

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13382 of 2014

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1. M/s Overseas Enterprises, 2263, 1st Floor, Room No. 11, Gali Raghunandan, Naya Bazar, Delhi 110063, through its partner Kalu Ram Kundlia
 2. Kalu Ram Kundlia son of Shri Sumer Mal Kundlia, G-50, Kirti Nagar, New Delhi 110015

.... Petitioner/s

Versus

1. The Union of India through the Chief Commissioner of Customs (Preventive), Patna Zone, 4th Floor, Central Revenue Building, Birchand Patel Patna, Patna
2. The Commissioner of Customs (Preventive), Customs Head Quarters, 5th Floor, Central Revenue Building, Birchand Patel Path, Patna
3. The Additional Commissioner of Customs (Adjudication), Customs Head Quarters, 5th Floor, Central Revenue Building, Birchand Patel Path, Patna
4. The Assistant Commissioner of Customs (Preventive), Customs Head Quarters, 5th Floor, Central Revenue Building, Birchand Patel Path, Patna
5. The Superintendent of Customs (Preventive), Office of Commissioner Customs, 5th Floor, Central Revenue Building, Birchand Patel Path, Patna
6. The Superintendent of Customs (Adjudication), Customs Head Quarters, 5th Floor, Central Revenue Building, Birchand Patel Path, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sudhir Kumar, Adv
For the Customs Department : Mrs. Nivedita Nirvikar, Adv
Mrs. Archana Meenakshi, Adv.

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA

CAV JUDGMENT

Date: 30.11.2015

Heard learned counsel for the parties.

2. When this case was filed on 05.08.2014, the prayer of the petitioners had read as follows:-

“That the petitioners by way of the present writ petition are seeking a writ of mandamus and/or any other appropriate writ or direction to the Respondents to release the seized goods (split betel nuts) of the petitioners imported vide Bill of Entry No.

01210/16/2013 dated 28.01.2013 weighing 15.470 MT which have been illegally and unauthorizedly withheld by the Respondents despite the proceedings initiated against the petitioners in respect of the said goods for the charge of its illegal import has been dropped by the Adjudicating authority and there is a specific direction for release of the seized goods vide order dated 28.03.2013."

(underlining for emphasis)

3. The facts giving rise to the aforesaid underlined prayer in this writ application lie in a very narrow compass. It is the case of the petitioners that they had imported 15.470 MT of processed betel nuts from Bangladesh through Land Customs Station, Petrapole under a valid bill of entry dated 28.01.2013. It is also claimed that upon clearance of payment of the prescribed amount of import duty, the goods imported by the petitioners were examined and after assessment and clearance of the goods, they were loaded in West Bengal registered vehicles and were brought to a place Bangaon by these trucks from where the goods were transferred/loaded to the trucks provided by the Transporter M/s SRC India Movers enroute to their business premises at New Delhi. The petitioners, in this regard, have also asserted that the goods, namely, betel nuts imported by them, were also got tested and nothing spurious was found in the test report of the Export Inspection Agency at Kolkata.

4. It is the further case of the petitioners that while transporting the betel nuts from Bangaon to its destination at New Delhi, its one of the consignment by Truck No HR46C3697 was intercepted on 16.02.2013 and seized by the officers of the Customs



(Prevention), Patna in purported exercise of power under Section 110 of the Customs Act (hereinafter referred to as 'the Act') for alleged violation of Sections 45, 46 and 47 of the Act read with Section 11 of the Foreign Trade (Development & Regulation) Act, 1992 on the allegation that the recovered consignment split betel nuts were illegally imported to India from Bangladesh and were liable for confiscation under Section 111 of the Act. Such seized articles thereafter were brought to Patna where it was weighed and found to be 15.470 MT. The Custom officials, while seizing the goods, had also valued the same at Rs. 14,69,650/- apart from the value of the truck at Rs 12,00,000/-.

5. On acquiring knowledge of such seizure, the petitioner no 2 claims to have appeared before the Additional Commissioner (Prev.), Patna on 06.03.2013 and had filed application for release of the said goods. The authorities of Custom Department after recording of the statement of petitioner no. 2 in terms of Section 108 of the Act on 06.03.2013 as well as on 027.03.2013 and on verification of the papers relating to its valid import produced their prayer for provisional release of the seized goods, in terms of Section 110 of the Act, was also allowed by the Additional Commissioner of the Customs vide his order dated 28.03.2013.

6. It is also the case of the petitioners that though they had



made possible efforts for getting release of the goods in terms of the aforesaid order of the provisional release dated 28.03.2013, but the same was still not released by the authorities of the Custom Department who under a design and mala fide intention, in order to block the release of the seized goods on 2.4.2013 had sent the sample of goods (betel nuts) for testing to Central Food Laboratory, Kolkata Camp, Raxaul (hereinafter referred to as 'the C.F.L.') which on 03.04.2014 had submitted a report that the sample was found to be adulterated and unsafe as per the Food Safety & Standards Act, 2006.

7. According to the petitioners, they were subjected to confiscation proceedings in terms of Section 111 read with Section 115 of the Act and they were called upon to file their show cause as to why 190 bags of betel nuts of Bangladesh weighing 15470 Kg. (15.470 quintals) valued at Rs. 14,69,650/- as also the truck in question valued at Rs 12,00,000/- should not be confiscated under Section 115 of the Act and penalty in terms of Section 112 and 116 of the Act be not imposed upon them. The petitioners thereafter had filed their show cause reply dated 8.5.2013 to the show cause notice dated 08.04.2013 in which they had categorically denied the allegation made in the show cause notice and had gone to explain that the goods in question were legally imported with the valid documents as also after due custom clearance and were being transhipped to its

destination at Delhi.



8. It is the further case of the petitioners that during pendency of the confiscation proceedings pending before the Additional Commissioner (Adjn.) Customs, Patna, they had again sent a notice dated 12.09.2013 to the Additional Commissioner, Customs Headquarters, Patna from compliance of the provisional order of release dated 28.03.2013, but no action was taken by the officials of the Custom Department even in response to such notice. The petitioners have also claimed on 27.09.2013 that they had also informed the Commissioner of Customs, Patna both with regard to non-compliance of the order of the provisional release of the betel nuts dated 28.03.2013 as also the continued deterioration of the seized goods due to lack of its proper storage and preservation but even then their seized goods were not released.

9. According to the petitioners, the confiscation proceedings in the meantime was decided in their favour by the final order of Additional Commissioner (Adjn.) Customs, Patna dated 29.11.2013 dropping the confiscation proceedings. The petitioners, in this regard, have also stated that after the aforesaid final order in adjudication proceedings dated 29.11.2013, they had again requested the Superintendent, Customs to release the seized goods weighing 15.740 MT of betel nuts to the petitioner no. 2 but the authorities of



the Custom Department, vide letter dated 7.12.2013, had informed the petitioners that the request for release of the goods cannot be considered in view of the case being presently pending for departmental review before the reviewing authority. The petitioners have also explained that after this communication nothing more was communicated to them and the department consumed a period of almost four months in only filing its appeal on 25.3.2014 against the final order of adjudication dated 29.11.2013.

10. The petitioners have in this regard have also explained that even when there was no order of stay passed by the appellate authority in such appeal yet its request for release of the seized betel nuts was not allowed despite the fact that the petitioners had kept on informing the authorities as with regard to perishable nature of the seized betel nuts. According to the petitioners, on 09.04.2014, the sample of the betel nuts was again sent to C.F.L, Raxaul for its being tested and when on 24.04.2014 a negative test report of betel nuts was received by the Custom Department from the C.F.L., Raxaul, the authorities of the Custom Department had still not released the seized betel nuts of the petitioners whereafter they had been compelled to file this writ application on 05.08.2014.

11. As would be found from the prayer of the petitioners already quoted above their main grievance, on the date of



filing of the writ application i.e. 05.08.2014, was that despite an order of provisional release passed by the competent authority of the Custom Department dated 28.03.2013 followed by the final order dated 29.11.2013 dropping the confiscation proceedings, its seized articles (split betel nuts) on 16.02.1993, were not released. This Court, thus, considering the urgency of the matter, by its order dated 06.08.2014, had directed the learned counsel for the Custom Department to take instructions and file counter affidavit disclosing reasons for not releasing the seized articles within next four days so that the case could be heard on 11.8.2014.

12. Pursuant to the aforesaid order of this Court dated 06.08.2014 though the case could not be taken up on 11.08.2014, but then, on 22.08.2014, a counter affidavit had been filed on behalf of the authorities of the Custom Department wherein an order of release dated 09.08.2014 had been enclosed directing for the provisional release of the split betel nuts of the petitioners and a plea was taken in such counter affidavit that since the goods had already been released in favour of the petitioners on 09.08.2014 on furnishing of the bank guarantee of Rs. 14,69,650/- as well as another bank guarantee for a sum of Rs 9,28,200/-, the grievance of the petitioners, as raised in this writ application, had stood redressed. The order dated 09.08.2014 of the Commission or of Customs reads as follows:

“GOVERNMENT OF INDIA

OFFICE OF THE COMMISSIONER OF CUSTOMS
5TH FLOOR, CENTRAL REVENUE BUILDING, BIRCHAND
PATEL MARG, PATNA-800001

C. NO.VIII (10) 10-Cus/P/H/Seiz/12-13/Part 1 12825 Date: 09.08.2014

Order

Date: 09.08.2014

Having regard to facts and circumstances of the case, the Additional Commissioner of Customs (P), Patna is pleased to order for provisional release of 15470/-Kg of cut betel nuts of Bangladesh origin valued at Rs. 14,69,650/- (Fourteen lakhs sixty nine thousand six hundred fifty only) seized by the officers of Customs (Prev.) Hqrs., Patna on 17.02.2013 vide Unit case NO. 10/2012-13, to its legal owner on execution of Bank Guarantee @ Rs. 60 per Kg. backed by surety bond for full seizure value subject to completion of all conditions as prescribed in this regard.

In pursuance of the said order the seized goods has been provisionally released to its legal owner through their authorized representative Shri Kalu Ram Kundlia, Partner, Overseas Enterprises, 2263/68, 1st Floor, Room No. 11, Gali RAghunandan, Naya Bazar, Delhi-110006. A bond of Rs. 14,69,650/- (Fourteen lakhs sixty nine thousand six hundred fifty only) on Non Judicial e-Stamp paper bearing Certificate No. IN-DL90869642974705M Certificate issued on 09-Aug-2014 has been executed and Bank Guarantee of Rs. 9,28,200/- (Nine lakhs twenty eight thousand two hundred only numbered IBG54159 DATED 09.08.2013 issued by Federal Bank, Chandni Chowk Branch, New Delhi.

This release order is issued in compliance to the said order.

Sd/- 09.08.2014

Assistant Commissioner (Prev.)
Customs Hqrs. Patna

13. Apart from the aforesaid explanation in the counter affidavit that was filed by the authorities of the Custom Department on 22.08.2014, it was also stated that the sample, drawn at the time of seizure of the split betel nuts of the petitioners, was sent for edibility test to the C.F.L., Raxaul and the report received had revealed that the sample of split betel nuts of the petitioners was found adulterated and thus, created a doubt with regard to test report of Export Inspection Agency, Kolkata dated 28.01.2013, on the basis of which, the petitioners were carrying the betel nuts through the road

by a truck which was intercepted and had led to seizure of the goods on 17.02.2013. On this basis, it was claimed by the Custom Department that the seized betel nuts were not those for which the petitioners had obtained the test report of Export Inspection Agency, Kolkata dated 28.01.2013.

14. It was further stated in the counter affidavit that the departmental appeal before the Commissioners (Appeal) against the final order of Adjudication dated 29.11.2013 was still pending. What is actually relevant in this regard is that in para-5 of the counter affidavit the authorities of the Custom Department had accepted that the Additional Commissioner (Adjn.), Customs Hqrs., Patna, vide order dated 28.03.2013, had directed for release of the seized goods in favour of the petitioners, but as a test report of the said betel nuts dated 3.4.2013 was received from the C.F.L., Raxaul stating that the sample of betel nuts does not conform to the standard laid down under Regulation No. 212 and 2.3.47(5) of Food Safety and Standard (FSS Act, 2006). Para 5 of the said counter affidavit is quoted herein below:

5. That in reply to para-7 to 13, it is stated that the Additional Commissioner (Adjn.), Customs Hqrs., Patna, vide his order dated 28.03.2013 had directed to release the seized goods. However, as the test report of the said betel nuts received from CFL, Raxaul said that " the sample of betel nuts does not conform to the standard laid down under Regulation No. 212 and 2.3.47(5) of Food Safety and Standard (FSS Act, 2006 and FSS (Food the proceedings of release were dropped."



15. When the hearing of the case was taken up on 02.12.2014 learned counsel for the petitioners had submitted that only when this Court in course of its hearing of the case on 6.8.2014 had taken a serious view the seized articles of the petitioners were released on 09.08.2014, but then this Court should look into the aspect as to why such goods were not released in favour of the petitioners for a period of more than sixteen months despite an order of provisional release dated 28.03.2013. Learned counsel for the petitioners, in fact, was of the view that in the period of almost one and half year, since the date of seizure to the date of release, the quality of the seized split betel nuts had deteriorated to such an extent that if become wholly useless and thus causing huge financial loss to the petitioner.

16. Mrs. Archana Meenakshi, learned counsel appearing on behalf of the Custom Department, on 2.12.2014 had produced a copy of the letter dated 11.11.2014 and had also submitted that though the goods were already released in favour of the petitioners on 09.08.2014 pursuant to the release order passed by the authorities on 08.08.2014 on furnishing of Bank guarantee by the petitioners but on account of dismissal of appeal filed by the department the Bank guarantee furnished by the petitioners were also sought to be returned back to them. The aforesaid letter dated

11.11.2014, produced by Mrs. Archana Meenakshi reads as follows:

“GOVERNMENT OF INDIA
OFFICE OF THE COMMISSIONER OF CUSTOMS
PREVENTIVE 5TH FLOOR, C.R. BUILDING, BIRCHAND
PATEL MARG

PATNA:.....800001

C. NO.VIII (10) 10-Cus/P/H/Seiz/12-13/Part 1 12825 Date:11.11.2014

To,
Kalu Ram Kudlia
M/S Overseas Enterprises
2263/68, 1st Floor, Room No. 11
Gali Raghunandan, Naya Bazaar, Delhi-110006
Sir,

Sub: Release of Bank guarantee No. IBG54159 and surety Bond dated 09.08.2014 for Rs. 9,28,200/-, and Rs. 14,69,650/- respectively against release order dated 08.08.2014 issued from file No. VIII (10) 10-Cus/P/H/Seiz12-13-reg

Please refer to your letter dated 12.09.2014 on the captioned subject. In this regard, it is to intimate that order in Appeal No. 838/Pat/Cus/Appeal/2014 dated 09.09.2014 has been accepted by the Competent authority. Hence, Bank guarantee No. IBG54159 and surety Bond dated 09.08.2014 for Rs. 9,28,000/- and Rs. 14,69,650/- respectively are being revoked. As these are valuable documents, you are requested to collect them personally from this officer on any working day as per your convenience and kindly intimate the date of your visit to this office.

Your's faithfully

Assistant Commissioner (Prev)
Customs (P) Hqrs, Patna

Ms. Archana Meenakshi, Sr. Standing Counsel, She is requested to place the documents before the Hon'ble High Court, Patna in proof to the letter was returned back with postal remark "Lock Closed" dt. 19.11.2014.

Superintendent (Legal)
Customs (Prev) Hqrs."

17. Learned counsel for the petitioners, however, had made a strong protest to the aforementioned submissions of Mrs. Archana Meenakshi and had pointed out that only after the petitioners had filed the writ application on 05.08.2014 and it was taken up by way of urgent mentioning on 06.08.2014, learned counsel for the



Custom Department took time to take instructions and file counter affidavit and only thereafter the authorities of the Custom Department had gone to pass the order of provisional release of the goods of the petitioners on 08.08.2014 whereafter the petitioners had furnished the bank guarantee and surety bond dated 09.08.2014 for a sum of Rs. 14,69,650/- and Rs. 9,28,200/- respectively. According to the learned counsel for the petitioners, had the petitioners not filed the writ application and this Court could not have called upon the authorities of the Custom Department for disclosing the reason of not releasing of the seized articles of the petitioners, it could have never been released. He has also submitted that as a matter of fact in the interregnum period of almost one and half year i.e. 17.02.2013 to the date of released of articles i.e. 09.08.2014 , the quality of the seized split betel nuts had deteriorated to such an extent that it remained of no use for the petitioners.

18. Taking the aforementioned submissions into consideration, this Court, on 02.12.2014, had directed the authorities of the Custom Department to disclose the reasons for such an enormous delay in the release of the seized articles of the petitioners and the Commissioner of the Customs (Prev.) in person was directed to file an affidavit giving explanation as to why it had taken almost one and half year to act upon the provisional order of release dated

28.03.2013 and whether for such laches on the part of the concerned officers/employees any action had been taken against them or was proposed to be taken. The order of this Court dated 02.12.2014 being relevant is quoted herein below:

Heard learned counsel for the parties.

This Court is literally perplexed if not shocked with the approach of the authorities of the Custom Department inasmuch as an order of provisional release of the goods of the petitioner was passed way back on 28.3.2013 and yet the same was released in favour of the petitioner only on 9.8.2014.

Learned counsel for the petitioner submits that in the interregnum period of nearly 1½ years the quality of the goods has virtually deteriorated to such an extent that it cannot be now used in any manner or for any purpose.

Though Mrs. Archana Meenakshee, learned Senior standing counsel appearing on behalf of the Custom Officials, has produced a letter dated 11.11.2014, which is kept on records, this Court would direct the Commissioner of Customs (Preventive) to file an affidavit giving explanation as to why it had taken almost 1½ years to act upon the order of the provisional release and if he finds that some officials of the Department are responsible for such delay he must inform this court as to what action has been or would be taken against them for their obvious laches in performance of official duties.

Put up this case on next Tuesday i.e. 9.12.2014 under the same heading when the Commissioner of Customs (Preventive) shall also remain personally present.

19. Pursuant to the aforementioned order dated 02.12.2014, the Commissioner, Customs had filed a supplementary counter affidavit, relevant portion whereof reads as follows:

"4. That it is further submitted that the seizure of foreign origin betel nut weighing 15470 kg. valued at Rs. 14,69,650/- along with the truck bearing registration number HR 46C 3697 valued at Rs. 12,00,000/- totally valued at Rs. 26,69,650/- was made on 16.02.2013 by a team of Customs Officers, Patna.

5. That it is further submitted that the petitioner filed an application for release of aforesaid seized goods on 06.03.2013 followed by another dated 12.03.2014 before the Department.

6. That it is further submitted that the adjudicating Authority passed an order for provisional release of the goods to the petitioner with terms and conditions i.e. execution of Bond and Bank Guarantee which was communicated to the petitioner vide order dated 28.03.2013 issued under letter C.No. VIII (48) 15-Cus/Hqrs/PR/13/2040 dated 29.3.2013.

7. That it is further submitted that in response to the order

dated 28.03.2013 of the Adjudicating Authority, the petitioner vide letter dated 06.04.2013 addressed to the Department requested for unconditional release of the said goods as those were legally imported on provisional assessment basis by executing bank guarantee covering the differential duty leviable thereon.

8. That it is further submitted that in terms of CBEC Instruction issued vide F.No. 450/100/2006-Cus. IV dated 12th October, 2006, a representative sample was drawn and sent for testing to the Central Food Laboratory, Raxaul on 30.03.2013. As the sample was found adulterated the Adjudicating Authority vide letter dated 29.04.2013 directed the seizing Unit for not releasing the same, in compliance to Section 7 Prevention of Food Adulteration Act 1954.(Now the Food Safety and Standards Act 2006).

9. That it is further submitted that the petitioner vide letter dated 12.03.2014 followed by another letter dated 29.03.2014 requested for release of the goods provisionally with any terms and conditions provided the goods were found in proper condition.

10. That it is further submitted that on the request of the petitioner, a fresh representative sample was drawn in presence of the petitioner on 12.03.2014, which too was reported as adulterated by the Central Food Laboratory vide their report dated 21.04.2014.

11. That it is further submitted that the show cause notice issued to the petitioner was adjudicated vide order in original issued on 29.11.2013, whereby the Adjudicating Authority dropped the proceedings initiated vide the show cause notice dated 08.04.2013 which was communicated to the petitioner vide letter C.No. VIII(10) 12-CUS/ADC/Hqrs/2013/2105-06 dated 29.11.2013.

12. That it is further submitted that being aggrieved by the order dated 29.11.2013 Department filed an Appeal before the Commissioner (Appeals) on 25.03.2014.

13. That it is further submitted that since the goods were found adulterated Department was not in position to release the goods in terms of the Instruction issued vide F.No. 450/100/2006-Cus. IV dated 12th October, 2006 by the Central Board of Excise and Customs that the seized goods cannot be released when goods found adulterated as per the Chemical examination report under PFA Act, 1954 by the notified laboratory.

14. That it is further submitted that the petitioner on 08.08.2014 submitted the Bond with requisite bank guarantee and subsequently the goods were handed over to the petitioner.

15. That it is further submitted that when the matter was decided by Commissioner (Appeals), orders for release of Bond and Bank Guarantee were immediately issued on dated 11.11.2014 and the letter was dispatched to the petitioner by post on the same day which was returned undelivered by Postal Authority with remarks dated 19.11.2014 as "Lock Closed" and same were handed over to the petitioner's representative when he came in person on 28.11.2014."

20. From reading of the supplementary counter affidavit, it thus became very clear to this Court that the seized

articles of the petitioners, being the split betel nuts and the truck, on 17.02.2013, even though were directed to be released on an application filed by the petitioners on 06.03.2013 under the order of the competent authority, namely, the Superintendent (Adjn.), Customs (Hqs.) Patna, on 28.03.2013, the release was not made. In this regard it would be useful to reproduce the order of the provisional release which reads as follows:

“GOVERNMENT OF INDIA
OFFICE OF THE COMMISSIONER OF CUSTOMS PATNA:::800001
C. NO.VIII (10) 10-Cus/P/H/Seiz/12-13/Part 1 12825 Date:11.11.2014

O R D E R
DATE : 28.03.2013

Having regard to the fact that and circumstances of the case, the Additional Commissioner of Customs, Patna is pleased to order for Provisional Release of seized, Truck bearing Regn. No.HR-46C-3697 valued at Rs. 12,00,000/- and Cut betel nuts valued at Rs. 14,69,650/- respectively totally valued at Rs. 26,69,650/-, seized by the officers of Customs (Prev.) Hqs, Patna on 17.02.2013 to its legal owner on execution of bond for full seizure value of vehicle and goods backed by security of 30% of the seizure value of seized vehicle and in respect of seized goods ie. Betel nut backed by the Bank Guarantee @ Rs. 60/KG only and subject to completion of all conditions as prescribed in this regard.

Sd/-
Superintendent (Adjn)
Customs Hqs, Patna

21. Thus, it would become clear that the aforesaid order of provisional release dated 08.08.2013 on furnishing Bank guarantee as was also even earlier directed in the order of provisional release dated 28.03.2013 came to be passed only because of filing of the writ petition by the petitioners on 5.8.2013 and an explanation sought by this Court on 6.8.2013, inasmuch as such release even otherwise could have been made earlier in terms of the aforesaid order of

provisional release dated 28.3.2013.

22. Thus, when this Court was not at all satisfied with the aforementioned explanation in the supplementary counter affidavit filed by the Commissioner of Customs, an assurance was given by him in person to this Court on 16.12.2014 by filing a second supplementary counter affidavit that he had instituted an inquiry to be conducted by Mr. K.Ramamurti, Additional Commissioner, Customs for fixing responsibility on the concerned officials who had caused abnormal delay in the release of the consignment of the petitioners. Para 15 of the second supplementary counter affidavit in this regard reads as follows:

"That an inquiry has been ordered in the matter to ascertain the name of the officers who were in fault, so that disciplinary action may be initiated against them."

23. On 19.12.2014, a 3rd supplementary counter affidavit was filed enclosing the copy of the inquiry report dated 18.12.2014 wherein following conclusions were recorded by Mr. K. Ramamurti, the Additional Commissioner:

Conclusion

(i) It appears from above that there has been no deliberate attempt not to release the goods. In view of the adulterated nature of the subject goods which is prohibited under the Prevention of Food Adulteration Act 1954, there was no scope for the department to release the goods.

(ii) Though the adjudication order was in favour of the party, the goods could not be released because the Reviewing Authority did not accept the adjudication order which necessitated filing of Appeal against the said the adjudication order. In compliance with the Review order, appeal was filed before the Appellate authority. During pendency of the Appeal, the goods could not be released.

(iii) The bonafide intention of the department of

release the goods is very much evident from its effort to get the sample tested from another Laboratory in Dhanbad and re-testing of the sample at CFL, Raxaul.

Clarification was also sought from CFL, Raxaul as to whether the sample can be made fit for human consumption after fumigation of any other process.

However, in the absence of a positive test report, the department was helpless to facilitate release of the goods. It was beyond the scope of the competent authority to allow provisional release of the goods after the sample was reported to be adulterated.

Procedural requirement delayed early release of the goods.

*(K. Ramamurthy)
Addl. Commissioner
Customs (P), Patna.*

24. On 19.12.2014, in fact, a further supplementary counter affidavit was filed on behalf of the respondents bringing on record the dates and events and the connected documents in chronological order to justify the delay of nearly one and half years in releasing of the goods and Mrs. Nivedita Nirvikar, the Senior Standing counsel, in course of making her submissions had made a valiant effort to shield the officials of Custom Department.

25. In the compilation of the list of date and documents submitted by Mrs. Nivedita Nirvikar, learned counsel for the respondent running into 57 pages which has been taken on record, it is found that the seizure memo was prepared 17.2.2013. The petitioner no.2 had thereafter appeared on 6.3.2013 with all the papers and documents to show that import of the seized betel nuts were made in authorized manner and, as such, were fit to be released in favour of the petitioners. This was followed by his another application filed



before the Commissioner of Custom, Preventive, Patna dated 12.3.2013 wherein the petitioner no.2, while undertaking to face the confiscation proceeding under Section 111 of the Custom Act, had specifically brought to the notice of the Commissioner of Custom that the seized goods were perishable in nature and had to be stored with proper precaution, inasmuch as, any sort of damage caused by improper and long storage could result in reduction of the value of the goods and, as such, the prayer of the petitioner for release of the seized betel nut, which were legally imported by them in India, should be allowed.

26. It appears that on receipt of such application, the competent authority had addressed himself to the issue of provisional release of seized articles of the petitioners and had directed the Assistant Commissioner, Custom by his letter dated 26.3.2013 to furnish relevant documents necessary for considering the request of the petitioners for provisional release of the seized articles. The competent authority in his such letter dated 26.3.2013 had also specifically asked the Assistant Commissioner, Preventive to give specific comments as to whether provisional release of the seized processed betel nut and the vehicle would have any adverse impact on investigation of the case against the petitioners. Pursuant thereto, the Assistant Commissioner, Preventive on 26.3.2013 had submitted his



report without objecting to the provisional release of the seized articles of the petitioners. It was only thereafter that on 28.3.2013, the competent authority, namely, the Additional Commissioner of Custom had passed an order for provisional release which was communicated by the Superintendent, Adjudication vide his order dated 29.3.2013 with copy thereof to both the petitioner no.2 as well as to the Assistant Commissioner, Custom, Preventive.

27. It appears that after the direction for provisional release by the competent authority was already issued in terms of Section 110A of the Custom Act that the specimen of the goods were sent on 2.4.2013 to the Central Food Laboratory (C.F.L.), Kolkata having its extension center at Raxaul and on 3.4.2013, the report was submitted by the C.F.L. Raxaul stating that the split betel nut was found to be adulterated.

28. From the records that have been submitted before this Court along with list of dates and documents do contain the application of the petitioner no.2 dated 6.4.2013 wherein referring to the judgment of the Calcutta High Court in the case of Satya Sarkar Vs. DDDGRI 2010 (256) E.L.T. 680 (Cal.), a prayer was made for release of betel nuts on furnishing security and in this application, the petitioner no.2 had again emphasized on the aspect that the seized goods were perishable in nature and as per the various instructions of

the Government of India should be released without delay failing which the Department could become liable to pay the seizure value to the petitioners.

29. It is here that this Court will have to also take note of the communication of the Superintendent, Adjudication contained in his letter no. 2038 dated 29.4.2013 wherein referring to the report of CFL, Raxaul stating the betel nuts to be adulterated, it was specifically directed to get the sample test of the said seized betel nuts reconducted at Food Analyst, Bihar, P.H. Lab, MADA, Dhanbad without any delay so that the order of the provisional release could be acted upon. It is also on record that pursuant to the aforesaid inter-departmental order dated 29.4.2013, specimen of seized articles were sent to the Food Analyst, Bihar, P.H. Lab, MADA, Dhanbad on 7.5.2013 for submitting the test report and even a reminder was sent for submission of such report on 21.5.2013.

30. While the report of Food Analyst, Bihar, P.H. Lab, MADA, Dhanbad was being awaited, the Superintendent, Adjudication, in his communication to the Superintendent, Preventive, Custom, had explained the request of the petitioner no.2 for release of the seized betel nut to the petitioners on his undertaking by making the consignment fit for human consumption. The Superintendent, Preventive, Custom was accordingly asked by the



Superintendent, Adjudication, Custom, Patna to seek further report from C.F.L. Kolkata Extension Center at Raxaul and Food Analyst, Bihar, P.H. Lab, MADA, Dhanbad as to whether the said betel nuts could be made fit for human consumption by way of fumigation so that the further action for provisional release of the seized betel nuts could be taken. Pursuant thereto, a communication was made to the Officer In-charge of C.F.L., Laxmipur, Raxaul as to whether the said betel nuts could be made fit for human consumption by way of fumigation and such desired information was sought to be furnished on priority basis so that the action could be taken for provisional release of the betel nuts.

31. From the records, it is also borne out that the Officer in-charge of C.F.L., Raxaul Extension Center, Raxaul, in his letter dated 2.8.2013, had informed the Superintendent, Preventive that certifying the fitness of betel nuts for human consumption was beyond the scope of activities of C.F.L. It appears that on 12.8.2013, the Food Analyst, Bihar, P.H. Lab, MADA, Dhanbad earlier was given another reminder for sending the report in respect of specimen betel nuts as also as to whether the betel nuts could be made fit for human consumption by way of fumigation.

32. On 10.12.2013 after the confiscation proceeding in favour of the petitioner were already decided and dropped by the



competent authority vide his final order dated 29.11.2013, a legal notice dated 7.12.2003 was given on behalf of the petitioners wherein it was claimed that after dropping of the confiscation proceeding in terms of Section 122 of the Custom Act, there was no rationale or justification for keeping the seized article and that the same should be released for which the petitioners along with their counsel were to appear on 16.12.2013. It was in reply to the aforesaid legal notice dated 7.12.2013 / 10.12.2013 that the Assistant Commissioner, Preventive by his letter dated 17.12.2013 had informed to the lawyer of the petitioners that as the final order dated 29.11.2013 dropping confiscation proceedings was presently pending for departmental review, the request for release of the betel nuts of the petitioners could be considered only after the adjudication order dated 29.11.2013 was accepted by the reviewing authority and, as such, the request made for provisional release could not be considered as on 17.12.2013 (at present).

33. From the records, it also appears that the petitioner no.2 even on 10.3.2014 had made a request for release of the seized betel nut by making it clear that if the department had intended to go in appeal, the petitioners were ready to execute bond for their release of betel nuts. When this prayer of the petitioner no.2 also did not evoke any response, he had filed an application on 12.3.2014 before



the competent authority who had passed the order of provisional release on 29.3.2014, namely, Additional Commissioner, Custom and in his such application dated 12.3.2014, the petitioner no.2 had again undertaken to comply the prescribed terms and conditions for such provisional release as incorporated in the earlier order dated 29.3.2014. On such application of the petitioner no.2, the sample of the seized betel nut was once again taken on 12.3.2014 and thereafter the authority of the Custom Department on 21.3.2014 had claimed to have sent another reminder to the Food Analyst, Bihar, P.H. Lab, MADA, Dhanbad for submission of the desired report in respect of seized betel nut of the petitioner sent on 7.5.2013.

34. It also transpires from the documents that on 25.3.2014, a decision was taken for filing an appeal against the order dated 29.11.2013 passed by the Additional Commissioner, Custom dropping the adjudication in the confiscation proceeding. The petitioners who were however desperate to get their seized betel nuts released had once sent a legal notice dated 29.3.2014 asking the Assistant Commissioner, Custom to release betel nuts and in the aforesaid legal notice, it was made clear that the seized betel nuts were in fact to be used for manufacturing of mosquito repellent coils and not for the human consumption and thus the betel nut should be released so as to protect them from perishing.



35. It also appears from the letter of the Assistant Commissioner, Preventive dated 9.4.2014 that the samples of the seized betel nuts of the petitioner were once again sent to C.F.L., Raxaul for submission of the test report whereafter the C.F.L., Raxaul on 21.4.2014 had submitted its report in which it was stated that the split betel nut did not conform to the standards as the damaged and discolored nuts including insects damaged betel nuts had exceeded the prescribed limits. The Department thereafter claims to have sent the copy of the said report of C.F.L., Raxaul to the petitioner on 28.4.2014.

36. The bunch of papers submitted by the learned counsel for the Custom Department thereafter has contained only the order of the provisional release dated 8.8.2014 which of-course was passed after filing of the writ application on 5.8.2014 and the first order of this Court dated 6.8.2014 directing the authority of the Custom Department to explain as to why the seized articles of the petitioners despite the order of the provisional release dated 28.3.2013 and even after dropping of the confiscation proceeding on 29.11.2013 were not released.

37. This Court on perusal of the all the documents referred above as also after hearing the learned counsel for the parties is fully satisfied that there is no justifiable reason for not releasing the seized

betel nuts of the petitioner and in fact, it is a classic case of highhandedness and arbitrary exercise of power by the officials of the Custom Department at Patna.

38. In this regard this court firstly must deal with the aforesaid inquiry report of Mr. K. Ramamurthy, the Addl. Commissioner of Customs, who was entrusted the enquiry by Mr. Kishori Lal, the Commissioner Customs (Preventives) Patna on 9.12.2014 as explained earlier in his supplementary counter affidavit for the purposes of fixing responsibility on the erring officials of the Custom Department, who had caused delay of nearly 1½ years in releasing of the seized articles of the petitioners. It must be kept in mind that that report of Mr. K. Ramamurthy, who himself was a party to the decision either in reviewing or in filing appeal against the final order of adjudication in confiscation proceedings dated 29.11.2013, should in fact not have been associated with such enquiry by Mr. Kishori Lal, the Commissioner, Custom because somewhere for part of the delay in releasing of the consignment at least from the date of 29.11.2013 to the date of filing of the appeal i.e. 23.4.2014 he also being instrumental in causing delay in the eventual release of the seized articles of the petitioners could not have been fair and impartial in fixing the responsibility on erring officials of the Custom Department.



39. As a matter of fact this Court is thoroughly disappointed with the conclusions arrived by Mr. K. Ramamurthy in his inquiry report as already quoted above in paragraph no. 23 of this judgment. His all three conclusions is bereft of his awareness of the provisions of the Customs Act, inasmuch as when there was an order of provisional release dated 28.3.2013 in terms of Section 110A of Customs Act in favour of the petitioners, his finding that there was no deliberate attempt not to release the seized articles of the petitioners is absolutely a perverse finding. The help taken by him of the provisions of Prevention of Food Adulteration Act, 1954 in no view of the matter could have become a factor after the order of the provisional release dated 28.03.2013 was passed and unless such order was set aside by the higher authority the same had to be essentially acted upon.

40. It is also apparent that Mr. K. Ramamurthy either in ignorance or deliberately had lost sight of the fact that it was only after order of the provisional release was passed by the competent authority on 28.3.2013 and that too upon perusal of test report of Kolkata dated 28th January, 2013 as also supported by other valid import document including the bill of entry produced by the petitioners on 6.3.2013 on being duly verified in the comments submitted by the Assistant Commissioner in his letter dated 28.3.2013 that a statutory order in terms of section 110A of the Customs Act for



provisional release had been passed on 28.3.2013. As against such statutory order if the department had not filed any appeal it could not have taken a shortcut by sending the seized articles, namely, betel nuts for its test report by the CFL. Raxaul and in fact such recourse itself smacks of malafide on the part of officials of Custom Department. .

41. The second reasoning of Mr. K. Ramamurthy in his conclusion of enquiry report is equally bad, inasmuch as under the provisions of the Customs Act if the adjudication in confiscation proceedings is decided in favour of the person concerned alleged to have violated the provisions of the Customs Act, the seizure made itself becomes illegal from that very date of the final order. Thus, if there was an order of provisional release in favour of the petitioners dated 28.3.2013 and the confiscation proceedings had also ended in favour of the petitioners on 29.11.2013, there could be no justification whatsoever in law including under any provisions of the Customs Act in not releasing the seized articles either on the ground of pendency of review or the appeal. Such recourse of mere pendency of a review or filing of an appeal amounting to staying the final order of confiscation proceeding is at least not contemplated under the provisions of the Customs Act.

42. It is in fact here that Mr. K. Ramamurthy has become



judge of his own cause because he too was a party in obstructing release of seized articles of the petitioners on the ground of pendency of alleged review of the final order of confiscation proceedings dated 29.11.2013 as well as in filing of the appeal after a period of nearly four months and thus had become responsible with other officers in not releasing the seized articles despite the final order of adjudication in the confiscation proceedings dated 29.11.2013 in favour of the petitioners.

43. This Court in fact is amazed with the approach of Mr. K. Ramamurthy when he describes in his conclusion in the Enquiry Report that there was a bonafide intention on the part of the Custom Department in releasing of the goods because it was awaiting the verification of the sample report for a period over one year. As noted above, the first report of F.S.L. was received on 4.4.2013 and on that basis the officers of Custom Department had set over and virtually overruled the statutory adjudicatory order under section 110A of provisional release of the seized articles of the petitioners dated 28.3.2013. Thereafter the adjudication proceedings got concluded by way of dropping of confiscation proceedings against the petitioners on 29.11.2013 and as noted above, the appeal was not filed till 23.4.2014. Thus, if the sample could be sent again to F.S.L. only in the month of April, 2014 this court fails to understand as to what had



prevented the Department in doing so in the interregnum period of one year? This Court, therefore, will have no difficulty in coming to the conclusion that Mr. K. Ramamurthy was also trying to shield not only the other erring officials of the Custom Department but also himself.

44. It must be kept in mind that though an attempt was made by the officials of the Custom Department in the counter affidavits and also in the enquiry report of Mr. K. Ramamurthy to suggest that the provisional order of release dated 28.3.2013 had been reviewed by the same authority on 29.4.2013 but no such order has been produced before this Court except some noting in the file or inter departmental communication dated 29.4.2013. By-now it is well settled that a noting in the file is not a concluded order as was held by the Apex Court in the case of Bachhittar Singh v. State of Punjab & anr., reported in AIR 1963 SC 395.

45. This Court in fact cannot read the order dated 29.4.2013 to be an order of review of the order passed by the Additional Commissioner directing provisional release of the betel nuts of the petitioners in terms of Section 110A of the Custom Act, inasmuch as, the Superintendent, Adjudication, in the said inter-departmental communication in letter no. 2038 dated 29.4.2013, had never sought to rescind, cancel or review the order dated 28.3.2013.

This would become more clear from reading of the aforesaid letter dated 29.4.2013 produced by the Ms. Nivedita Nirvikar, learned counsel for the respondents in her compilation of the documents, at page 28, which reads as follows:-

*“GOVERNMENT OF INDIA
OFFICE OF THE COMMISSIONER OF CUSTOMS :::::::::::
PATNA*

C No. VIII (48)15-CUS/HQRS/PR 13/ 2038 Dated 29.04.2013

To,

The Superintendent (Prev.)

Customs (P) Hqrs., Patna

Sub:- Regarding provisional release of seized goods i.e. 15,470 kgs of Cut Betel nuts valued Rs. 14,69,650/- unit case no. 10/2013.

As per sample test report of the seized cut betel nuts received from Central Food Laboratory, Kolkata (Extension Centre), Raxaul, the same has been found adulterated. Therefore, in terms of section 7 of Food adulteration Act, 1954 the said consignment of seized betel nuts cannot be released.

However, as per the direction of the competent authority you are requested to get the sample test of the said seized betel nuts reconducted at Food Analyst, Bihar, P.H. Lab, MADA, Dhanbad without any delay so that the further procedures can be carried out smoothly.

Sd./-

29.4.13

Superintendent (Adjn.)

Customs (P) Hqrs. Patna”

46. That apart even if the story of so called review of the provisional order of release dated 28.3.2013 by the so called order dated 29.4.2013 is to be accepted, that again cannot be justified in



law, inasmuch as such a statutory order dated 28.3.2013 on the application of the petitioners dated 6.3.2013 in terms of Section 110A of Custom Act was passed and there is no power of review vested in the authority under any provision of Customs Act. Secondly, if for any reason whatsoever the said order was sought to be allegedly reviewed though no order of such review has been produced before this Court, it was all the more imperative for the authorities to at least give notice to the petitioners and hear them before passing of the alleged order of review. Admittedly that was never done and therefore, this Court cannot accept the defence of the so called review of the provisional order of release dated 28.3.2013 by the same authority who allegedly in the file had passed some order on 29.4.2013.

47. Let it be kept in mind that the order of provisional release of the seized goods passed by the adjudicating authority on 28.03.2013 was also never made subject matter of any appeal by any authority on any ground whatsoever and, therefore, the internal correspondence with regard to sending sample of the consignment for obtaining report of the C.F.L. could not have been made an excuse for not releasing the goods of the petitioners. What would really further surprise this Court that such alleged order of review the adjudicating authority dated 29.04.2013 is said to have been communicated vide



letter no. 2038 dated 29.04.2013 only to the Superintendent (Prev.) Customs (P) Hqrs., Patna, being Annexure-Q series to the 3rd supplementary counter affidavit to the report of Mr. K.Ramamurthy, Additional Commissioner, Customs, but then obvious cutting in the letter no. 2038 by seeking to change the figure '8' of 2038, will itself create a doubt regarding its authenticity of this letter, even if it was an inter departmental communication. This letter dated 29.4.2013 at best appears to be a subsequent defence of the officials of Custom Department and the best proof of the same will be that while the order of provisional release dated 28.03.2013 had been communicated to the petitioners, but they were never informed with regard to this alleged order passed in review dated 29.04.2013.

48. Pausing for a minute, even if this Court would believe the story put forward by the authority of the Custom Department and accept that there was a communication made on 29.4.2013, the same was not capable of its being read as an order cancelling/setting aside the order of provisional released by the Additional Commission, Custom on 29.3.2013. As a matter of fact, all that the letter dated 29.4.2013 talks of is that test of seized betel nut had to be reconducted by the Food Analyst, Bihar, P.H. Lab, MADA, Dhanbad. The fact however remains that this report from the Food Analyst, Bihar, P.H. Lab, MADA, Dhanbad was never received and, therefore, on the

strength of this order dated 29.4.2013, the authorities of the Custom Department had no power or jurisdiction to annul the order of provisional release passed in favour of the petitioners by the competent authority in exercise of power under Section 110A of the Custom Act way back on 28.3.2013.

49. This aspect of the matter, in fact, becomes more clear from the final order in confiscation proceedings (running into 42 pages) passed by the adjudicating authority dated 29.11.2013 wherein probably each and every thing, that had happened in the department from the dated of seizure on 16.2.2013, has been recorded but not a word has been said about the existence of this so called review order dated 29.04.2013 passed in the file, as noted in the report of Mr. K.Ramamurthy. Let it be kept in mind that the adjudicating authority had also taken into account the report of C.F.L. dated 3.4.2013 and had rejected the same while passing his final order. The relevant portion of the final order dated 29.11.2013 dropping the confiscation proceedings against the petitioners, in fact, reads as follows:

"It is observed that no documents could be found at the time of interception of seized goods, either in the truck or in the possession of Noticee no.1, who is khalasi of the seized vehicle. It was only on 6.3.2013, when Shri Kalu Ram Kundlia (Noticee No. 3) appeared before the department and provided the documents pertaining to the consignment in question. His version has already been detailed above and need no repetition.

It is observed from the documents annexed with the show cause notice that it contains a copy of print out of D-IX/D-X Suvudha, which gives details of the consignment in question for VAT as well as inter-state movement of consignments. As per the details contained in the said Suvudha form, the consignor of the goods is M/s Jahan Processing Export Limited and the consignee is M/s Overseas

Enterprises, Naya Bazar, New Delhi and the relevant Invoice No. is EXP/JPEL/OE/048/2012 dated 19.11.2012. The consignment note no. is 16413 dated 14.02.2013 and vehicle No. is HR 46C 3697 and it is crossed Integrated Check Post, Dobhi on 15.02.2013 at 1:37 PM for Integrated Check Post, Karmnasa. It is apparent that the declaration of the consignment made to the VAT department is for the goods covered under the said Bill of Entry No 01210/16/2013 dtd. 28.01.2013 processed at LCS, Petrapole. It also mentions the name of driver of the seized vehicle as one Shri Sunil, whose Driving License NO. 5816. This proves that the name of driver is also mentioned in the relevant transport/VAT documents. Investigation has not challenged or commented on this piece of evidence. Hence, as per the relevant records for inter-state movement of goods, the seized goods pertained to the Bill of Entry NO. 01210/16/2013 dated 28.01.2013.

It is further observed from the documents available on record viz. the weighment slip and statements made by the notices that the seized goods were loaded from Bangaon. As regards the contentions of the department that the Bill of Entry did not mention the seized vehicle, I find that the seized goods are not prohibited goods and are freely imported at preferential rate of duty from Bangladesh. Further, the investigation has not been able to even indicate the possible routes from which the seized goods could have been smuggled or that Bangaon or places around Petrapole is notified area for smuggling. Further, as per the relevant invoice and Bill of Entry, the consignment was imported from Bangladesh for transportation up to New Delhi. In view of these facts, it is very difficult to establish smuggling in this case, particularly when the consignment has moved at least 400 Kms inside the Indo-Bangladesh border and that the notices have already declared the consignment before the Commercial Tax authorities before interception as one legally imported. Further, no investigation appears to have been made on the notices statutory documents w.r.t. rest of the consignments. Further, the investigation done at Petrapole and at Bangaon by the seizing unit has not revealed any new facts so as to hold the consignment as contraband. Under the circumstances, I find it difficult to go by the department's contentions that the seized goods are smuggled in nature.

As regards the contentions that the variance in two reports from the CFL, I find that this contention alone is not sufficient to establish that the seized goods were smuggled in nature. Firstly, the samples are by nature samples only and cannot be said to represent the entire consignment practically. Secondly, there is indeed a time gap in drawal of two samples and chances of infection/infestation with insects cannot be ruled out. Hence, the possibility of at least some part of the consignment getting infected in the intervening period cannot be ruled out.

In view of the above, I find that the seized goods pertain to legally imported consignment of betel nuts imported from Bangladesh vide Bill of Entry No. 01210/16/2013 dtd. 28.01.2013 processed at LCS, Petrapole. Accordingly, the proceedings initiated vide Show Cause Notice issued under C.No. VIII(10)10-Cus/P/H/Seiz/2012-13 dated 08.04.2013 is liable to be dropped.

Order

Taking into consideration all the facts, as discussed above, and in exercise of powers conferred upon me under Section 122 of the Customs Act, 1962, I drop the proceedings initiated vide Show Cause Notice issued under C.No. VIII(10)10-Cus/P/H/Seiz/2012-13 dated 08.04.13.

(AKHILESH KUMAR)
 Additional Commissioner (Adjudication)
 Customs(P) Headquarters,
 Patna."

(underlining for emphasis)

50. Section 110-A of the Customs Act lays down the power of the adjudicating authority for directing the provisional release of the seized goods on obtaining a bond with security and also imposing any conditions in the following words:

"110-A . Provisional release of goods, documents and things seized pending adjudication.- Any goods, documents or things seized under section 110, may, pending the order of the [adjudicating authority], be released to the owner on taking a bond from him in the proper form with such security and conditions as the [adjudicating authority] may require."

51. Thus, when in exercise of this power under Section 110-A of the Customs Act and order of provisional release in favour of the petitioners had already been passed on 28.03.2013, this Court would not be in a position to buy the defence, being sought to be advanced by the learned counsel for the Customs Department or the Commissioner of Customs himself, that after passing of the provisional order of release on 28.3.2013, the Department had felt necessity of sending the seized split betel nuts of the petitioners to the C.F.L., Raxaul for finding out its edible quality. That seems to be a layman explanation and in fact a burning example of red tapism prevailing in the office of the Custom Department.

52. In this regard it must be kept in mind that the petitioners in terms of the aforementioned order of provisional release dated



28.3.2013 were always prepared and ready to furnish bank guarantee, as directed in the order of release dated 28.03.2013, but the betel nuts were not released. It must be borne in mind that such order of provisional release dated 28.3.2013 was a statutory order under section 110A of the Customs Act and could not have been ignored on a mere ipsi dixit of the officials of Custom Department.

53. This Court in fact has no iota of doubt that there was absolutely no justification at all either on fact or in law in not giving effect to the order of the provisional release dated 28.03.2013. The plea of the respondents that they had received some adverse report of C.F.L., Raxaul with regard to adulterated quality of the betel nuts dated 04.04.2013, could not be given them any power to review or recall the order of provisional release passed by the competent authority in exercise of power under Section 110(A) of the Act.

54. What would still make the matter worse for the authorities of the Custom Department is that after the adjudication in confiscation proceedings, in terms of Section 122 of Custom Act, had been brought to an end in favour of the petitioners on 29.11.2013 and there was no order of either confiscation or paying fine by the petitioners and, in fact, the proceedings itself was dropped, the authorities, in any view of the matter, whether in the name of the pendency of the report of the C.F.L. or otherwise, could not have kept

the seized consignment of the petitioners in their possession even for a day.

55. Let it be noted that the appeal was filed by the Department against the order of the confiscation dated 29.11.2013 only on 25.03.2014 i.e. after a period of 04 months and in this period there was no stay of any court or any authority not to release the seized goods of the petitioners.

56. This Court, in fact, has amazed with the approach of the authorities of the Custom Department, which, in the name of obtaining the report from the C.F.L., had kept the matter relating to release of seized goods of the petitioners pending from 03.04.2013 to 24.04.2014 despite both the provisional order of release dated 28.03.2013 and the adjudicatory order dated 29.11.2013 to be in favour of the petitioners.

57. At this stage, it is also significant to note that the report of the C.F.L., Raxaul dated 3.4.2013 could not have inspired any confidence, inasmuch as, the report did not contain any reason for the split betel nut to have found adulterated. In this regard, all important column as prescribed standard of the C.F.L. report dated 3.4.2013 is found to be completely vacant which in comparison would make the whole report of the C.F.L. dated 3.4.2013 to be unsustainable either on fact or in law. It is for this purpose that this Court would deem it

necessary to reproduce the report dated 3.4.2013 which reads as follows:-

“Analysis Report

- i) Sample Description : Split Betel Nut Batch- NIL
 ii) Physical Appearance : Split Betel Nut in sealed envelop.
 iii) Label:

Sl. No.	Quality Characteristics	Name of the Method test used	Result Data Obtained	Prescribed st as per: a) Item no.2 2.3.47(5) of tl Regulation, 201 b) As per declaration for foods. c) As per provi the Act & Ru both the above.
1.	Physical Examination	Visual Examination	Betel Nut from fungal growth	
2.	Extraneous Matter	DGHS MANUAL	Absent	
3.	Damaged Betel Nuts	DGHS MANUAL	22.80%	
4.	Insect Damaged Betel Nut (By Count)	DGHS MANUAL	17.10%	
5.	Rodent Hair & Excreta	DGHS MANUAL	Absent	
6.	Insect	DGHS Manual	Present	
7.	Added Colouring Matter	DGHS MANUAL	Absent	

OPINION: The sample of Split Betel Nut (Proprietary Food) is found adulterated in respect of tests mentioned above.

Place: Raxaul

Dated 03.04.2013

Sd./-
 (Dr. Debadutta Mishra)
 Officer-in-Charge
 CFL, Kolkata
 (Extension Centre, Raxaul)”

58. There is a valid reason for this Court to reject the said

analysis report dated 3.4.2013 because subsequently when after more than one year, the samples of the same betel nuts were sent to the same C.F.L. Laboratory, Raxaul, the same person, namely, Dr. Debduitta Mishra, the Officer-in-charge, C.F.L., Kolkata in his report had given a complete different picture as would become clear from reading of such report dated 16.4.2014 reproduced herein below:-

“Certificate No: INF/CFL/KOL/RXL/14/APR-35

Analysis Report

- iv) Sample Description : Split Betel Nut Batch- NIL
 v) Physical Appearance : Split Betel Nut in sealed envelop.
 vi) Label:

Sl. No.	Quality Characteristics	Name of the Method used	Result Obtained	Data	Prescribed st as per: a) Item no.2 2.3.47(5) of tl Regulation, 201 b) As per declaration for foods. c) As per provi the Act & Ru both the above.
1.	Physical Examination	Visual Examination	Betel Nut from fungal growth		Free from growth discoloration
2.	Extraneous Vegetable Matter (m/m)	DGHS MANUAL	Absent		1%
3.	Damaged & Discolored Nuts including Insect Damaged Betel Nuts (m/m)	DGHS MANUAL	62.18%		2%
4.	Rodent Hair & Excreta	DGHS MANUAL	Present		
5.	Insect	DGHS MANUAL	Present		
6.	Added Colouring Matter	DGHS MANUAL	Present		

OPINION: The Sample of Split Betel Nut does not conform to the standards laid down under regulation No. 2.12 & 2.3, 47(5) of Food Safety and Standards (FSS) Act, 2006 and FSS (Food Products & Food Additive) Regulation, 2011 as the damaged & discolored Nuts including Insect Damaged Betel Nuts exceeds the prescribed limits.

Place: Raxaul

Dated 16.04.2014

Sd./-
(Dr. Debadutta Mishra)
Officer-in-Charge
CFL, Kolkata
(Extension Centre, Raxaul)"

59. Now if the two reports are compared, first of all, it would be clear that the report dated 3.4.2013 does not contain the prescribed standard on the basis of which the C.F.L., Raxaul could have declared the split betel nut of the petitioners to be adulterated whereas in the subsequent report dated 16.4.2014 in the last column, the prescribed standard were mentioned at least in respect of three of the parameters/quality/characteristic but then in the last report dated 16.4.2014, the betel nuts were not declared to be adulterated and now the same officer-in-charge, C.F.L., Raxaul had found them to be not conforming to the prescribed stand and on the ground of its being damaged and all discoloured.

60. It is here that the content and quality of the report of C.F.L., Raxaul dated 24.4.2014 itself becomes questionable, inasmuch as, in the first report dated 3.4.2013 damaged betel nuts were found to be only 22.80% whereas damaged & discolored nuts



including insect damaged betel nuts in the second report were found to be 62.18% which by itself would be a proof of the fact that such betel nuts on account of long storage in not a proper condition for a period of more than one year had become further damaged by exceeding the ratio around 40%. What would really also go in favour of the petitioners is that in the period of one year, the quality of betel nut had deteriorated, inasmuch as, rodent hair & excreta were found to be absent in the report dated 3.4.2013 but found to be present in the report dated 16.4.2014. Yet again, the added coloring matter in the report dated 3.4.2013 was found to be absent but surprisingly they were said to be present in the report dated 16.4.2014. Thus, a close perusal of the two reports by itself would be a proof of the fact that at least they could not be made basis for not releasing the seized articles (betel nuts) of the petitioners.

61. This Court is also not in a position to accept the submission of Mrs. Nevedita Nirvikar, learned counsel for the respondents that the law has been laid down by this Court or the Apex Court in the case of Salsa Transport Company that the authorities of the Custom Department will be justified in not releasing the seized food articles if they were found to be allegedly contaminated. As a matter of fact, from the order of this Court dated 4.3.2013 in CWJC No. 3784 of 2013 in the case of Salsa Transport Company and another



Vs. Union of India, it would be found that when the learned Single Judge had directed for releasing the betel nuts, the matter was taken to Division Bench in LPA No. 1186 of 2013 at the instance of Union of India and the Division Bench did not allow the plea of the Custom Department for not releasing the betel on account of its being allegedly adulterated as would be more apparent from the order dated 25.11.2013 in LPA No. 1186 of 2013, which is quoted herein below:-

"This Appeal under Clause 10 of the Letters Patent has been preferred by the applicant Union of India against the order dated 24th July 2013 made by the learned single Judge in M.J.C. No.2185 of 2013 arising from the order dated 17th January 2013 made by the learned single Judge in C.W.J.C. No. 317 of 2012.

The matter at issue is the seizure of some 38920 Kg. of Bengal Fali Betel Nuts transported by the writ petitioners by two vehicles seized by the appellant Customs authorities. Under order dated 4th March 2013 made in C.W.J.C. No. 3784 of 2013, the learned single Judge directed the respondents to release the betel nuts and the vehicles. Since then, the respondent Union of India and the Customs authorities approached the learned single Judge in M.J.C. No. 2185 of 2013 for modification of the order dated 4th March 2013 on the premise that the betel nuts seized by the Customs authorities were adulterated; were not fit for human consumption and that such

adulterated betel nuts cannot be released for consumption by the society in general. Reliance was placed on the report of the Central Food Laboratory Kolkata (Extension Centre, Raxaul), Bihar. According to the said report, the sample was adulterated by insect affected betel nuts and damaged betel nuts.

The application was contested by the writ petitioners. According to the writ petitioners, the betel nuts were being sent for processing at Kanpur and it was not meant for human consumption until processed. The learned single Judge has, under the impugned order dated 24th July 2013, dismissed the application for modification. Therefore, this Appeal.

Learned advocate Mrs. Nivedita Nirvikar has appeared for the appellant Union of India. She has strenuously urged that the food articles which are not safe for human consumption should not be allowed to be sold in the market. In support thereof she has relied upon the judgment of the Hon'ble Supreme Court in the matter of **Pyarali K. Tejani v. Mahadeo Ramchandra Dange & Others**, (AIR 1974 SC 228). She has also relied upon the Instruction dated 15th June 2001 issued by the Government of India, Ministry of Finance, Department of Revenue in respect of the clearance of the food articles, drawing and testing of samples to the effect that pursuant to the Notification issued by the Director General of Foreign Trade, the Customs should, inter alia, follow certain norms mentioned in the said Circular and to ensure that the food items meet specifications.

The learned single Judge has considered the application and has dealt with the contentions raised by the Union of India and has refused to modify the order.

We are in agreement with the learned single Judge. The Appeal is devoid of any merit. Appeal is dismissed in limine.

Interlocutory Application stands disposed of.”



62. The submission of Mrs. Nirvikar that the order of the Division Bench though assailed before the Apex Court by the Custom Department in the case of Salsar Transport Company (supra) in S.L.P. ----/2014 (CC 7331/2014) was affirmed by way of dismissal of S.L.P. but the question of law was left upon in the order of Apex Court dated 8.5.2014 shall never mean that the Apex Court had held that the Custom Authorities, who had already passed an order of provisional release like in the case of the petitioners and in whose favour the confiscation proceeding was also dropped, could still impound betel nuts by way of permanent seizure and confiscation. This Court cannot read so in the order of the Apex Court dated 8.5.2014 of dismissal of the Special Leave Petition filed by the Custom Department observing question of law to be remain open much less hold that the release of the split betel nuts of the petitioners could have been withheld for a period of one and half year which also surprisingly was released immediately on 9.8.2014 after filing of the writ application on 5.6.2014 when the respondents could not find any plausible answer much less any defence in support of their action of not releasing the betel nuts in favour of the petitioner despite the order of provisional release dated 28.3.2013 and dropping of the confiscation proceeding itself by an order dated 29.11.2013.

63. Having thus regard to the findings of the adjudicating



authority in confiscation proceedings dated 29.11.2013 which also stands fully affirmed by way of dismissal of appeal filed by the department, this Court would find it difficult to accept any of the plea of Custom Department with regard to non-release of the seized articles of the petitioners for a period of nearly one and half year commencing from 28.03.2013 till 09.08.2014. This Court, therefore, would not be required to say anything more about the events which have taken place after releasing of betel nuts on 09.08.2014, inasmuch as, the appeal filed against the adjudicatory final order in confiscation proceedings dated 29.11.2013 was also eventually dismissed on 29.11.2013 some time in November, 2014 which led to return of bank guarantee to the petitioners in view of the order dated 11.11.2014 as quoted above in paragraph no.16 of this judgment.

64. As a matter of fact, there are four phases of time period in this case which was required to be explained by the authorities of the Custom Department in respect of not releasing the seized betel nuts of the petitioners:-

- (i) From 28.03.2013 to 28.11.2013 inasmuch as the order of provisional release dated 28.3.2013 in favour of the petitioners passed by the competent authority, had never been cancelled though the adjudication proceedings had continued up to

28.11.2013.

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- (ii) From 29.11.2013 when the final order of adjudication in favour of the petitioners holding the confiscation proceedings itself to be bad and not maintainable to 23.03.2014 when the appeal was filed by the Custom Department against the aforementioned order of final adjudication passed by the competent authority dated 28.11.2013.
- (iii) From 25.03.2014, the date on which the appeal was filed by the Custom Department against the order of final adjudication till 24.04.2014 when negative test report of C.F.L., Raxaul was received holding that there was nothing contaminated/ spurious in the quality of seized betel nuts of the petitioners.
- (iv) From 25.04.2014 to 09.08.2014 in the period in which neither there was any order of stay passed by the appellate authority against the final order of adjudication nor there was any adverse report against the quality of the seized betel nut being adulterated before it got released on 09.08.2014 in favour of the petitioners only on account of

pendency of the writ application since 05.08.2014 and order of this Court dated 06.08.2014.



65. There is however no plausible much less acceptable explanation in the four set of counter affidavit filed in this case by the respondents and the only plea that the department had received an adverse report of the betel nuts being adulterated on 04.04.2013 also does not hold good either on facts or in law. As a matter of fact when the betel nuts were already directed to be provisionally released by an order dated 28.03.2013, there being no power of review in the adjudicatory authority, either the effort of the officials in withholding the seized consignment of cut betel nuts of the petitioners or its alleged order of review by the adjudicating authority of 29.04.2013 was itself without jurisdiction.

66. In any event after adjudication in confiscation proceeding was decided in favour of the petitioners on 29.11.2013 and confiscation proceeding against the petitioners was dropped on 29.11.2013, there was no justification whatsoever, in still withholding the consignment of seized cut betel nuts of the petitioners and therefore, in all fairness the officials of the Customs Department ought to have released the seized goods immediately after 29.11.2013 inasmuch as awaiting the result of the re-verification of the sample or awaiting for the result of the appeal, is not permissible in law and



therefore, this Court cannot approve the delay in release of the cut betel nuts of the petitioner even for a day after 29.11.2013 specially when the petitioners were repeatedly insisting for its release by furnishing adequate bank guarantee in terms of order of their provisional release dated 28.03.2013.

67. What really amazes this Court is that even after the adjudication in confiscation proceedings were itself dropped, by the final order dated 28.11.2013 when there was no sanction of law under any provision of Customs Act which would have empowered the authorities of the Custom Department to withhold the release of the seized articles of the petitioners inasmuch as the Custom Department and its authorities in fact had no power in law to keep the seized articles in their possession after passing of the final order of adjudication dated 29.11.2013, they still did not release the articles despite the petitioners' application dated 2.12.2013 on a plea that such articles of the petitioners could be released only after the correctness of final adjudicatory order dated 29.11.2013 was accepted by the competent reviewing/appellate authority. This Court again does not find any such provision in the Act which could have enabled the authorities of Customs Department to sit over the final order of adjudication in confiscation proceedings dated 29.11.2013.

68. Let it be in this regard also kept in mind that in spite of



repeated pressing for release of betel nuts by the petitioners, the Department, under the pretext of pendency of the appeal as also in the name of getting the fresh test report of food analyst through C.F.L, had refused to release the articles of the petitioners. What would further shock this Court is that the appeal itself filed against the order of adjudicating authority dated 29.11.2013 on 25.03.2014 before the Commissioner (Appeals) and, therefore, there was again no justification in not releasing the seized goods of the petitioners even in this period of 29.11.2013 to 25.3.2014 of nearly four months inasmuch as the order of the adjudicating authority in confiscation proceedings dated 29.11.2013 had not been stayed by any competent authority or the Court.

69. The matter in fact become still worse for the authorities of the Custom Department because they had consumed a period of more than one year in only getting the test report of the Laboratory with regard to edible quality of the betel nuts and despite a negative test report of betel nuts dated 16.4.2014, the seized betel nuts of the petitioners was released by the Custom Department only on 9.8.2014. In fact, there could be no logic or justification whatsoever in not releasing the seized goods of the petitioners at least after receiving this negative test report of the betel nuts from the C.F.L. on 24.04.2014, holding the same to be neither spurious nor contaminated



nor even adulterated but that also was not done till the petitioners filed the writ application on 05.08.2014 and in fact till echo of first order of this Court passed on 06.08.2014 was heard by the officials of Custom Department directing the authorities of the Custom Department to explain as to why the goods of the petitioners were not released despite an order of provisional release dated 28.03.2013 and the final order of the adjudicating authority dropping the proceedings itself on 29.11.2013.

70. In any event after 24.04.2014, when a negative test report of the cut betel nuts of CFL, Raxaul dated 16.4.2014 was received by the department from C.F.L, Raxaul there was no valid reason whatsoever for not releasing the goods in question in favour of the petitioners. In this regard it must be kept in mind that in the appeal against the order of the adjudicating authority dated 29.11.2013 was filed on or after 25.04.2014 and there was no stay granted by the appellate authority which could have enabled the authorities of the Custom Department to detain the release of the betel nuts in favour of the petitioners.

71. Thus the fact remains that only after the petitioners had filed writ petition on 05.08.2014 and an order was passed by this Court on 06.08.2014, directing the standing counsel for the Customs Department to disclose the reasons for not releasing the goods by



filing the counter affidavit that the conditional order of release on furnishing of taking bank guarantee and bond by the petitioners had been passed on 8.8.2014 which in turn would go to show that this could have been done even on 24.4.2014 if not on 29.11.2013 or 28.3.2013. Thus, the reason for not releasing the goods on account of pendency of the appeal is also a mere hoax and not permissible in law. The manner in which the authorities have in fact sought to keep the petitioners deprived of the seized goods for a period of almost one and a half year, therefore, cannot be approved by this Court.

72. In such a situation, when no plausible much less acceptable explanation has come forward on behalf of the authorities of the Custom Department, it has to be essentially held that there was gross unreasonable delay in release of the seized articles of the petitioners, which has resultantly caused immense loss to the quality of the seized betel nuts of the petitioners and eventually has become absolutely of no use for the petitioners. The petitioners, in fact, were made to run around the corridors of the office of the Custom Department since 28.03.2013 for getting release of their seized articles and as such when there is also evidence to show both in the final order dropping the confiscation proceedings dated 29.11.2013 as also in test report of CFL dated 24.4.2014 that the seized betel nuts had also become rotten, damaged and discoloured on account of



infection/infestation with insects in the period of more than one year primarily due to poor storage condition in the office and godown of Custom Department, this Court will have no difficulty in holding that it was on account of abnormal delay caused in releasing of the seized betel nuts of the petitioners that its utility value had been virtually reduced to Zero.

73. This Court, therefore, is of the view that had the authorities of the Custom Department released the seized betel nuts in view of provisional release dated 28.3.2013 by accepting the Bank guarantee as granted in the aforementioned order which they eventually did on 9.8.2013, neither the petitioners could have been put to a loss nor the authority of the Custom Department in any way could have been prejudiced in pursuing and completing the confiscation proceedings.

74. This Court is really disturbed in the manner in Mr. Kishori Lal the Commissioner Customs (P), Patna has conducted himself before this Court inasmuch as he even did not spare any effort in hoodwinking this court. Mr. Kishori Lal, the Commissioner of Customs (Prev.) Patna, who had appeared before this Court on 09.12.2014 and 16.12.2014 and had assured this Court of an independent inquiry for fixing the responsibility of the guilty officials and had eventually appointed Mr. Ramamurthy to hold such enquiry.

If Mr. Ramamurthy himself was a party to the decision questioning the order of final adjudication dated 28.11.2013 as is clear from Annexure XV to the last counter affidavit filed by the respondents, Mr. Kishori Lal in all fairness, ought to have not entrusted such an enquiry to Mr. Ramamurthy as was done by him vide his D.O. Letter dated 09.12.2014. The said D.O. letter of Mr. Kishori Lal reads as follows:-

*“Kishori Lal
I.R.S.
Commisisoner*

*Government of India
Mionistry of Finance/Department of Revenue
Office of the Commissioner
Customs (Prev) Patna
5th Floor, C R Building
B.C. Patel Path Patna-800 001
Ph. 0612-2504998, Fax 0612-2505506
F.No.II(39)35-Cus/ET/Commr.cell/Misc/14
Date: 09.12*

My dear Ramamurthy

As you may be aware that the personal appearance of the undersigned was ordered by Hon'ble High Court Patna during the course of hearing of the petition CWJC No. 13382/2014, filed by M/s. Over Seas Enterprises & oths. In compliance to this order the undersigned appeared in the court of Hon'ble Justice M.K. Jha on 09.12.2014, where it transpired that the court wanted to know as to why the consignment was seized when no contravention has been found in the adjudication proceedings and why there has been delay in the provisional release of goods to the petitioner.

You are therefore requested to inquire into the matter and submit the inquiry report within seven days hereof, indicating therein the names of the officers who have been at fault, so that the disciplinary action may be initiated against them.

With best wishes

*Sincerely yours
Sd./-
(Kishori Lal) 09.12.2014*

To Shri K. Ramamurthy

*Additional Commissioner
Customs (Prev.)
Patna.*

75. Thus, the attempt made by Mr. Kishori Lal, Commissioner, Customs, Patna to mislead this Court is truly disappointing inasmuch as Mr. Kishori Lal, the Commissioner, Customs having given a statement in the supplementary counter affidavit before this Court that he will get an inquiry held as with regard to fixing the responsibility on the erring officials of the Custom Department who had caused delay of one and half year in releasing the betel nuts of the petitioners in all fairness ought to have not handed over such inquiry to any independent officer and not to Mr. Ramamurty who had to defend also his own action leading to delay in release of seized betel nuts.

76. Thus, having an overall picture this court will have no difficulty in coming to the ultimate conclusion that the petitioners on account of abnormal delay of almost 1½ years caused in release of its seized betel nuts have been put to a perennial loss. Since the authorities themselves had valued and quantified the price of the seized articles, namely, split betel nuts weighing 15.470 M.T. to the tune of Rs.14,69,650/- on 17.2.2013, the petitioners would become at least entitled to recover this amount from the officials of the Custom Department.

77. By now, the law is well settled that the public officers

have to be also held accountable for their acts of omission and commission. Reference in this connection may be made to the judgment of the Apex Court in the case of *Lucknow Development Authority Vs. M.K. Gupta* reported in *1994(1) SCC 243*, in the case of *State of A.P. Vs. Food Corporation of India* reported in *2004(13) SCC 53* and in the case of *Delhi Airtech Services Private Limited and Anr. Vs. State of Uttar Pradesh & Anr.* reported in *2011(9) SCC 354*. The apex Court in this regard in the case of Lucknow Development Authority (supra) had approved the following observation of Misfeasance in public office as explained by Wade in his book of *Administrative Law*

“Even where there is no ministerial duty as above, and even where no recognized tort such as trespass, nuisance, or negligence is committed, public authorities or officers may be liable in damages for malicious, deliberate or injurious wrong-doing. There is thus a tort which has been called misfeasance in public office, and which includes malicious abuse of power, deliberate maladministration, and perhaps also other unlawful acts causing injury.”

78. Having held so, the Apex Court in the case of Lucknow Development Authority (supra) had also laid down law as with regard to fixing responsibility on the erring government officials in the following terms:-

“11. Today the issue thus is not only of award of compensation but who should bear the brunt. The concept of authority and power exercised by public functionaries has many dimensions. It has undergone tremendous change with passage of time and change in socioeconomic outlook. The authority empowered to function under a statute while exercising power discharges public duty. It has to act to subserve general welfare and common good. In discharging this duty honestly and bona fide, loss may accrue to any person. And he may claim compensation which may in circumstances be payable. But where the duty is performed capriciously or the exercise of power results in harassment and agony then the responsibility to pay the loss determined should be whose? In a modern society no authority can arrogate to itself the



power to act in a manner which is arbitrary. It is unfortunate that matters which require immediate attention linger on and the man in the street is made to run from one end to other with no result. The culture of window clearance appears to be totally dead. Even in ordinary matters a common man who has neither the political backing nor the financial strength to match the inaction in public oriented departments gets frustrated and it erodes the credibility in the system. Public administration, no doubt involves a vast amount of administrative discretion which shields the action of administrative authority. But where it is found that exercise of discretion was mala fide and the complainant is entitled to compensation for mental and physical harassment then the officer can no more claim to be under protective cover. When a citizen seeks to recover compensation from a public authority in respect of injuries suffered by him for capricious exercise of power and the National Commission finds it duly proved then it has a statutory obligation to award the same. It was never more necessary than today when even social obligations are regulated by grant of statutory powers. The test of permissive form of grant is over. It is now imperative and implicit in the exercise of power that it should be for the sake of society. When the court directs payment of damages or compensation against the State the ultimate sufferer is the common man. It is the tax payers' money which is paid for inaction of those who are entrusted under the Act to discharge their duties in accordance with law. It is, therefore, necessary that the Commission when it is satisfied that a complainant is entitled to compensation for harassment or mental agony or oppression, which finding of course should be recorded carefully on material and convincing circumstances and not lightly, then it should further direct the department concerned to pay the amount to the complainant from the public fund immediately but to recover the same from those who are found responsible for such unpardonable behaviour by dividing it proportionately where there are more than one functionaries."

79. A similar view was taken by the Apex Court in the case of Food Corporation of India (supra) wherein recovery of costs in the frivolous legal proceeding was sought to be made from the officer concerned for negligence in prosecuting litigation on behalf of the State. The Apex Court in this regard had held as follows:-

"2. In this view, while dismissing the applications seeking condonation of delay, we direct that enquiry be made forthwith by the State Government as to the person responsible for this state of affairs, recover from such person the costs involved in filing these petitions and submit the report to this Court within a period of four weeks."

80. In the case of Delhi Aristech Services (P) Ltd. (supra) relating to the lapses by the public officials in the land acquisition resulting into huge loss to the government exchequer on account of negligence and/or overt act of the officials had also held as follows:-

“213. These authorities are instrumentalities of the State and the officers are empowered to exercise the power on behalf of the State. Such exercise of power attains greater significance when it arises from the statutory provisions. The level of expectation of timely and just performance of duty is higher, as compared to the cases where the power is executively exercised in discharge of its regular business. Thus, all administrative norms and principles of fair performance are applicable to them with equal force, as they are to the Government department, if not with a greater rigour. The well established precepts of public trust and public accountability are fully applicable to the functions which emerge from the public servants or even the persons holding public office.

214. In the case of State of Bihar v. Subhash Singh [(1997) 4 SCC 430], this Court, in exercise of the powers of judicial review, stated that the doctrine of 'full faith and credit' applies to the acts done by the officers in the hierarchy of the State. They have to faithfully discharge their duties to elongate public purpose.

215. The concept of public accountability and performance of functions takes in its ambit, proper and timely action in accordance with law. Public duty and public obligation both are essentials of good administration whether by the State or its instrumentalities. In the case of Centre for Public Interest Litigation & Anr. v. Union of India & Anr. [(2005) 8 SCC 202], this Court declared the dictum that State actions causing loss are actionable under public law. This is a result of innovation, a new tool with the courts which are the protectors of civil liberties of the citizens and would ensure protection against devastating results of State action. The principles of public accountability and transparency in State action are applicable to cases of executive or statutory exercise of power, besides requiring that such actions also not lack bona fides. All these principles enunciated by the Court over a passage of time clearly mandate that public officers are answerable for both their inaction and irresponsible actions. If what ought to have been done is not done, responsibility should be fixed on the erring officers; then alone, the real public purpose of an answerable administration would be satisfied.

216. The doctrine of 'full faith and credit' applies to the acts done by the officers. There is a presumptive evidence of regularity in official acts, done or performed, and there should be faithful discharge of duties to elongate public purpose in accordance with the procedure prescribed. Avoidance and delay in decision making process in Government hierarchy is a matter of growing concern. Sometimes delayed decisions can cause prejudice to the rights of the parties besides there being violation of the statutory rule.

217. This Court had occasion to express its concern in different cases from time to time in relation to such matters. In the case of *State of Andhra Pradesh v. Food Corporation of India* [(2004) 13 SCC 53], this Court observed that it is a known fact that in transactions of Government business, no one would own personal responsibility and decisions would be leisurely taken at various levels.

218. Principles of public accountability are applicable to such officers/officials with all their rigour. Greater the power to decide, higher is the responsibility to be just and fair. The dimensions of administrative law permit judicial intervention in decisions, though of administrative nature, which are *ex facie* discriminatory. The adverse impact of lack of probity in discharge of public duties can result in varied defects, not only in the decision making process but in the final decision as well. Every officer in the hierarchy of the State, by virtue of his being 'public officer' or 'public servant', is accountable for his decisions to the public as well as to the State. This concept of dual responsibility should be applied with its rigours in the larger public interest and for proper governance."

81. Recently, the Full Bench of this Court in the matter of illegal appointment had adopted the same yardstick for fixing responsibility against the government officers in the case of **Ram Sevak Yadav & Anr. Vs. The State of Bihar & Anr.** reported in 2013(1)PLJR 964 wherein it was held as follows:-

"41. The public power to make appointment on public posts is conferred for public good. The power is given to the officer concerned by the government in trust, that it shall be used and not abused. If the trust is belied, the protection conferred upon a government servant stands denuded. The answerability and accountability is then individual of the officer. The government is duty bound to take appropriate civil/ criminal action against the officer. The illegality in the appointment is not a one way street. If there was someone willing to pay a price for the job, there was another waiting to take advantage of the same by fixing a price. It is not without reason that majority of such appointments relate to class III and IV posts. The standard by which the government professes to act is the same standard by which its action shall be judged. Therefore, whenever the government terminates an appointment being illegal, it is the constitutional duty of the government to simultaneously take action against the officials who belied the trust of the government. Those who made hay while the sun shined must see the darker cloudy days also. In 1995(2) PLJR 573 (DB) (*Bimal Kishore Rai v. State of Bihar*) it was directed:

"16. In cases where an appointment is found to have been illegally made, the courts quash the appointment and, therefore, the appointee suffers the consequence.

However, the real guilty person, namely, the appointing authority does scot free. The result is that even though large number of such appointments have been quashed by the courts, the appointing authorities have showed total indifference to the orders passed by the courts, and they continue to make such appointments. It is a well-known fact, so far as this state is concerned, that appointment in majority of cases has to be bought. The ordinary citizen who has concern for the law and morality, must suffer, even if in terms of capability and merit he is far superior to the unscrupulous ones, who managed the appointments. We have, therefore, felt the need to issue some directions in this regard, so that the appointing authorities, who are primarily guilty in such matters, and who exploit the jobseekers taking advantage of their hardship are equally punished when such illegal appointments are brought to the notice of the government. I, therefore, direct that in each and every case where an appointment is said to have been illegally made, in the sense that the rules governing the appointment is made by flouting the law in such a manner that the motive of the appointing authority becomes suspect, simultaneously with the cancellation of such illegal appointment, action must be initiated against the appointing authority, and in appropriate cases they should be immediately suspended pending departmental proceedings. If such action is not taken, courts will doubt the genuineness of the reason shown by the government for cancellation of such appointment. I direct that this should be complied with by the government in each and every case where an appointment is sought to be cancelled on the ground that it was illegally made in circumstances which give rise to a suspicion that the appointment was made on extraneous consideration, including money.”

42. Court orders are not mere platitudes or idealistic rhetoric incantation. They are meant to be complied with. We therefore direct the State Government to identify the officials concerned with the present appointments and take appropriate action against them in accordance with law and expeditiousness. Let a report be then submitted within eight weeks.”

82. Thus, when this Court has found that the petitioners have been put to a loss of at least Rs.14,69,650/- on account of complete deterioration of quality of split betel nuts solely on account of deliberate laches on the part of the officials of the Custom Department it would direct respondent no.2 to pay a sum of



Rs.14,69,650/- along with interest at the rate of 9% per annum for the period 28.3.2013, the date on which the order of provisional release of the seized article was passed by the competent authority to the order directing release of the seized articles dated 9.8.2014 within a period of three months from today.

83. It is, however, made clear that such amount, which has to be paid by way of compensation for the loss caused to the petitioners on account of delay of nearly 1½ years in release of the seized articles, shall be recovered from the erring officials and for the purposes of fixing individual responsibility on such erring officials this Court would direct the Chairman of Central Board of Excise and Customs Department of Revenue, New Delhi to get an enquiry conducted by an Officer not below in the rank of Chief Commissioner of Customs who must not be posted and/or associated in any manner with Patna Zone of the Custom Department.

84. Upon completion of such enquiry and upon submission of enquiry report appropriate action under the orders of Chairman Central Board of Excise and Customs, New Delhi be taken against erring officials not only for recovery of the amount directed to be paid under this judgment to the petitioners but also for initiating and concluding disciplinary proceedings by the competent authority against the erring officials of Customs Department of Patna zone who



are found to have caused delay in release of the seized articles of the petitioners in any part of period in between 28.3.2013 to 9.8.2014. This whole exercise must be completed within a period of six months from the date of receipt of this judgment by the Chairman of the Central Board of Excise and Customs, New Delhi, who having taken his action as directed above shall also submit his action taken report to the registry of this Court on or before 30th of June, 2016.

85. With the aforementioned observations and directions, this writ application is allowed with a cost of Rs. 25,000/- quantified by this Court for coercing and compelling the petitioners to file this writ petition for release of their seized betel nuts to be paid by the Respondents to the petitioners within a period of three months from today.

86. It is, however, made clear that irrespective of initiation and conclusion of the aforesaid proceedings against the erring officials of Customs department of Patna zone by the Chairman of Central Board of Excise and Customs, the payment of the amount of Rs.14,69,650/- alongwith interest at the rate of 9% per annum from 28.3.2013 to 9.8.2014 must be made to the petitioners within a period of three months from today, failing which the amount of interest on the amount of Rs. 14,69,650/- shall stand enhanced from 9% per annum to 18% per annum from 28.3.2013 till the date of its actual

payment.

87. Let a copy of this judgment be sent immediately to not only the Chairman of Central Board of Excise and Customs Department of Revenue, Ministry of Finance, New Delhi, but also to the Commissioner of Customs (Preventive), respondent no.2, for its compliance in letter and spirit.

(Mihir Kumar Jha, J)

Patna High Court
Dated the 30th November 2015
A.F.R./Ranjan/-

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