

GAHC020004372026

2026:GAU-NL:426



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

Case No. : Crl. Pet./18/2026

THE DEPUTY DIRECTOR, DRI
DIRECTORATE OF REVENUE AND INTELLIGENCE, DIMAPUR
REGIONAL UNIT, H/NO. 40, SKT APARTMENT, LANE 3, NAGARJAN,
DIMAPUR, NAGALAND.

VERSUS

THE STATE OF NAGALAND
REPRESENTED BY THE PUBLIC PROSECUTOR NAGALAND

2:SHRI KIYETO ZHIMOMI
S/O VIKUHO ZHIMOMI
R/O MISHIKITO VILLAGE
CHUMUKEDIMA, NAGALAND

BEFORE
HON'BLE MR JUSTICE MRIDUL KUMAR KALITA

For the Petitioner : Mr. Z. Kulnu, Standing Counsel, CBIC

For the Respondents : Mr. C. T. Jamir, Senior Advocate
: Mr. Aliba Ozukum, Advocate
(for respondent No. 2)

: Mr. E. Thiba Phom, Govt. Advocate
(for respondent No. 1)

Date of Hearing : **06.08.2026**

Date of Judgment : **13.08.2026**

JUDGMENT & ORDER

1. Heard Mr. Z. Kulnu, the learned standing counsel, Central Board of Indirect Taxes and Customs (CBIC). Also heard Mr. C. T. Jamir, the learned senior counsel assisted by Mr. Aliba Ozukum, the learned counsel for the respondent No. 2 as well as Mr. E. Thiba Phom, the learned Government Counsel appearing for the State of Nagaland, for respondent No. 1.

2. This application under Section 528 of BNSS, 2023 has been filed by the petitioner praying for setting aside the order dated 12.03.2026, passed by the Court of learned Principal District and Sessions Judge/Special Judge, Dimapur, in connection with DRI Seizure No. 02/ CL/ IMP/ ARECA/ DRI/ DiRU/ 2025-26, corresponding to G.R. Case No. 718/2025, whereby, it had directed release of 570 bags of Areca nuts seized by the Customs Department to the respondent No. 1 on furnishing a bond of Rs.10 Lakhs along with surety to the satisfaction of Investigating Officer.

3. The facts relevant for consideration of the instant criminal petition, in brief, are that on 19.12.2025, on receipt of an information through the reliable sources by the Officers of the Directorate of the Revenue Intelligence, Dimapur to the effect that some trucks are carrying smuggled foreign origin Areca nuts from Manipur to Dimapur. It was further informed that said trucks would likely to reach Dimapur during the early hours of 20.12.2025, a surveillance team was arranged at

Kukidolong on National Highway leading towards Dimapur. After some time, i.e., at around 0700 hours on 20.12.2025, two trucks bearing Registration No. CG-04-JD-5709 and AS-01-FC-7638 were intercepted by the DRI officials at Kukidolong. During the interrogation of the drivers of the said trucks, it was revealed that said trucks were carrying Areca nuts loaded from the Ukhrul district, Manipur for delivery in Dimapur. During search of the said trucks, it was found that the said trucks were carrying 570 bags of Areca nuts weighing around 45,600 kg. with an approximate value estimated at Rs.3,19,52,376/-.

4. On further interrogation, the drivers of the said trucks produced transit pass purportedly issued by Forest Department, Phek Division, Government of Nagaland. However, during examination of the said transit pass, it was found that the transit pass pertains to only 25,000 kgs of areca nuts, whereas, actual areca nuts which were recovered therefrom were weighing 45,600 kgs.

5. Thereafter, on suspecting the recovered areca nuts to be smuggled and of foreign origin, which is liable to confiscation under the provisions of the Customs Act, 1962, the said areca nuts along with the trucks carrying the same as well as other items and documents recovered therefrom were seized under Section 110 of the Customs Act, 1962. It was also alleged that the person from whose possession the areca nuts were recovered, were liable to be punished under the provisions of the Customs Act, 1962 as such they were also arrested. Thereafter, the Investigation under Customs Act, 1962 was initiated and it is further stated in the criminal petition that show cause notice under Section 124 of

the Customs Act, 1962 is yet to be issued.

6. However, in the meanwhile, the respondent No. 1 approached the Court of learned Principal District and Sessions Judge/Special Judge, Dimapur claiming ownership of the seized areca nuts and praying for release of same to him on *zimma*. Accordingly, by order dated 12.03.2026, passed by the Principal District and Sessions Judge/Special Judge, Dimapur in G.R. Case No. 718/2025, the respondent No. 1 was granted *zimma* of the seized areca nuts on furnishing of bond of Rs.10,00,000/- (Rupees Ten Lakhs) as well as on providing surety to the satisfaction of the Investigating Officer. The aforesaid order has been impugned in the instant criminal petition.

7. Mr. Z. Kulnu, learned standing counsel, Central Board of Indirect Taxes and Customs (CBIC) has submitted that the Principal District and Sessions Judge/Special Judge, Dimapur has erred in passing the impugned order by granting *zimma* of the seized areca nuts to the respondent No. 1 without having jurisdiction to do so under the Customs Act, 1962. He submits that the provisions of Customs Act, 1962 being a special law would prevail over the provisions of the general law like BNSS, 2023. He submits that the seizure of areca nuts in the instant case has been made by the customs authorities in exercise of powers under Section 110 of the said Act.

8. He further submits that under Section 110 (1A) as well as under Section 110A of the said Act, the power to dispose of the goods seized under Section 110 of the said Act in case such goods are perishable in nature or hazardous in nature is with the "proper officer". He submits that

the proper officer in the instant case would be an officer who has power to adjudicate the matter regarding confiscation and imposition of penalty under Section 122 of the said Act. He submits that such an officer, in the instant case, would be the Commissioner of Customs. He further submits that since the seized areca nuts were not produced before the Court, after such seizure, the powers under Section 497 of BNSS, 2023 could not have been exercised by the regular criminal court.

9. He submits that under such circumstances, the order passed by the learned Principal District and Sessions Judge/Special Judge, Dimapur granting *zimma* of the areca nuts to the respondent No. 1 is beyond jurisdiction. In support of his submissions, he has cited a ruling of a Co-ordinate Bench of this Court in the case of "***Union of India Vs. Sayad Ali Laskar***" (*Judgment dated 08.05.2026, in Criminal Petition No. 1086/2025*).

10. He further submits that though in respect of the said seized areca nuts, an order has already been passed by releasing the same by the Co-ordinate Bench of this Court on 09.04.2026 in W.P.(C) No. 42/2026 and a contempt case has also been filed in that regard which has been registered as COP(C) No. 15/2026. However, the present petitioners are intending to file an application under Article 226(3) for modification of the interim order in the said writ petition.

11. On the other hand, Mr. C. T. Jamir, learned senior counsel appearing for the respondent No. 2 has submitted that the present petitioner has purchased the seized areca nuts from its owner, namely, M/s Zamzam Traders, who had purchased the said areca nuts in a public auction conducted by the Government of Manipur. He has further

submitted that after purchasing the seized areca nuts from its owner, namely, M/s Zamzam Traders, the said areca nuts were transported from Manipur to Dimapur with proper transit passes issued by both Government of Manipur and Government of Nagaland.

12. He submits that the order dated 31.10.2024 of the Government of Manipur, Office of the Chief Conservator of Forest/Territorial-II, Imphal, Manipur itself indicate that seized areca nuts which were purchased by the present petitioner from the proprietor of M/s Zamzam Traders were earlier seized and confiscated and were reportedly of Burmese origin non-edible supari and it is only after confiscation, the public auction was conducted.

13. The learned senior counsel for the respondent No. 2 submits that since the respondent No. 2 has purchased the said areca nuts from the lawful owner, who had purchased the same in a public auction conducted by the Government of Manipur after seizure and confiscation of said areca nuts, no offence may be attributed to the present respondent No. 2. He further submits that as in connection with the present seizure for the second time after the consignment of said Burmese supari was in transit to Dimapur since a GR case was also registered, the learned Principal District and Sessions Judge/Special Judge, Dimapur was well within its power to direct release of the seized areca nuts on furnishing of bond and subject to production of surety.

14. He further submits that in spite of direction of the learned Sessions Judge, which has been impugned in this criminal petition, the areca nuts were not released by the respondent authorities, hence, the respondent No. 2 approached this Court by filing a writ petition which was

registered as W.P.(C) No. 42/2026. He submits that in the said writ petition, by order dated 09.04.2026, a Co-ordinate Bench of this Court had directed the respondent authorities to release the said 570 bags of areca nuts to the present respondent No. 2 immediately. He further submits that the said order has been received by the respondent Nos. 1 and 2 on 10.04.2026, however, in spite of direction of this Court, the areca nuts were not released by the respondent authorities, the petitioner was compelled to file contempt case which was registered as COP(C) No. 15/2026.

15. He submits that in the said contempt case, the respondents were directed by the Court on 20.07.2026 to show compliance of the directions issued by the Court on 09.04.2026, however, the seized areca nuts are yet to be released. He further submits that the seized areca nuts being perishable goods are required to be released in terms of the order of the learned Principal District and Sessions Judge/Special Judge, Dimapur passed on 12.03.2026 as well as also in pursuant to the direction by this Court passed, in the WP(C) No. 42/2026, on 09.04.2026. He, therefore, submits that this criminal petition is liable to be dismissed. He also submits that the facts of the ruling cited by the learned standing counsel for the CBIC, namely, "***Union of India Vs. Sayad Ali Laskar***" (supra) are distinguishable from the facts of this case as such same is not applicable. Hence, he prays for dismissing the instant criminal petition.

16. On the other hand, Mr. E. Thiba Phom, the learned Government Counsel appearing for the respondent No. 1 has submitted that there is no infirmity in the impugned order passed by the learned Principal District

and Sessions Judge/Special Judge, Dimapur in G.R. Case No. 718/2025. He submits that since on the basis of a complaint filed by the DRI, Dimapur before the Court of learned Chief Judicial Magistrate, Dimapur, under Sections 7(1)/11/104/110/112/135 of the Customs Act, 1962, and on the basis of said complaint, G.R. Case No. 718/2025 has been registered. The Criminal Court including the Court of learned Sessions Judge does have jurisdiction to dispose of the property seized during the pendency of the investigation of the case under Section 497 of the BNSS. He, therefore, submits that no interference is justified in the impugned order passed by the learned Principal District and Sessions Judge/Special Judge, Dimapur and same is liable to be dismissed.

17. I have considered the submissions made by the learned counsel for both sides and have gone through the materials available on record. I have also gone through the rulings cited by the learned counsel for both sides in support of their respective submission.

18. Though, the instant criminal petition was earlier clubbed with W.P. (C) No. 42/2026, W.P.(C) No. 117/2026 as well as COP(C) No. 15/2026, however, by order dated 06.08.2026, passed in COP(C) No. 15/2026, this matter was separated from the aforesaid cases and was heard for final disposal.

19. Though, the release of seized areca nuts in connection with DRI Seizure No. 02/ CL/ IMP/ ARECA/ DRI/ DiRU/ 2025-26, corresponding to G.R. Case No. 718/2025 has been directed, both by the impugned order dated 12.03.2026, passed by the Court of learned Principal District and Session Judge/Special Judge, Dimapur as well as by the order dated

09.04.2026, in the WP(C) No. 42/2026 by a Co-ordinate Bench of this Court, in this instant criminal petition, we are concerned only with the legality or otherwise of the order dated 12.03.2026, passed by the Court of learned Principal District and Session Judge/Special Judge, Dimapur in G.R. Case No. 718/2025.

20. It appears from record that approximately 45,600 kgs of areca nuts were seized by the officials of Directorate of Revenue Intelligence, Dimapur Regional Unit, on 20.12.2025, in connection with Case No. No. 02/ CL/ IMP/ ARECA/ DRI/ DiRU/ 2025-26 for contravention of the provisions contained in Customs Act, 1962. The provisions contained in Section 110 of the Customs Act, 1962 provides for seizure of goods, documents and things which are liable to be confiscated under the aforesaid Act. Whereas, Section 110A of the said Act provides for release of the goods, documents, things etc. which were seized, pending adjudication.

21. Section 122 of the said Act provides that in every case, under Chapter-XIV of the said Act, in which anything is liable to be confiscated or any person is liable to a penalty, such confiscation or penalty may be adjudged by officers mentioned in Clause (a) and (b) of the said section. The Section 122A for the said Act provides for procedure for adjudication of the confiscation and penalties.

22. It also appears that Chapter-XVI of the Customs Act, 1962 provides for the provisions relating to offences and prosecution under the said Act. The various offences under the said Act have been defined in Section 132 to Section 136 of the said Act. It is also provided in Section

137 of the said Act that previous sanction of the Principal Commissioner of Customs or Commissioner of Customs is required before cognizance of offence under Section 135 and some other offences is taken by the Court.

23. In the instant case, it appears that though on 21.12.2025, the Senior Intelligence Officer, DRI, Dimapur, Regional Unit have filed a complaint under Sections 7(1), 11, 104, 110, 112 and 135 of the Customs Act, 1962 against two accused persons, namely, (i) Muhammad Ayub Khan @ Tungou and (ii) Anil Kumar Gupta before the Court of learned Chief Judicial Magistrate, Dimapur and on the basis of the said complaint, G.R. Case No. 718/2025 was registered. However, on perusal of the records of G.R. Case No. 718/2025, it appears that no previous sanction order of Principal Commissioner of Customs or Commissioner of Customs is there on record. Further, no specific order regarding taking of cognizance by the learned Chief Judicial Magistrate, Dimapur is there on record.

24. It is pertinent to mention herein that out of various sections quoted in the complaint filed by the DRI, namely, Section 7(1), 11, 104, 110, 112 and 135 of the Customs Act, 1962, only Section 135 pertains to an offence under the said Act and for taking cognizance of the offence under Section 135 of the Customs Act, 1962, previous sanction of the appropriate authority is required.

25. This Court is of considered opinion that in absence of previous sanction under Section 137 of the Customs Act, 1962, no cognizance of offence under Section 135 of the said Act may be taken by a regular criminal court. As such, passing of impugned order by the Court of learned

Principal District and Session Judge/Special Judge, Dimapur appears to be beyond jurisdiction.

26. Though, cognizance of offence under the provision of Customs Act, 1962 has not been taken in this case, however, there is no bar for the appropriate authorities under Customs Act, 1962 to proceed parallelly for the confiscation of the seized goods as well as imposition of penalty for contravention of provisions of Customs Act, 1962, if sufficient grounds may be shown for proceedings as such under the provisions of the said Act. Under such circumstances, the matter relating to confiscation and imposition of penalties has to be adjudged by the authorities earmarked in Section 122 of the said Act as per the procedure laid down in the Section 122A and other provisions of the said Act.

27. In case of a seizure of goods which is limited to any likelihood of confiscation of the same as well as imposition of penalty for contravention of any provision of the Customs Act, 1962, the provisional release of the same pending adjudication by the adjudicating authority under the Act has to be under the provisions contained in Section 110 and Section 110A of the said Act, by the proper officer. In absence of taking of any cognizance of offence under Chapter-XVI of the Customs Act, 1962 by regular criminal court, the power of provisional release of the seized goods may not be exercised by regular criminal court under the provisions of the general criminal law like BNSS, 2023 overriding the provisions contained in Section 110 and Section 110A of the Customs Act, 1962, which is a special law.

28. As such, invoking of jurisdiction by the Court of learned Principal

District and Session Judge/Special Judge, Dimapur under the provisions of BNSS, 2023 for releasing the seized areca nuts on *zimma* to the respondent No. 2 appears to be beyond jurisdiction.

29. In view of the discussions made and reasons stated in the foregoing paragraphs of this judgment, the impugned order dated 12.03.2026, passed by the Court of learned Principal District and Session Judge/Special Judge, Dimapur in G.R. Case No. 718/2025 corresponding to DRI Case No. 02/ CL/ IMP/ ARECA/ DRI/ DiRU/ 2025-26 is hereby set aside.

30. This criminal petition is accordingly allowed.

31. Let a copy of this order be sent to the Court of the learned Principal District and Sessions Judge/Special Judge, Dimapur as well as the learned Chief Judicial Magistrate, Dimapur.

JUDGE

Comparing Assistant