an appeal against such order is pending.

Explanation.—For removal of doubts, it is hereby declared that in cases where an order under sub-section (1) has been passed before the date on which the Finance Act, 2018 receives the assent of the President and no appeal is pending against such order as on that date, the option under said sub-section may be exercised within a period of one hundred and twenty days from the date on which such assent is received.]

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2. Inserted by Act 80 of 1985, S. 9 (w.e.f. 27-12-1985).
3. Substituted by Act 13 of 2018, S. 95(i), for “Provided that”.
4. Substituted by Act 23 of 2019, S. 78, for “the provisions of this section shall not apply”.
5. Substituted by Act 80 of 1985, S. 9, for sub-S. (2) (w.e.f. 27-12-1985).
6. Inserted by Act 13 of 1018, S. 95(ii).



**26.** It is evident on bare reading of sub-section (3) of Section 125 of the Act of 1962 that where the fine imposed is not paid within the period of one hundred and twenty days days from the date of option given thereunder, such option shall become void, unless an appeal against such order is pending.

**27.** In the present case, the sale of the seized goods within a period of 29 days only from the date of dispatch of copy of the order of adjudication to the petitioner is nothing but an apparent violation of the sub-section (3) of Section 125 of the Act of 1962 and by no canon of justice, it may be found in consonance with the principles of natural justice. More than one ground are available to hold the confiscation order bad in law.

**28.** This Court, is therefore, of the considered opinion that the order of confiscation/adjudication dated 22.12.2023 was passed by the Deputy Commissioner, Customs (P) Divison, Motihari in hot haste during the pendency of the writ application when the matter was adjourned for filing of the counter affidavit and then even without waiting for the statutory period within which the petitioner could have redeemed the goods, these were subjected to sale. In view of these discussions, the impugned order of confiscation/adjudication is held bad in law. It is quashed accordingly.



**29.** This Court has though noticed that wheats have been sold only for Rs. 31,678/-, but because this Court has found that the sale was effected in hot haste and without following the statutory provision of law that too during pendency of the writ application when the case was adjourned at the instance of the respondents, this Court would direct the respondents to pay the total value of wheats being Rs. 46,200/- with interest at the rate of 6% from the date of seizure of the goods till the date of payment within six weeks from the date of receipt/production of a copy of this order. The respondents shall also pay within the same period, a cost of litigation assessed at the rate of Rs.5,000/- to the petitioner.

**30.** The writ application stands allowed.

**(Rajeev Ranjan Prasad, J)**

**( Ashok Kumar Pandey, J)**

avin/-

AFR/NAFR	
CAV DATE	
Uploading Date	01.07.2025
Transmission Date	

