

GAHC020000692026

2026:GAU-NL:359



**THE GAUHATI HIGH COURT**  
**(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)**  
**KOHIMA BENCH**

**Case No. : WP(C)/20/2026**

SARVADEVA VANIJYA PVT. LTD  
REGISTERED OFFICE SITUATED AT 2ND FLOOR, 2-C5, SHINE  
TOWER SARABHATI, GUWAHATI, KAMRUP METRO, ASSAM -  
781008, REPRESENTED BY ITS BRANCH INCHARGE, GUWAHATI,  
SHRI ABHISHEK CHHAJER, S/O LATE PYARILAL, CHHAJER, R/O  
NATUN, A.T. ROAD, NAGON, ASSAM, 782001

VERSUS

THE UNION OF INDIA AND 6 ORS  
REPRESENTED BY THE SECRETARY, DEPARTMENT OF REVENUE,  
MINISTRY OF FINANCE, GOVT. OF INDIA, NORTH BLOCK, NEW  
DELHI.

2:CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS  
CBIC  
REPRESENTED BY THE CHAIRPERSON  
NORTH BLOCK  
NEW DELHI

3:THE CHIEF COMMISSIONER  
CENTRAL GOODS AND SERVICES TAX AND CUSTOMS  
GUWAHATI ZONE  
KEDAR ROAD  
GST BHAVAN  
MACHKHOWA  
GUWAHATI  
ASSAM  
781001

4:THE COMMISSIONER OF CUSTOMS

PREVENTIVE  
NER CUSTOMS  
PREVENTIVE COMMISSIONERATE  
CUSTOM HOUSE 110 M.G. ROAD  
SHILLONG  
MEGHALAYA

5:THE SUPERINTENDENT  
A-S  
CUSTOMS PREVENTIVE DIVISION  
DIMAPUR  
KHERMAHAL POLICE POINT  
DIMAPUR  
NAGALAND - 797112

6:THE ASSISTANT COMMISSIONER  
CUSTOMS PREVENTIVE DIVISION  
DIMAPUR  
KHERMAHAL POLICE POINT  
DIMAPUR  
NAGALAND - 797112

7:MR. MOIN UDDIN  
S/O SAFAR ALI  
R/O ISLAM BASTI  
LANKA WARD NO. 11  
LANKA  
P.O. AND P.S. DISTRICT HOJAI  
ASSAM - 78244

**Advocate for the Petitioner** : THUYEKHRULU,

**Advocate for the Respondent** : A K MISHRA, VIKRAMJEET DEVNATH

**-BEFORE-  
HON'BLE MR. JUSTICE PRANJAL DAS**

Advocate for the petitioner : Mr. A. Goyal, Adv.  
Advocate for the respondent nos. 1 to 6 : Mr. V. Devnath, Adv.  
Date on which judgment is reserved : **27.04.2026**  
Date of pronouncement of judgment : **18.06.2026**  
Whether the pronouncement is of the

operative part of the judgment ? : N/A  
Whether the full judgment has been : Yes  
pronounced?

### **JUDGMENT & ORDER (CAV)**

Heard Mr. A. Goyal, learned counsel appearing for the petitioner. Also heard Mr. V. Devnath, learned counsel for the respondent nos. 1 to 6.

**2.** The instant writ petition has been filed by the petitioner company, namely *Sarvadeva Vanija Pvt. Ltd.*, represented by its Guwahati branch in-charge, Abhishek Chhajer, aggrieved by order dated 06-11-2025, whereby a vehicle in the nature of truck bearing registration No. AS-31-C-1172 was intercepted by the customs authorities at Dimapur division and the goods in the nature of areca nuts which have been transported in the truck and valued at Rs. 43,13,750/- - were seized along with the vehicle. It is stated that an inventory of the goods seized and detained dated 06-11-2025 was prepared under section 110 of the Customs Act, 1962. It is stated that the grounds recorded in the inventory were that the goods were suspected to be of foreign origin and hence, seized by the customs authorities.

**3.** It is stated that the petitioner company is engaged in the business of sale and supply of areca nuts and registered under the Goods and Services Tax Act, 2017 having registration No. GSTIN/UIN 18AATCS7469P1ZY with CIN No. U74900WB2013PTC195756. It is stated that the directors of the company are citizens of India by birth and entitled to the rights

guaranteed under the Constitution of India and the laws framed there under. It is stated that after acquiring the areca nuts from the local market of Abdullapur, Hailakandi by the petitioner company, the goods were lawfully dispatched to the godown of the company at Guwahati in the nature of self-transportation supported by delivery note dated 31-10-2025.

**4.** It is stated that the said goods were not meant for sale or supply to any other party but rather a stock transfer to its own godown. The goods were dispatched from Abdullapur, Hailakandi to Guwahati by truck bearing registration No. AS-31-C-1172. It is stated that while the said truck carrying the areca nuts was proceeding towards Guwahati, officials of the Preventive Customs Department, Dimapur Division detained the vehicle and seized the goods valued at Rs. 43,13,750/- along with the truck on 06-11-2025.

**5.** As already mentioned above, an inventory of the seized goods is stated to have been made under section 110 of the Customs Act. It is stated that the goods were detained and seized by the customs authorities despite the petitioner producing valid documents in support of the goods. It is stated and contended that the action of the customs authorities in seizing the goods was illegal and without jurisdiction and hence, the petitioner company has invoked the writ jurisdiction of this Court under Article 226 of the Constitution of India.

**6.** It is stated that as the seizure had been made under section 110 of the Customs Act, the said provision requires the officer to have '*reasons to believe*', for such seizure. It is stated that the goods

were seized merely on suspicion of being of foreign origin though the statutory provision under Section 110 of the Customs Act requires the officer to have *reasons to believe* about the goods being liable to confiscation. It is further stated that though the provisions of 110 (1-B) of the Customs Act are directory but the authorities have not complied with the same. It is stated that subsequently the petitioner company sought a provisional release of the vehicle by way of an application but the same was rejected and in that proceeding, it was informed by the customs authorities that there was non-production of E-way Bill while transporting the areca nuts. It is stated that by raising this issue of non-production of E-way Bill, the application seeking provisional release was rejected by the authorities. It is stated and contended by the petitioner company that the power of search and seizure under the GST Act, 2017 is vested in the concerned GST authorities such as Commissioner, Joint Commissioner and Additional Commissioner, but the said powers of seizure due to any violation of the GST law is not vested upon the customs authorities and therefore, the present seizure of the goods by the customs authorities, for any violation of GST law would be without the authority of law and vitiated.

**7.** It is stated and contended by the writ petitioner that the customs authorities have seized the goods of the petitioner company in violation of law and the provisions of Section 110 of the Customs Act and hence, the writ petitioner seeks release of the said goods. Various documents have been annexed with the writ petition. The writ petitioner company has also filed an additional affidavit bringing

on record the copies of the documents submitted before the Superintendent of Customs (Preventive) Department, Dimapur who is respondent No. 5 in this writ petition. These documents are submitted pursuant to order dated 26-03-2026 passed by this Court directing the petitioner to approach the respondent No. 5 on 07-04-2026 and place the necessary documents in respect of the inventory of goods which were seized on 06-11-2025. The respondent Nos. 1 to 6 being the respondent authorities of the customs department have filed a joint affidavit in opposition to the writ petition.

**8.** It may be mentioned here that respondent No. 7 Moin Uddin is stated to be the owner of the vehicle and he is impleaded as a proforma respondent. In their affidavit-in-opposition, the respondent No. 1 to 6 state that the seizure has been effected under section 110 of the Custom Act and investigation is presently going on regarding the origin, ownership and validity of the goods. It is stated that mere registration of the petitioner company under the GST law does not establish the lawful origin, possession and transportation of the goods in question.

**9.** It is stated that compliance under the GST law operates in a separate domain and does not restrict or override the powers of the customs authorities under the Customs Act. It is stated that seizure has been effected lawfully in exercise of powers under section 110 (1) of the Customs Act upon formation of reasonable belief that the goods were liable to confiscation. Such belief was based on objective material and surrounding circumstances and is not arbitrary or without jurisdiction.

**10.** It is stated in the affidavit that at the time of interception, no invoice or e-way bill or delivery challan or any such documents were produced by the person in charge of the conveyance. It is stated that the legality of the transportation has to be assessed with regard to the circumstances prevailing at the time of the interception and cannot be retrospectively validated by documents subsequently produced. It is stated that the documents subsequently relied upon by the petitioner are unreliable and bereft of important particulars and that these documents do not inspire confidence.

**11.** It has been reiterated in the affidavit that the seizure was effected upon formation of a reasonable belief as required under section 110 of the Customs Act based on an objective assessment due to absence of documents, high value nature of the goods and surrounding suspicious circumstances. It is stated that the expression *reason to believe* in section 110 of the Customs Act denotes a primary satisfaction on objective materials and does not require a detailed adjudicatory order at that stage. It is stated that the application for provisional release was rightly rejected in exercise of discretion under section 110A of the Customs Act.

**12.** It is stated that section 110 of the Customs Act is an independent statutory power which is not overridden or curtailed by the provisions of the GST law. It is stated that acting on specific intelligence regarding smuggling of areca nuts through the northeastern region, officers of the Customs Department intercepted the truck on 06-11-2025 near Lumding-Hojai and interception was done as part of the preventive measures to prevent cross-border

smuggling activities. The truck was found to be carrying 33,600 kgs of areca nuts in 480 bags with an estimated market value of Rs.2.22 crores.

**13.** It is reiterated and stated in the affidavit that at the time of interception, no documents by way of invoices, e-way bills, delivery challan or other value documents were produced by the person in charge of the conveyance. The complete absence of documents at the relevant time gave rise to a reasonable belief that the goods were being transported in contravention of law. It is also stated that during the seizure, the driver of the vehicle assaulted a customs personnel and absconded from the spot and such conduct was a relevant circumstance reinforcing the belief that the goods were being transported unlawfully.

**14.** It is stated that northeastern region is highly prone to smuggling of areca nuts through the international borders and the modus operandi appropriately observed in the present case is consistent with known patterns of such illegal activities.

**15.** Opposing the prayer for release, the respondents in the affidavit stated that investigation is going on and any premature release of the contraband would frustrate the investigation.

**16.** In support of his contentions, the learned counsel for the writ petitioner makes the following submissions :- *(i) The requirement of reason to believe is not there justifying the seizure. (ii) No country of origin has been assigned from which the goods are suspected to have been seized. (iii) The seized goods were not sent to the chemical authority. (iv) For violation of any GST law, the customs authorities cannot make any seizure. (v) There are no materials to indicate that the criteria of requirement of reason to believe on*

*the part of the customs authorities was fulfilled. The reason to believe has not also been furnished to the petitioner. (vii) The goods are only suspected to be of foreign origin and that the same would not suffice the criteria of reason to believe as required under section 110 of the Customs Act.*

**17.** On the other hand, Mr. Devnath, learned counsel appearing for the respondent/Customs Authorities, makes the following submissions :- (i) *No documents were made available to the customs authorities at the time of seizure, including any e-way bill. (ii) The delivery note did not have any signature. (iii) The quantity of the seizure was huge, comprising 480 bags, weighing 33,600 kgs and value approximately at Rs. 2.22 crores in the market. The driver could not give any bona fide answers. (iv) The reason to believe was very much existent based on lack of documents, huge quantity and assault by the driver and fleeing away from the spot. (v) Two summons have already been given to the owner, though he has submitted documents, but he has not appeared. (vi) The driver of the vehicle was never found. (vii) The company director has shown Moin Uddin as the supplier of the goods. (viii) The petitioner or the director of the firm has not appeared and made any statement. (ix) It would be premature to release the vehicle. (x) Though the invoices were submitted on 06-04-2026, the petitioner himself has not appeared. (xi) The documents submitted indicated Moin Uddin as the supplier.*

**18.** In support of his contentions, the learned counsel for the petitioner cites the following decisions:

(i) *Commissioner of Income Tax, Mumbai vs. Amitabh Bachan*, reported in (2016) 11 SCC 748.

(ii) *Joti Parshad v. State of Haryana*, reported in 1992 Supp (2) SCC 497.

(iii) *Calcutta Discount Co. Ltd. Vs. ITO*, reported in (1961) 41 ITR 191.

(iv) *Madhya Pradesh Industries Ltd. Vs. ITO*, reported in (1965) 57 ITR 637.

(v) *M.P. Industries Ltd. Vs. ITO*, reported in (1970) 2 SCC 32.

**19.** I have perused the relevant materials, including the pleadings and the annexed documents, and considered the rival submissions. I have also perused the case laws submitted at the Bar.

**20.** Under Section 110 of the Act (i.e., the Customs Act), a proper officer can seize goods liable to confiscation upon reasonable belief that the said goods are liable to confiscation. The statutory provision – Section 110 of the Act is reproduced herein below:-

***"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:***

*[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 an order on the owner of the goods or the beneficial owner or any person holding himself out to be importer, or any other person from whose custody such goods have been found, directing that such person shall not remove, part with, or otherwise deal with such goods except with the previous permission of such officer.]*

*[(1A) 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.*

*(1B) Where any goods, being goods specified under sub-section (1A), have been seized by a proper officer under sub-section (1), he shall prepare an inventory of such goods containing such details relating*

*to their description, quality, quantity, mark, numbers, country of origin and other particulars as the proper officer may consider relevant to the identity of the goods in any proceedings under this Act and shall make an application to a Magistrate for the purpose of—*

- (a) certifying the correctness of the inventory so prepared; or*
- (b) taking, in the presence of the Magistrate, photographs of such goods, and certifying such photographs as true; or*
- (c) allowing to draw representative samples of such goods, in the presence of the Magistrate, and certifying the correctness of any list of samples so drawn.*

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

*[(1D) Where the goods seized under sub-section (1) is gold in any form as notified under sub-section (1A), then, the proper officer shall, instead of making an application under sub-section (1B) 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:*

*[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 110A, 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.*

*[(5) Where the proper officer, during any proceedings under the Act, is of the opinion that for the purposes of protecting the interest 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.] (emphasis added)“*

**21.** Thus, for exercise of powers in Section 110 of the Act, 3 basic things required are; (i) the goods in question are liable to confiscation (ii) reasonable belief of the concerned officer that the goods are so liable to confiscation under the Act (iii) the concerned officer is a *proper officer* within the meaning of Section 110 of the Act.

**22.** In this context, *proper officer* mentioned in Section 110 of the Act has been defined in Section 2 (34) of the Act as – a customs officer assigned those functions by the Board or the Principal Commissioner of Customs or Commissioner of Customs u/s 5 of the Act.

**23.** In the case of *Indru Ramchand Bharvani* (supra) the Hon'ble Supreme Court delved into the expression *reason to believe*, for the purpose of section 110 of the Act and held interalia, in para 16 as follows:

**"16.** ... *The question whether it was under the reasonable belief or not, was a justiciable one. The facts of this case certainly warrant the formation of belief. In any case, once it is held that there was material relevant and germane, the sufficiency of the material is not open to judicial review. ... (emphasis added)“.*

**24.** In the case of *Ruksana Begum Choudhury Vs. Union of India* reported in *2024 SCC Online Gau 2093 : (2024) 5 Gau LR 187*, the Division Bench of this Court held in para 13 as under:-

**"13.** *The hon'ble Supreme Court in Indru Ramchand Bharvani (supra) has observed that reasonable belief as to smuggled goods had been explained by the hon'ble Supreme Court in State of Gujarat v. Mohanlal Jitmalji Porwal, (1987) 2 SCC 364, wherein the hon'ble Supreme Court observed whether or not the official concerned has seized the article under "reasonable belief" that the goods are smuggled goods is not a*

*question on which the court can sit on appeal. The circumstance under which the officer entertains reasonable belief have to be judged from his experienced eye who is well equipped to interpret the suspicious circumstances to form a reasonable belief."*

**25.** In para 4 of the *State of Gujarat Vs. Mohanlal J. Porwal*, (1987) 2 SCC 364 – the Hon'ble Apex, interalia held as follows:-

**4.** *".....Whether or not the official concerned had seized the article in the "reasonable belief that the goods were smuggled goods is not a question on which the court can sit in appeal. The law to this effect has been declared in no ambiguous terms in Pukhraj V. D. R. Kohli. This Court has administered caution to the courts not to sit in appeal in regard to this question and has observed that if prima facie there are grounds to justify the belief the courts have to accept the officer's belief regardless of the fact whether the court of its own might or might not have entertained the same belief. The law declared by this Court is binding on the High Court and it was not open to the High Court to do exactly what it was cautioned against by this Court. Section 123 of the Act does not admit of any other construction. Whether or not the officer concerned had entertained reasonable belief under the circumstances is not a matter which can be placed under legal microscope, with an over-indulgent eye which sees no evil anywhere within the range of its eyesight. The circumstances have to be viewed from the experienced eye of the officer who is well equipped to interpret the suspicious circumstances and to form a reasonable belief in the light of the said circumstances ....."(emphasis added)*

**26.** Thus, within the ambit of these principles, the factual matrix is to be seen to determine in any exercise of judicial review, as in the present case - as to whether the seizure made u/s 110 of the Act was justified in law and facts.

**27.** Section 111 of the Act pertains to confiscation of goods for the grounds stated in the said statutory provision. Section 111 of the Act is required to be extracted and is done so, herein below:-

**"111. Confiscation of improperly imported goods, etc.—**The following goods brought from a place outside India shall be liable to confiscation:—

(a) any goods imported by sea or air which are unloaded or attempted to be unloaded at any place other than a customs port or customs airport appointed under clause (a) of section 7 for the unloading of such goods;

- (b) any goods imported by land or inland water through any route other than a route specified in a notification issued under clause (c) of section 7 for the import of such goods;*
- (c) any dutiable or prohibited goods brought into any bay, gulf, creek or tidal river for the purpose of being landed at a place other than a customs port;*
- (d) any goods which are imported or attempted to be imported or are brought within the Indian customs waters for the purpose of being imported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force;*
- (e) any dutiable or prohibited goods found concealed in any manner in any conveyance;*
- (f) any dutiable or prohibited goods required to be mentioned under the regulations in an [arrival manifest or import manifest] or import report which are not so mentioned;*
- (g) any dutiable or prohibited goods which are unloaded from a conveyance in contravention of the provisions of section 32, other than goods inadvertently unloaded but included in the record kept under sub-section (2) of section 45;*
- (h) any dutiable or prohibited goods unloaded or attempted to be unloaded in contravention of the provisions of section 33 or section 34;*
- (i) any dutiable or prohibited goods found concealed in any manner in any package either before or after the unloading thereof;*
- (j) any dutiable or prohibited goods removed or attempted to be removed from a customs area or a warehouse without the permission of the proper officer or contrary to the terms of such permission;*
- (k) any dutiable or prohibited goods imported by land in respect of which the order permitting clearance of the goods required to be produced under section 109 is not produced or which do not correspond in any material particular with the specification contained therein;*
- (l) any dutiable or prohibited goods which are not included or are in excess of those included in the entry made under this Act, or in the case of baggage in the declaration made under section 77;*
- (m) [any goods which do not correspond in respect of value or in any other particular] with the entry made under this Act or in the case of baggage with the declaration made under section 77 [in respect thereof, or in the case of goods under transshipment, with the declaration for transshipment referred to in the proviso to sub-section (1) of section 54];*
- (n) any dutiable or prohibited goods transited with or without transshipment or attempted to be so transited in contravention of the provisions of Chapter VIII;*
- (o) any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer;*

*[(p) any notified goods in relation to which any provisions of Chapter IV A or of any rule made under this Act for carrying out the purposes of that Chapter have been contravened.]*

*[(q) any goods imported on a claim of preferential rate of duty which contravenes any provision of Chapter VAA or any rule made thereunder.]”*

**28.** From a comparative study of Section 110 and 111 of the Act, it is clear that while section 110 envisages seizure of a temporary nature; Section 111 of the Act on the other hand envisages forfeiture of the seized goods by way of confiscation. Therefore, perhaps, it can be said that while Section 110 is primarily an administrative act, but the exercise of power u/s 111 of the Act is more a quasi-judicial act. Nevertheless, powers u/s 110 of the Act though administrative, have to be exercised within the corners of the jurisdiction conferred under the provision – most importantly, satisfaction of the criteria of ‘*reason to believe*’ of the proper officer that the goods in question are liable to confiscation in terms of Section 111 of the Act.

**29.** If the goods seized under section 110 are not released due to improper exercise of powers under the provision of the Act and/or not issuing notice within 6 (six) months, etc - the matter logically has to proceed to the stage of confiscation proceedings, wherein the goods can be forfeited on a permanent basis. Needless to say, that confiscation proceeding has to give due opportunity to the person concerned to explain as to why his goods should not be confiscated under the Act. In this context, Section 124 of the Act specifically provides for show cause notice and opportunity of hearing before confiscation of goods.

**30.** From an analysis of the statutory provision of section 110 of

the Act and the principles of law laid down by the Hon'ble Supreme Court as noticed above - it is clear that the merit of the exercise of power u/s 110 of the Act by the proper officer, is to be scrutinized on the basis of the materials that were before him at the time of the seizure. It would not be correct to say that the merit of the said seizure made by the proper officer u/s 110 of the Act, can be seen on the basis of the materials subsequently submitted. That would not be the spirit of section 110 of the Act. At the stage of confiscation proceeding, of course, the petitioner would be at full liberty to submit all his materials to defeat the prospect of confiscation.

**31.** In the affidavit-in-opposition filed by the respondents – Customs authorities, the reasons given for exercising the power under section 110 of the Act are as follows:-

(i) 33,600 kilograms of arecanuts packed in 480 bags, having an estimated market value of around Rs. 2.22 crores, raised suspicion regarding their lawful origin and movement considering their quantity and value.

(ii) At the time of interception, no invoice, e-way bill, delivery challan or any other valid document was produced by the person in charge of the conveyance.

(iii) During the process of detention of vehicle, the driver assaulted a Customs personnel and absconded from the spot – reinforcing the belief that goods were being transported unlawfully.

(iv) Further investigation revealed discrepancies, including absence of GST registration at the place of dispatch, non-generation of e-way

bill and production of unreliable and incomplete documentation.

(v) North- Eastern region is highly prone to smuggling of arecanuts through international border, and the modus operandi was consistent with known patterns of such illegal activities.

**32.** Accordingly, on these grounds, the Customs officer exercised the power under Section 110 of the Act and seized the materials along with the vehicle.

**33.** I have perused the seizure documents including the panchanama prepared and also the seizure report.

**34.** In the seizure report, against serial No. 15, it is stated that - no supportive legal documents were produced at the time of seizure and based on latest trend of smuggling. In the panchanama also, the alleged assault of the accompanying Havaldar by the Driver of the truck has been mentioned and his subsequent fleeing away from the spot. Upon perusing the seizure documents, I find that the same lends support to the narration in the affidavit filed by the respondents- Customs authority. A police information was also lodged regarding the assault by the Driver.

**35.** In the case of *Joti Parshad* (supra) relied upon by the petitioner's side, the Hon'ble Apex Court delved into the meaning of expression - '*reason to believe*' which also finds mention in Section 26 of the IPC. The Hon'ble Apex Court discussing the subject matter held in para 5 that the expression *reason to believe* in substance means that - a person must have '*reason to believe*' if the circumstances are such that a reasonable man would, by probable reasoning, conclude or infer regarding the nature of the thing

concerned. The relevant extract from the said paragraph is reproduced herein below:-

*5. "..... In substance what is means is that a person must have 'reason to believe' if the circumstances are such that a reasonable man would, by probable reasoning, conclude or infer regarding the nature of the thing concerned....." (emphasis added)*

**36.** As has been seen from the case laws of the Hon'ble Supreme Court as discussed earlier, the satisfaction of the criteria of the 'reason to believe' for the purpose of Section 110 of the Act has to be seen in the circumstances prevailing at the time of the seizure and through the experienced eye of the Customs officer.

**37.** The subsequent affidavit filed by the petitioners side may not be of much help in this determination. In this regard, in the case of *Indru Ramchand Bharvani* (Supra), the Hon'ble Apex Court had in para 17 agreed with the approach of the High Court in discarding the affidavits filed after a gap of 15 months. The High Court had held that by filing the affidavit, the burden has not been discharged by the petitioner to show that the goods were not liable to be seized. The relevant para 17 may be reproduced herein below:-

*"17. The other contention urged on behalf of the petitioners was that the burden that lay upon the petitioners, had been fully discharged to show that the goods were not smuggled. The High Court on an analysis of the facts found that the onus was not duly discharged and held that though the burden on the petitioners was not as high as on the prosecution but there must be preponderance of probabilities. The High Court found that by filing the affidavits in this case, the burden had not been discharged. We are in agreement with the High Court. The facts that the affidavits had been filed long afterwards and the names of the parties were not disclosed at the time of search, warrant rejection of the affidavits. These were filed after a gap of 15 months and the same were examined minutely. The facts and figures given were checked- up and the credibility of the deponents as well as the credence of their version*

*examined. Furthermore, the affidavits must be looked on the background that those persons who claim that they had given these diamonds on approval basis, made no claim for all these diamonds.....” (emphasis added)*

**38.** The decisions relied upon by the petitioner’s side in the cases of *Amitabh Bachchan* (supra), *Calcutta Discount Co. Ltd* (supra), *Madhya Pradesh Industries Ltd* (supra) and *M.P. Industries Ltd* (supra) pertaining to exercise of powers under the Income Tax Act, would in my considered view, not come to the aid of the petitioner’s side in the instant proceeding. In *Calcutta Discount Co. Ltd* (supra) the Hon’ble Apex Court had held that before the Income Tax Officer could issue a notice under section 34 (1)(a) of the Act, two conditions must co-exist namely, reason to believe that income profits or gains have been under-assessed and such under-assessment was due to non disclosure of material facts by the Assessee.

**39.** The decision in *Varun Goyal* (supra) rendered by this Court was more pertaining to arrest procedures in the context of GST law.

**40.** Thus, upon perusing all the relevant materials on record and in the backdrop of the above discussion – I come to the considered finding that in the instant case, exercise of powers by the Customs official under section 110 of the Act in seizing the arecanuts was a bonafide exercise of power, satisfying the criteria of *reason to believe* mentioned in the statutory provision of section 110 of the Act. In terms of the principles of law discussed and noticed above, I come to the considered finding that the Customs officer had *reasons to believe* to exercise the powers under Section 110 of the Act in the instant case.

**41.** Therefore, the prayer of the petitioner in this writ petition for seeking release of the arecanuts is liable to be dismissed. However, if confiscation proceedings u/s 111 of the Act are carried out by the Customs authorities with regard to the seized arecanuts – then in terms of section 124 of the Act, the petitioner is to be noticed and given a chance of hearing. Therefore, in any such confiscation proceeding, the petitioner company is the purported owner of the arecanuts would be at liberty to produce all the documents in support of its contention, that the arecanuts should not be confiscated.

**42.** Further, another matter has to be gone into. In the writ petition, the petitioner company is seeking release of the arecanuts of which it claims to be owner, and also release of the vehicle bearing registration No. AS31-C-1172, which was seized along with the arecanuts. However, it is stated by the writ petitioner that the proforma respondent no. 7, namely, Mr. Moin Uddin, is the owner of the vehicle, which was allegedly carrying the arecanuts. The said proforma respondent (respondent no. 7) stated to be the vehicle owner has not appeared in this proceeding.

**43.** In my considered view, having found that the exercise of powers u/s 110 of the Act regarding seizure of the arecanuts was bonafide, the said exercise of power is to be upheld in this judicial review. But at the same time, this Court is of the view that the vehicle in question bearing registration No. AS31-C-1172, should be released to the owner (respondent no. 7) on suitable conditions.

**44.** Accordingly, the vehicle bearing registration No. AS31-C-1172,

seized by the Customs authorities shall be *released* in favour of its purported owner, respondent no. 7, namely, Mr. Moin Uddin – upon necessary verification and suitable conditions, including furnishing of a bond of appropriate amount.

**45.** Consequently, the writ petition stands **dismissed**, subject to the aforesaid observations and directions.

**46.** A copy of this judgment and order shall be furnished to the learned counsel representing the customs authorities for information and doing the needful.

**JUDGE**

**Comparing Assistant**