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IN THE HIGH COURT OF DELHI AT NEW DELHI*Date of decision: 23rd July, 2025*

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W.P.(C) 7230/2025 & CM APPL. 42345/2025**SHAMINA**

.....Petitioner

Through: Dr. Ashutosh, Ms. Fatima and Mr.
Prewaz, Advocates.

versus

COMMISSIONER OF CUSTOMS

.....Respondent

Through: Mr. Aakarsh Srivastava, SSC with
Mr. Anand Pandey, Adv.

CORAM:**JUSTICE PRATHIBA M. SINGH****JUSTICE RAJNEESH KUMAR GUPTA****Prathiba M. Singh, J. (Oral)**

1. This hearing has been done through hybrid mode.
2. The present petition has been filed by the Petitioner-Shamina under Articles 226 and 227 of the Constitution of India, *inter alia*, seeking release of the four gold bangles of the Petitioner, weighing 100 grams, which have been detained by the Customs Department *vide* detention receipt bearing no. 4019 dated 19th March 2024. An Order-in-Original dated 9th October 2024 (hereinafter, '*impugned order*') has been passed by which absolute confiscation of the four gold bangles has been ordered. The operative portion of the impugned order reads as under:

“i) I deny the 'Free Allowance', if any, admissible to the Pax



Shamina for not declaring the detained goods to the Proper Officer at Red Channel as well to the Customs Officer at Green Channel who intercepted her and recovered the detained goods from her.

*ii) I declare the passenger Shamina as an **"ineligible Passenger"** for the purpose of the Notification No. 50/2017-Customs dated 30.06.2017 (as amended) read with Baggage Rules, 2016 (as amended).*

*iii) I order **absolute confiscation of Four Gold bangles having average purity 998 with gross and net weight 100 grams having Assessable value Rs.6,27,900/- recovered from the Pax Shamina and detained vide DR No.DR/INDEL4/19.03.2024/004019 dated 19.03.2024 under section 111(d), 111 (i), 111 (j) and 111 (m) of the Customs Act, 1962;***

*iv) I also impose a penalty of **Rs.1,00,000/- (Rupees One Lac Only)** on the Pax Shamina under section 112 (a) and 112(b) of the Customs Act, 1962."*

3. The case of the Petitioner is that she is an Indian citizen, who had gone to Riyadh to meet her husband, who was working in Riyadh, and was wearing the said four gold bangles which formed part of her personal jewellery. Upon her arrival at the Indira Gandhi International Airport, New Delhi, the Petitioner did not declare the same as the said bangles were her personal jewellery which were worn by her.

4. After the detention of the said bangles, a detention receipt dated 19th March 2024 was issued to the Petitioner. According to the Petitioner, on 9th October, 2024, a lawyer engaged by the Petitioner appeared before the Customs Department on behalf of the Petitioner and was handed over the copy of the impugned order. Moreover, another lawyer engaged by the Petitioner visited the office of the Customs Department on 09th September, 2024 and waived the issuance of the Show Cause Notice (hereinafter, 'SCN').



5. As per the Petitioner, since these four gold bangles are used jewellery the same are liable to be released. Further, it is argued on behalf of the Petitioner that no personal hearing was granted and the waiver to the SCN is contrary to law.

6. Mr. Aakarsh Srivastava, Id. Sr. Standing Counsel for the Respondent, submits that the advocate engaged by Petitioner herself has waived the SCN and personal hearing and has in fact received the oral SCN and therefore, there is no illegality.

7. The Court has considered the matter. It is to be noted that no personal hearing has been granted to the Petitioner in the present case. Perusal of the impugned order would show that the Adjudicating Authority holds that the Petitioner is an ineligible passenger and has relied under Rule 5 of the Baggage Rules, 2016 to hold that the cap which has been fixed under the said rule is much lower and the value of the gold which the Petitioner was carrying is higher. Further, the Adjudicating Authority records that these are four gold bangles with average purity of 998 and therefore, it is not in the nature of jewellery.

8. The weight of four gold bangles collectively is 100 grams which means that each bangle weighs 25 grams. On the aspect of personal effects and jewellery, the Adjudicating Authority has merely held that because of the purity, the same cannot be considered as personal jewellery as it is prohibited goods. This is contrary to the settled law.

9. The Supreme Court in ***Directorate of Revenue Intelligence v. Pushpa Lekhumal Tolani, (2017) 16 SCC 93***, has considered whether jewellery being carried by a tourist as part of her baggage would qualify as smuggling under the Customs Act, 1962 read with the Baggage Rules, 1998, that was in force



during the relevant period. The Supreme Court clearly holds that it is not permissible to completely exclude jewellery from the ambit of ‘*personal effects*’. Accordingly, the Court declared that the seized jewellery items therein were the *bona fide* jewellery of the tourist for her personal use and was intended to be taken out of India. The relevant extract from the judgment of the Supreme Court is also set out below:-

*“13. Insofar as the question of violation of the provisions of the Act is concerned, we are of the opinion that the respondent herein did not violate the provisions of Section 77 of the Act since the necessary declaration was made by the respondent while passing through the green channel. Such declarations are deemed to be implicit and devised with a view to facilitate expeditious and smooth clearance of the passenger. Further, as per the International Convention on the Simplification and Harmonisation of Customs Procedures (Kyoto 18-5-1973), a passenger going through the green channel is itself a declaration that he has no dutiable or prohibited articles. **Further, a harmonious reading of Rule 7 of the Baggage Rules, 1998 read with Appendix E (2) (quoted above), the respondent was not carrying any dutiable goods because the goods were the bona fide jewellery of the respondent for her personal use and was intended to be taken out of India.** Also, with regard to the proximity of purchase of jewellery, all the jewellery was not purchased a few days before the departure of the respondent from UK, a large number of items had been in use for a long period. It did not make any difference whether the jewellery is new or used. There is also no relevance of the argument that since all the jewellery is to be taken out of India, it was, therefore, deliberately brought to India for taking it to Singapore. Foreign tourists are allowed to bring*



into India jewellery even of substantial value provided it is meant to be taken out of India with them and it is a prerequisite at the time of making endorsements on the passport. Therefore, bringing jewellery into India for taking it out with the passenger is permissible and is not liable to any import duty.

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15. [...] Also, from the present facts and circumstances of the case, it cannot be inferred that the jewellery was meant for import into India on the basis of return ticket which was found to be in the possession of the respondent. Moreover, we cannot ignore the contention of the respondent that her parents at the relevant time were in Indonesia and she had plans of proceeding to Indonesia. Some of the jewellery items purchased by the respondent were for her personal use and some were intended to be left with her parents in Indonesia. The High Court has rightly held that when she brought jewellery of a huge amount into the country, the respondent did not seem to have the intention to smuggle the jewellery into India and to sell it off. Even on the examination of the jewellery for costing purposes, it has come out to be of Rs 25 lakhs and not Rs 1.27 crores as per DRI. **The High Court was right in holding that it is not the intention of the Board to verify the newness of every product which a traveller brings with him as his personal effect. It is quite reasonable that a traveller may make purchases of his personal effects before embarking on a tour to India. It could be of any personal effect including jewellery Therefore, its newness is of no consequence. The expression “new goods” in their original packing has to be understood in a pragmatic way.**

Conclusion:



16) We are of the considered opinion that in the absence of any facts on record about the nature and mode of concealment and also any finding of the lower authority that jewellery was kept in a way to evade detection on examination of the baggage, it has to be held that there was no concealment as such. It is seen that the respondent chose the Green Channel for clearance of her baggage. She committed no violation of law or infraction of any instruction for clearance of the baggage through the green channel as she being a tourist had no dutiable goods to declare under the Baggage Rules. The presumption that the jewellery found in her baggage cannot be considered as personal effects owing to its high monetary value is rebutted herewith and we hold that the respondent was entitled to import personal jewellery duty free.

17) In the facts and circumstances of this case, it will be just and proper to expunge the remarks against the appellant from the judgment passed by the High Court. Therefore, the strictures passed against the appellant are expunged.

18) In view of the foregoing discussion, we are of the considered opinion that the High Court was right in setting aside the show-cause notice dated 12.12.2002 and order dated 14.08.2003 passed by the competent authority. There is no scope to interfere in the orders passed by the Division Bench of the High Court. There is no merit in this appeal and the appeal is, therefore, dismissed with no order as to costs. However, it is made clear that the present conclusion is confined only to the disposal of this appeal.”

10. In ***Saba Simran v. Union of India & Ors., (2024:DHC:9155-DB)*** this Court was seized with the issue of deciding the validity of the seizure of gold jewellery by the Customs Department from an Indian tourist. The Court



considered the ambit of ‘personal effects’ vis-à-vis jewellery under the Baggage Rules, 2016 in effect from time to time. The relevant paragraphs of the said judgement are as under:

“13. When the 2016 Rules ultimately came to be promulgated, Rule 2(vi) specifically introduced a definition with respect to “personal effects”. As noticed in the preceding parts of this judgment, Rule 2(vi) while defining “personal effects” explicitly excludes items of jewellery. The word ‘jewellery’ as it now appears in that definition clause must necessarily be read in conjunction with the previous versions of the Baggage Rules which operated from time to time as well as the clarificatory Circular referred to above. However, both Rules 3(a) as well as 4(b) employ the phrase “used personal effects” and which expression existed even in the prior versions of the rules and have been noticed hereinabove.

14. Rule 2(vi) of the 2016 Rules essentially adopts the same concept of ‘used personal effects’ as was intended under the 1998 Rules, and by way of abundant caution, a definition now stands placed in the 2016 Rules and which purports to define the expression “personal effects” with sufficient clarity. However, the same would not detract from the distinction which the respondents themselves acknowledged in the Circular and intended customs officers to bear in mind the distinction which must be recognised to exist when construing and identifying ‘personal jewellery’ as opposed to ‘jewellery’ per se.

15. The expression ‘jewellery’ as it appears in Rule



2(vi) would thus have to be construed as inclusive of articles newly acquired as opposed to used personal articles of jewellery which may have been borne on the person while exiting the country or carried in its baggage. **Thus, personal jewellery which is not found to have been acquired on an overseas trip and was always a used personal effect of the passenger would not be subject to the monetary prescriptions incorporated in Rules 3 and 4 of the 2016 Rules.**

16. This clearly appeals to reason bearing in mind the understanding of the respondents themselves and which was explained and highlighted in the clarificatory Circular referred to above. That Circular had come to be issued at a time when the Appendices to the 1998 Rules had employed the phrase “used personal effects, excluding jewellery”. **The clarification is thus liable to be appreciated in the aforesaid light and the statutory position as enunciated by the respondents themselves requiring the customs officers to bear a distinction between “personal jewellery” and the word “jewellery” when used on its own and as it appears in the Appendices. This position, in our considered opinion, would continue to endure and remain unimpacted by the provisions contained in the 2016 Rules.”**

11. The above mentioned decision of the Division Bench of this Court was challenged before the Supreme Court in *SLP(C) No. 011281 / 2025* titled *Union of India & Ors. V. Saba Simran*. The Supreme Court, while dismissing the said challenge, held as under:



“ 1. Delay condoned.

2. Having heard the learned counsel appearing for the petitioners and having gone through the materials on record, we see no reason to interfere with the impugned order passed by the High Court.

3. The Special Leave Petition is, accordingly, dismissed.

4. Pending application(s), if any, stands disposed of.”

12. This Court in ***Mr Makhinder Chopra vs. Commissioner Of Customs New Delhi, 2025:DHC:1162-DB***, had the occasion to consider the relevant provisions of the Baggage Rules, 2016, as also the decisions of the Supreme Court and this Court. After analysing the same, this Court held as under:

“17. A conspectus of the above decisions and provisions would lead to the conclusion that jewellery that is bona fide in personal use by the tourist would not be excluded from the ambit of personal effects as defined under the Baggage Rules. Further, the Department is required to make a distinction between ‘jewellery’ and ‘personal jewellery’ while considering seizure of items for being in violation of the Baggage Rules.”

13. In view of the above settled law, absolute confiscation of the four gold bangles without even permitting payment of any duty, redemption fine or penalty seems to be an extreme measure taken by the Adjudicating Authority. Moreover, personal hearing cannot be waived as per the settled law.

14. Under these circumstances, the impugned order is set aside. The detained gold bangles are directed to be released to the Petitioner within four weeks subject to the payment of warehousing charges. The warehousing charges shall be payable in terms of applicable charges on the date of detention.



15. Accordingly, the present petition is disposed of. Pending applications, if any, are also disposed of.

16. The next date of hearing i.e., 24th July, 2025 stands cancelled.

PRATHIBA M. SINGH, J.

RAJNEESH KUMAR GUPTA, J.

JULY 23, 2025

v/ck