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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 4th March, 2025

+ **W.P.(C) 2690/2025, CM APPL. 12818/2025, & CM APPL.
12819/2025**

RAHUL VATTAMPARAMBIL REMESHPetitioner
Through: Ms. Kavitha K.T., Mr. Subhash
Chandra, Mr. S. Gopal & Ms. Syam
Krishna, Advs.

versus

UNION OF INDIA & ORS.Respondents
Through: None.

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 under Article 226 of the Constitution of India seeking release of the Gold jewellery which has been detained by the Respondent – Customs Department. The Petitioner is an Indian who is employed in the UAE.
3. The Petitioner had arrived at the Terminal-3, IGI Airport, New Delhi for attending a marriage ceremony. The invitation card for the marriage ceremony in Guruvayur is also placed on record as Annexure P-3. The Petitioner is said to have been wearing a gold chain weighing 32 gms which was detained by the Respondent/Department on 9th April, 2024.
4. The case of the Petitioner is that he was only served with the impugned Order-in-Original dated 13th November, 2024 without proper hearing being given to him. The Id. Counsel for the Petitioner submits that the chain was the Petitioner's personal jewellery. He has placed on record photographs which



show that he is wearing the gold chain.

5. None appears for the Respondent/Department, despite advance copy having been served at email ids: igilegaldelhi@gmail.com, membercus.cbic@gmail.com and mobile number: 9810274452 , 9871863446,

6. It is noticed that in a large number of customs matters, the Counsels are either not appearing or appear without proper instructions. In cases of non-appearance, the Court is compelled to request Standing Counsels present in Court to accept notice. This reflects a clear lack of coordination between the Department and the learned panel of Standing Counsels. Such a practice is highly undesirable and leads to gross wastage of judicial time.

7. Accordingly, this Court deems it appropriate to proceed with passing of the order on merits.

8. As per the impugned order, the Petitioner has been permitted to redeem the gold chain upon the payment of Rs.25,000/- for re-export and penalty has been imposed of Rs.20,000/-.

9. However, a perusal of the impugned Order-in-Original shows that the same is passed without properly hearing the Petitioner as the Petitioner, according to the Department, has waived his right to a show cause notice and personal hearing. The said portion of the impugned order is set out below:

*“8. I have carefully gone through the facts of the case and considered the submissions/admissions made by the Passenger in his statement dated 10.04.2024. **The Pax has also requested waiver of Show Cause Notice and Personal Hearing vide letter dated 20.05.2024** and after accepting his request, I proceed to adjudicate the case.”*



10. In this regard, this Court has already held in the case of *Amit Kumar v. The Commissioner of Customs, 2025:DHC:751-DB* that such waiver of show cause notice and personal hearing that too when obtained on a Standard Performa, would be contrary to law.

11. Similarly, in the case of *Mr. Makhinder Chopra v. Commissioner of Customs, New Delhi, 2025:DHC:1162-DB*, the Court has observed as under:

“III.(C) Waiver of show cause notice and personal hearing

23. *As mentioned above, the Customs Department has relied upon the undertaking in a standard form dated 17th June, 2024 signed by the Petitioner, wherein the Petitioner has waived of issuance of the show cause notice and personal hearing. It is admitted position that no show cause notice has been issued to the Petitioner on the basis of the said undertaking.*

24. *The issuance of a show cause notice before confiscation of goods by the Customs officials is covered under Section 124 of the Act, which reads as under:*

“124. Issue of show cause notice before confiscation of goods, etc.— No order confiscating any goods or imposing any penalty on any person shall be made under this Chapter unless the owner of the goods or such person—

(a) is given a notice in writing with the prior approval of the officer of Customs not below the rank of an Assistant Commissioner of Customs, informing him of the grounds on which it is proposed to confiscate the goods or to impose a penalty;

(b) is given an opportunity of making a representation in writing within such reasonable time as may be specified in the



notice against the grounds of confiscation or imposition of penalty mentioned therein; and

(c) is given a reasonable opportunity of being heard in the matter:

Provided that the notice referred to in clause (a) and the representation referred to in clause (b) may, at the request of the person concerned be oral.

Provided further that notwithstanding issue of notice under this section, the proper officer may issue a supplementary notice under such circumstances and in such manner as may be prescribed.”

25. *A perusal of the above Section would show that the principles of natural justice have to be followed by the Customs Department before detention of the goods. The Section provides a three-fold requirement:*

- i) a notice in writing informing the grounds of confiscation;*
- ii) An opportunity of making a representation in writing against the said grounds of confiscation;*
- iii) A reasonable opportunity of personal hearing.*

26. *In terms of proviso to the said Section, the Customs Authority may issue an oral show cause notice to the tourist in lieu of a written show cause notice at the request of the said tourist. However, in the opinion of the Court the undertaking in a standard form as relied upon by the Customs Department waiving the issuance of show cause notice and personal hearing would not satisfy the requirements of Section 124 of the Act.*

27. *This Court recently in **Amit Kumar v. The Commissioner of Customs, 2025:DHC:751 DB** was considering similar facts wherein the Petitioner had also signed an undertaking waiving show cause notice and personal hearing. The Court had analysed and*



discussed the validity of such undertaking vis-à-vis Section 124 of the Act. The relevant discussion is extracted hereinunder:

“12. The Court has considered the matter. The main plank of the Respondent’s submission is on the basis of the Standard Printed Form which is titled **Green Channel Violation (Request for Release of Detained Goods)** which has been extracted hereinabove.

13. A perusal of the above would show that in Printed Form, the following has been included:-

“It is humbly requested that said detained goods may please be **RELEASED**. I regret my mistake of opting for Green Channel and further request you to please take a lenient view in the matter. I undertake that my case may be decided on merit and as such I do not want any written Show Cause Notice and Personal Hearing in the matter. An oral SCN has been received.”

14. When a request for release of goods is being made by the person whose goods have been detained, the said person cannot be expected to read a printed form, where –

- **waiver of Show Cause Notice has been agreed to,**
 - **waiver of personal hearing has been agreed to**
- and**
- **it has also been recorded that an oral SCN has been received.**

Such signing of the standard form would not be in compliance with the principles of natural justice, inasmuch as, the waiver under Section 124 of the Act would have to be a conscious waiver and an informed waiver.

15. A perusal of Section 124 of the Act would show that even after an oral show cause notice is given, the authority has the discretion to issue supplementary notice under circumstances which may be prescribed. For ready reference, Section 124 of the Act is set out



below:-

“124. Issue of show cause notice before confiscation of goods, etc.—No order confiscating any goods or imposing any penalty on any person shall be made under this Chapter unless the owner of the goods or such person—

(a) is given a notice in [writing with the prior approval of the officer of Customs not below the rank of [an Assistant Commissioner of Customs], informing] him of the grounds on which it is proposed to confiscate the goods or to impose a penalty;

(b) is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of confiscation or imposition of penalty mentioned therein; and

(c) is given a reasonable opportunity of being heard in the matter: Provided that the notice referred to in clause (a) and the representation referred to in clause (b) may, at the request of the person concerned be oral. [Provided further that notwithstanding issue of notice under this section, the proper officer may issue a supplementary notice under such circumstances and in such manner as may be prescribed.]”

16. A perusal of Section 124 of the Act along with the alleged waiver which is relied upon would show that the oral SCN cannot be deemed to have been served in this manner as is being alleged by the Department. If an oral SCN waiver has to be agreed to by the person concerned, the same ought to be in the form of a proper declaration, consciously signed by the person concerned. Even then, an opportunity of hearing ought to be afforded, inasmuch as, the person concerned cannot be condemned unheard in these matters. Printed waivers of this nature would



fundamentally violate rights of persons who are affected. Natural justice is not merely lip-service. It has to be given effect and complied with in letter and spirit. 17. The three-pronged waiver which the form contains is not even decipherable or comprehensible to the common man. Apart from agreeing as per the said form that the oral SCN has been served, the person affected has also waived a right for personal hearing. Such a form in fact shocks the conscience of the Court, that too in cases of the present nature where travellers/tourists are made to run from pillar to post for seeking release of detained goods.

18. A Co-ordinate Bench of this Court recently in *Mohammad Zaid Saleem vs. The Commissioner of Customs (Airport & General) [W.P.(C) No. 2595/2019]*, has held clearly that if a SCN is not given within six months of the seizure, the goods would be liable to be released. The relevant portion of the above stated judgment is extracted below:

“Before parting with this petition, it is pertinent to note that the matters in issue in the present matter are squarely covered by decision in the case of Chaganlal Gainmull v. Collector of Central Excise, where it was held that if the show cause notice was not issued within six months from the date of seizure, the consequence would be that the person from whom the gold was seized would become entitled to its return. Although the aspect of extension of period of detention for another six months vide the Proviso to Section 110(2) of the Act was introduced w.e.f 29.03.2018 the ratio still holds sway to the effect that issuing of notice to the owner for detention of seized goods is mandatory and the Apex Court frowned upon the fact that no explanation was offered by the Respondents as to why they were constrained to dispose of the seized gold, when it was neither perishable nor hazardous, and there was no answer as to why the



gold was disposed of without any notice being”

19. This Court is of the opinion that the printed waiver of SCN and the printed statement made in the request for release of goods cannot be considered or deemed to be an oral SCN, in compliance with Section 124. The SCN in the present case is accordingly deemed to have not been issued and thus the detention itself would be contrary to law. The order passed in original without issuance of SCN and without hearing the Petitioner, is not sustainable in law. The Order-in-Original dated 29th November, 2024 is accordingly set-aside””

12. Secondly, the impugned Order-in-Original has detained the gold chain on the ground that the Petitioner is an ‘*ineligible*’ passenger. The order passed by the authority is set out below:

“xxx xxx xxx

ii) *I declare the passenger, **Rahul V. Remesh**, is 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).”*

13. However, this Court has now pronounced several orders/judgments, following various judgments of the Supreme Court and this Court, wherein it has been held clearly that if the gold items seized are personal jewellery, the same would not be liable to be confiscated. The few orders/judgments passed by this Court in this regard are as under:

- *Nathan Narayanswamy v. Commissioner of Customs, [Delhi High Court, W.P.(C) 6855/2023 dated 15th September, 2023]*
- *Farida Aliyeva v. Commissioner of Customs, 2024:DHC:9533-DB.*

14. The operative portion of *Nathan Narayanswamy (Supra)* is read as



under:

“2. The petitioner who holds a Malaysian passport issued on 02 May 2021 is stated to have arrived at the IGI Airport, New Delhi on 08 December 2022 from a flight which originated in Singapore. He is stated to have been detained for questioning after he had crossed the Green Channel and was moving towards the exit gate. His personal baggage items were thereafter searched. According to the respondent, on a personal search of the petitioner, they recovered a yellow metallic chain and a yellow metallic kada collectively weighing 463 grams. The aforesaid jewellery items were thereafter appraised and valued at Rs.21,45,079/-. The respondent asserts that the aforesaid goods are liable to be confiscated.

3. We find that the issue would have to be considered and answered in light of the Baggage Rules 2016 [„**Baggage Rules**“]. Those Rules which were framed in terms of Section 79 of the Customs Act, 1962 make the following provisions for arriving passengers:-

“3. **Passenger arriving from countries other than Nepal, Bhutan or Myanmar:-An Indian resident or a foreigner residing in India or a tourist of Indian origin, not being an infant arriving from any country other than Nepal, Bhutan or Myanmar, shall be allowed clearance free of duty articles in his bona fide baggage, that is to say, -**

(a) used personal effects and travel souvenirs; and

(b) articles other than those mentioned in Annexure-I, up to the value of fifty thousand rupees if these are carried on the person or in the accompanied baggage of the passenger:

Provided that a tourist of foreign origin, not being an infant, shall be allowed clearance free of duty articles in his bona fide baggage, that is to say,

(a) used personal effects and travel souvenirs; and

(b) articles other than those mentioned in Annexure- I, up to the value of fifteen thousand rupees if these are carried on the person or in the accompanied baggage of the passenger:

Provided further that where the passenger is an infant, only used personal effects shall be allowed duty free.



Explanation.- The free allowance of a passenger under this rule shall not be allowed to pool with the free allowance of any other passenger.

xxx xxx xxx

5. Jewellery. - A passenger residing abroad for more than one year, on return to India, shall be allowed clearance free of duty in his bona fide baggage of jewellery up to a weight, of twenty grams with a value cap of fifty thousand rupees if brought by a gentleman passenger, or forty grams with a value cap of one lakh rupees if brought by a lady passenger.

xxx xxx xxx

ANNEXURE-I

(See Rules 3, 4 and 6)

1. Fire arms.
2. Cartridges of fire arms exceeding 50.
3. Cigarettes exceeding 100 sticks or cigars exceeding 25 or tobacco exceeding 125 gms.
4. Alcoholic liquor or wines in excess of two litres.
5. **Gold or silver in any form other than ornaments.**
6. Flat Panel (Liquid Crystal Display/Light-Emitting Diode/Plasma) television.”

*4. Undisputedly, and since the petitioner held a foreign passport, it would be the Proviso to Rule 3 alone which would apply. In terms of the said Proviso, a tourist of foreign origin is permitted clearance of duty free articles in his bona fide baggage, and the articles and the limits/restrictions of those articles which are not allowed duty free are mentioned in Annexure-I. As we read Entry 5 in Annexure-I, it speaks of gold or silver in any form other than ornaments. **The chain and the kada which were found on the person of the petitioner would undoubtedly fall in the category of jewellery and ornaments. Clause 5 of Annexure-I would therefore not sustain the seizure of the articles in question.***

5. While learned counsel for the respondent had also drawn our attention to Rule 5 of the Baggage Rules, we note that the same pertains to a passenger who is returning to India after having resided abroad for more than one year. That would clearly not apply to the



petitioner here who is undisputedly a foreign national.”

15. The Petitioner is an UAE employed resident. The same has also been recorded by the Customs Authorities in the impugned order. The resident identity card of the Petitioner has also been referred to in paragraph 4 which is set out below:

*“4. The AR: Mr. Govind Vennankott Chandrasekharan (having passport No. M4297548) of the Pax visited this office and submitted a letter dated 20.05.2024 wherein it is inter- alia stated that he had arrived from Dubai to IGI Airport Terminal-S, New Delhi by the flight AI 916 Dated 09.04.2024 and brought "One yellow metal chain weighing 32 grams". **The Pax has submitted a copy of the United Arab Emirates Resident Identity Card bearing ID number - 784-1997-9428072-9 which has the Issuing date - 16.02.2024 and Expiry date- 15.02.2026. in support of his claim for Re Export.** He further requested that the said goods may be allowed for re-export to him, as he is ready to pay fine and penalty after taking lenient view as he had brought the gold for his personal use. He submitted that he did not want any show cause notice and personal hearing in the matter.”*

16. As mentioned above the Petitioner has placed on record the photographs of the Petitioner wearing the gold chain which in fact shows that it is his personal jewellery.

17. Under these circumstances, the present case is clearly covered by the above mentioned judgments. Therefore, considering the fact that -

- (i) The Respondent Department has failed to provide a Show Cause Notice and a Proper Hearing to the Petitioner; and
- (ii) The gold chain was clearly personal jewellery of the Petitioner, the impugned order is not sustainable.



2025:DHC:1444-DB



18. The impugned order in original dated 13th November 2024 is accordingly set aside. The Respondent is directed to release the gold item of the Petitioner within a period of four weeks. The Petitioner or his authorised signatory shall collect the same. The concerned official/agency shall verify the credentials of the Petitioner and release the same.

19. A copy of the present order be communicated by the Registry to the Commissioner of Customs.

20. Petition is accordingly disposed of in these terms. All pending applications, if any, are also disposed of.

PRATHIBA M. SINGH
JUDGE

RAJNEESH KUMAR GUPTA
JUDGE

MARCH 4, 2025

Rahul/Ar.