

GAHC010193332025



2026:GAU-AS:6373

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

Case No. : Crl.Pet./1086/2025

THE UNION OF INDIA
REPRESENTED BY ANNIE ENCHIMLO, INTELLIGENCE OFFICER,
DIRECTORATE OF REVENUE INTELLIGENCE, GUWAHATI ZONAL UNIT,
MAINAK TOWERS, CHRISTIAN BASTI,
DIST. KAMRUP (M), ASSAM, GUWAHATI-781005.

VERSUS

SAYAD ALI LASKAR
S/O MONUHAR ALI LASKAR
R/O CHAKCHANDPUR, LAKSHMISAHAR, HAILAKANDI, P.O. CHANDPUR,
P.S. HAILAKANDI, DIST. HAILAKANDI, ASSAM

Advocates for the appellant : Mr. K. Brook, Jr. Standing Counsel, DRI.

Advocates for the respondents : Mr. A.M. Barbhuiya, Advocate

:::BEFORE:::

HON'BLE MR. JUSTICE RAJESH MAZUMDAR

Date on which judgment is reserved : **25.03.2026**

Date of pronouncement of judgment : **08.05.2026**

Whether the pronouncement is of the :N/A

operative part of the judgment ?

Whether the full judgment has been pronounced? : Yes

JUDGMENT & ORDER (CAV)

Heard Mr. K. Brook, learned Junior Standing Counsel for the DRI. Also heard Mr. A.M. Barbhuiya, learned counsel for the sole respondent.

2. This is an application under Section 528 BNSS, 2023, read with Sections 442 and 438 of the BNSS 2023, for setting aside and quashing the order dated 24.06.2025 passed by the Court of the Additional Session Judge (Fast Track) Court no 3, Kamrup (Metro) Guwahati in Misc case number 133 of 2025, whereby the truck bearing registration number AS-26-C-9100, seized in connection with DRI Case No.26/ CL/ IMP/ CIG/ DRI /GZU /2024-25 dated 18.02.2025 was directed to be released. The respondent in this criminal petition

had preferred an application under Section 497 of the BNSS, 2023, before the learned Additional Sessions Judge, FTC number 3, Kamrup (Metro), Guwahati, seeking release of a vehicle seized by the Directorate of Revenue Intelligence, Guwahati Zonal Unit.

3. As per the contentions raised in the criminal petition, the truck involved in this case was seized by the officials of the Directorate of Revenue Intelligence (hereinafter referred to as DRI), in the presence of two independent witnesses, on being found to be carrying cigarettes of foreign origin without having paid the due revenue/customs on them. It is the case of the DRI that the truck contained concealed cartons, which in turn contained about 19,85,000 sticks of cigarettes of foreign origin. The truck, which was used for concealment and transport of the smuggled goods alongwith a white Tata Safari Car, and the mobile phones of the intercepted individuals, and other relevant documents, were duly inventoried and detailed in a seizure list. The three intercepted individuals involved in the incident were arrested and produced before the learned Chief Judicial Magistrate, Kamrup (Metro), Guwahati, on 19.02.2025, whereupon they were remanded to judicial custody.

4. When the respondent herein, who was the registered owner of the aforesaid vehicle, approached the Court of the Additional Session Judge (FTC), No. 3 Kamrup (Metro), Guwahati by registering Misc. Case No. 133 of 2025, seeking release of the truck, the learned Court called for a report from the Directorate of Revenue Intelligence as to whether the custody of the seized

truck could be granted in favour of the respondent herein/applicant therein.

A report was placed before the learned Court, taking a categorical stand that, in view of the provisions of the Customs Act 1962, the learned Court of the Additional Sessions Judge could not exercise jurisdiction to decide a prayer for release of a vehicle seized under the provisions of the Customs Act, 1962.

5. It was stated by the Directorate of Revenue Intelligence that the jurisdiction with regard to custody and disposal of articles, including vehicles, seized under the provisions of the Customs Act, 1962, was exclusively vested with the "Adjudicating Authority" or the "Proper Officers" under Section 110A of the Customs Act, 1962. It was further submitted before the learned Court of the Additional Sessions Judge that the custody of a vehicle or article seized under the Customs Act, 1962, could not be granted by a regular Criminal Court and such prayers could be considered and decided only by a competent authority under the Customs Act, 1962. A further stand had been taken that since that vehicle had not been produced before the regular Criminal Court, the prayers of the applicant for release of the vehicle deserved to be rejected by the learned Court.

6. By the impugned order dated 24.06.2025, passed in Misc. case 133/2025, the learned Court of the Additional Session Judge granted custody of the seized truck in favour of the respondent herein/applicant therein. This order, granting custody of the truck, is being assailed in this present petition.

7. The learned standing counsel for the petitioner department, Mr. K.K.

Brown, has submitted that provisions of Section 110A of the Customs Act, 1962, vest the power to grant the provisional release of seized goods in the "Adjudicating Authority" defined under the Act. He has submitted that since the case had been instituted within the ambit of the Customs Act, the prayer for release of the truck was required to be considered in accordance with the Act and not under the provisions of the Cr.P.C.

8. The learned counsel for the petitioner has submitted that the Customs Act, 1962, unequivocally vests the power to order the release of seized goods and conveyances exclusively with the authorities under the Customs Act. He has submitted that the Customs Act 1962 itself provides an exhaustive and complete appellate mechanism under Sections 128, 129 and 130 of the Customs Act, 1962 for redressal of grievances on orders passed by the "proper officer" or the adjudicating authority on applications praying for release of seized goods or conveyances. He has submitted that, therefore, the learned Additional Sessions Judge, while passing the order dated 20.06.2025, had traversed beyond the jurisdiction conferred on the said court by law, when it directed the release of a vehicle seized under the provisions of the Customs Act, 1962. He has submitted that the Customs Act 1962 is a special statute with a self-contained mechanism for dealing with seized goods.

9. The learned counsel has submitted that this Court had, by its order dated 01.02.2019, passed in **WP(C) 4029 of 2018**, titled ***Bajender Singh Cheema versus the Union of India***, directed the petitioner in that case to avail the

alternative remedy of appeal against the orders under Section 110A of the Customs Act by filing a review as provided under the Act.

10. The learned counsel for the petitioner has further submitted that the Meghalaya High Court, in its judgment dated 17.02.2022 in Criminal Petition No.1/2022 along with Criminal Petition number 02/2022 (***Directorate of Revenue Intelligence versus Ajay Babu Manda***), had held that in a proceeding under the Customs Act, it is but natural to expect that the provisions of the Act would be applicable to enable a concerned party to resort to applications for specific directions or relief as the case may be. The Meghalaya High Court had held that since the provisions of Section 110A specifically laid down that the "proper officer" would be empowered to release the seized goods to the owner on taking a bond from him, there would be no occasion for an aggrieved party to approach the Magistrate to exercise powers under Section 451 of the Cr.P.C to release such goods. It was held that since the Customs Act, 1962, was a special enactment and the Code of Criminal Procedure dealt with general law, the principles of the Latin maxim of "generalia specialibus non derogant" would apply.

11. The learned counsel has submitted that in the aforesaid case, the Meghalaya High Court found that the learned Magistrate had acted without jurisdiction while passing orders for the release of the goods involved in that case and that an abuse of the process of the court had been occasioned. The release orders were set aside. The learned counsel for the petitioner/DRI has

submitted that the impugned order dated 24.06.2025, passed by the learned Court of the Additional Session Judge, directing the release of the vehicle in favor of the respondent herein, required a similar interference from this Court.

12. The learned counsel appearing for the respondent, Mr. Barbhuiya, has submitted that it is an admitted position of the petitioner herein, who had seized the truck, that they did not plead the requirement of retention of the truck and had only contested the authority of the learned Additional Sessions Judge to adjudicate an application praying for release of the seized vehicle. The learned counsel for the respondent has submitted that it has been rightly held by the learned Court of the Additional Session Judge that there is no bar in the provisions of the Customs Act on the power and authority vested in the regular Criminal Courts to adjudicate on the prayers for custody of seized articles.

13. The learned counsel for the respondent has supported the observation of the learned Trial Court that the investigating authority had, in the meantime, with the passage of more than 6 months from the seizure, had sufficient time to investigate the case. He has submitted that the learned Court had correctly appreciated the law and allowed the custody of the seized vehicle in favour of the respondent herein.

14. This Court does not find any dispute to the powers vested in a criminal Court to order the custody and disposal of property pending trial in certain cases, since such powers have been vested in the Courts by the provisions of the Cr. P.C itself. It is, however, also noted that the Customs Act, 1962, contains

specific provisions relating to search, seizure and arrest. The provisions of Sections 100 to 110A provide for the powers of the "Proper Officer" and/or the "Adjudicating Authority" to exercise jurisdiction for the release of goods, documents or articles seized during the pendency of the adjudication.

15. The provisions of Sections 110 and 110A of the Customs Act, 1962 are reproduced herein below for ease of reference:

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

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

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

(1B) Where any goods, being goods specified under sub-section (1A), have been seized by a proper officer under sub-section (1), he shall prepare an inventory of such goods containing such details relating to their description, quality, quantity, mark, numbers, country of origin and other

particulars as the proper officer may consider relevant to the identity of the goods in any proceedings under this Act and shall make an application to a Magistrate for the purpose of—

(a) certifying the correctness of the inventory so prepared; or

b) taking, in the presence of the Magistrate, photographs of such goods, and certifying such photographs as true; or

(c) allowing to draw representative samples of such goods, in the presence of the Magistrate, and certifying the correctness of any list of samples so drawn.

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

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

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

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

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

(4) The person from whose custody any documents are seized under sub-

section (3) shall be entitled to make copies thereof or take extracts therefrom in the presence of an officer of customs.”

“110A 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.”

16. This Court is in agreement with the proposition of law that when Section 110A of the Customs Act specifically provides that the “Proper Officer” would be empowered to take a decision on the prayer of release of seized goods to the owner, an alternative approach to a Criminal Court under the provisions of Section 497 of the BNSS would not be called for. This is so because the Customs Act, 1962, is a special legislation, while the provisions of the BNSS, 2023, deal with general law.

17. This court has also noticed that it is not the case of the respondent herein that it had pleaded any violation of the provisions of the Customs Act, 1962 before the learned Additional Session Judge, while praying for the release of the vehicle, which was seized under the provisions of the Customs Act.

18. The reference of the learned Trial Court to the decision rendered by the ***Apex Court in Sundarbhai Ambalal Desai v. State of Gujarat, reported in (2002) 10 SCC 283,*** appears to be misplaced in the context of the case at hand, inasmuch as, the aforesaid case had referred to the procedure of custody and disposal of valuable articles under the Criminal Procedure Code 1973, but

had not held that the provisions of the Cr.P.C would prevail over the provisions of the Customs Act, 1962, insofar as the power to adjudicate prayers for custody and release of vehicles seized under the provisions of the Customs Act of 1962, were concerned.

This Court finds useful reference to an earlier decision of this Court rendered on 27 February 2003 in the case of Union of India vs Chungnunga and Anr., (Crl. Revision Petition no 1/2003) wherein it was held as follows:

“It cannot be disputed that articles which come under the domain of smuggled goods are within the authority of the customs department, which deals with the same as per the Customs Act, which is a special Act and Section 5 of the Cr. P.C. provides that provisions in Cr. P.C. will not come in clash with any special or local law for the time being in force. It will be convenient to quote Section 5 of Cr. P.C. as below. "5. Nothing contained in this Code shall, in the absence of a specific provision to the contrary, affect any special or local law for the time being in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force.”

19. In the result, the petition is allowed and the impugned order dated 24.06.2025 passed by the Court of the Additional Session Judge (Fast Track) Court no 3, Kamrup (Metro) Guwahati in Misc case number 133 of 2025, is set aside. The petitioner shall however be at liberty to approach the appropriate authority under the Customs Act, 1962, for redressal of his grievances and/or for release of the seized truck. In the event of such an approach, the

competent authority shall decide the prayer on its merits, without being influenced by this order in any manner.

20. Criminal Petition is disposed of.

JUDGE

Comparing Assistant