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

+ **W.P.(C) 8217/2025**

NITISH KHARBANDAPetitioner

Through: Ms. Richa Kumari, Advocate.

versus

COMMISSIONER OF CUSTOMSRespondent

Through: Mr. Aditya Singla, SSC with Ms. Arya Suresh Nair, Mr. Ritwik Saha, Mr. Raghav Bakshi, Mr. Sahil Parashar, Ms. Shreya Lamba and Mr. Akhil Sharma, Advocates.

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- Nitish Kharbanda under Article 226 of the Constitution of India, *inter alia*, seeking release of the one gold *kada*, weighing 100 grams and one gold chain, weighing 75 grams, (hereinafter, 'goods') seized *vide* detention receipt bearing no. 4207 dated 19th March 2024 (New detention receipt no. 26600 dated 8th August, 2024)
3. The case of the Petitioner is that he arrived at the Indira Gandhi International Airport, New Delhi (hereinafter, 'IGI Airport') on 19th March, 2024. Upon arrival at the IGI Airport, the Petitioner was intercepted by the concerned officials of the Customs Department and the goods of the Petitioner



were seized.

4. Mr. Aditya Singla, Id. Sr. Standing Counsel for Respondent submits that the personal hearing notice has been given to the Petitioner in terms of the decision dated 27th March, 2025 in *W.P.(C) 198/2025* titled '*Qamar Jahan v. Union of India & Ors.*' Ld. Sr. Standing Counsel relies upon the said decision to argue that a valid personal hearing notice has been given to the Petitioner, even though there is a waiver of Show Cause Notice (hereinafter, 'SCN'). The relevant portion of the said decision reads as under:

“15. Henceforth, the passengers shall be duly informed about the applicable provisions in respect of issuance of an oral SCN and the procedure thereto. In any event, even if notice is waived, notice of personal hearing would be given to the concerned passenger through Whatsapp, email id as also through the authorized signatory. This would ensure that the passenger's right to a personal hearing cannot be waived off, as is clear from a reading of Section 124 of the Act and the decisions passed by this Court. Accordingly, notice of personal hearing would be given to the passenger so that submissions can be made on behalf of the passenger prior to passing of the adjudicating order.”

5. Heard. This Court has already held in the case of *Amit Kumar v. The Commissioner of Customs, 2025:DHC:751-DB* that such waiver of SCN and personal hearing that too when obtained on a Standard Performa, would be contrary to law. The operative portion of the judgement in *Amit Kumar (supra)* is as under:

“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.

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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”

6. Accordingly, since there is no SCN issued in this matter, no personal hearing was given at all to the Petitioner and no Order-in-Original has been passed, the detention is no longer tenable. Moreover, the personal hearing notice has also been issued to the Petitioner after more than one year of



detention. Accordingly, the detention is set aside. The goods of the Petitioner shall be released within four weeks subject to payment of entire warehousing charges. The warehousing charges shall be payable in terms of applicable charges on the date of detention.

7. Accordingly, the petition stands disposed of. Pending applications, if any, are also disposed of.

PRATHIBA M. SINGH, J.

RAJNEESH KUMAR GUPTA, J.

JULY 23, 2025

v/ck