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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 29th May, 2025

+ **W.P.(C) 5081/2025**

FIRDOUS AHMAD RATHER

.....Petitioner

Through: Ms. Richa Kumari, Mr. Ravi Rathore,
Mr. Pawan and Mr. Yatin Bhutani,
Advocates.

versus

COMMISSIONER OF CUSTOMS

.....Respondent

Through: Mr. Aditya Singla, SSC, CBIC with
Mr. Umang Misra and Mr. Raghav
Bakshi, 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 under Articles 226 and 227 of the Constitution of India, *inter alia*, seeking release of one gold chain weighing 117 grams and three iPhone 15 Pro Max 256 GB variant (hereinafter “*detained goods*”), which were seized by the Customs Department *vide* Detention Receipt No. 3366 dated 22nd December, 2023.
3. In addition to the above, the Petitioner has also challenged the impugned Order-in-Original dated 16th February, 2024 and the Order-in-



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Appeal dated 16th December, 2024.

4. The Petitioner is an Indian citizen. It is the case of the Petitioner that on 22nd December, 2023, the Petitioner had arrived at the Indira Gandhi International Airport, New Delhi from Dubai and upon his arrival he was intercepted by the Customs Department. It is stated that the detained goods, of which the gold chain was worn by the Petitioner and the iPhones were for his personal use, were seized by the Customs Department.

5. On 22nd April, 2025 notice was issued in this matter and a direction was issued to the Customs Department to place on record the copy of the declaration filed by the Petitioner.

6. Mr. Aditya Singla, Id. Senior Standing Counsel for the Respondent has taken instructions in the matter and submits that in so far as the detained gold chain is concerned, the impugned Order-in-Original has permitted release of the same, subject to payment of redemption fine of Rs. 1,10,000/- along with applicable rate of Customs duty. However, the Adjudicating Authority has directed absolute confiscation of the detained iPhones. It is submitted that the appeal preferred by the Petitioner against the impugned Order-in-Original has been dismissed by the Appellate Authority. The Petitioner is stated to have filed the revision petition against the impugned Order-in-Appeal, which is pending before the Revision Authority.

7. Id. Counsel for the Petitioner submits that the Customs Department does not adopt a uniform stand in respect of devices such as iPhones *vis-a-vis* their confiscation or release subject to payment of redemption fine. Reliance is placed on the decision of this Court in ***W.P.(C) 5368/2025*** titled ***Chakshu Garg vs. Commissioner Of Customs***, wherein an iPhone was permitted to be redeemed by paying a sum of Rs. 32,000/- as redemption fee. However, in the



present case, absolute confiscation has been directed.

8. Heard, Id. Counsel for the parties. The Court has also perused the documents placed on record. In so far as the detained goods are concerned, the operative portion of the impugned Order-in-Original reads as under:

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ORDER

i) I deny the ‘Free Allowance’ if any, admissible to the Pax Mr. Firdous Ahmad Rather for not declaring the detained goods to the Proper Officer at Red Channel as well to the Customs Officer at Green Channel who intercepted him and recovered the detained goods from him.

ii) I declare the passenger, Mr. Firdous Ahmad Rather, 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).

iii) I order confiscation of “One gold chain having purity 997 weighing 117 grams valued at Rs. 7,40,837/-” recovered from the Pax Mr. Firdous Ahmad Rather and detained vide DR No. DR/INDEL4/22.12.2023/003366 dated 22.12.2023 under section 111(d), 111(j) and 111(m) of the Customs Act, 1962;

iv) I order absolute confiscation of “Three I Phone 15 Pro Max 256 GB valued at Rs, 3,56,420.10/-” recovered from the Pax Mr. Firdous Ahmad Rather and detained vide DR No. DR/INDEL4/22.12.2023/003366 dated 22.12.2023 under section 111(d), 111(j) and 111(m) of the Customs Act, 1962;

v) I give an option to redeem, the gold chain confiscated, above, on payment of fine of Rs. 1,10,000/- (One Lakh Ten Thousand Rupees only) along-with applicable rate of Customs duty on tariff valuation as on the date of detention of goods. I allow release of the detained goods within 120 days of issue of this order under Section 125(3) of Customs Act, 1962. The redemption is to be allowed after the completion of legal formalities in this regard and also fulfillment of any regulatory



clearances/approvals required. The offer of redemption, if accepted, shall be subject to condition that the Pax shall not dispute the identity and valuation of the detained goods. The offer of redemption shall cease after ‘One Hundred Twenty Days’ from date of the receipt of this order;

vi) I also impose a penalty of Rs. 1,10,000/- (One Lakh Ten Thousand Rupees only) on the Pax Mr. Firdous Ahmad Rather under section 112 (a) and 112(b) of the Customs Act, 1962.”

9. As can be seen from the above, the detained gold chain weighing 117 grams has been permitted to be released subject to payment of a sum of Rs. 1,10,000/- along with applicable duty - whereas the three iPhones have been ordered for absolute confiscation.

10. It is noted that no Show Cause Notice has been issued in this case as the Customs Department is relying on the standard pre-printed waiver that was obtained from the Petitioner. The validity of such pre-printed waiver of show cause notices and personal hearing has been considered by this Court in various matters, including in *Amit Kumar v. The Commissioner of Customs, 2025:DHC:751-DB* and *Mr Makhinder Chopra vs Commissioner of Customs New Delhi, 2025:DHC:1162-DB*. 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”

11. Further, this Court in ***Makhinder Chopra (supra)*** had analysed Section 124 of the Customs Act, 1962 (hereinafter “*the Act*”) while considering the issue of waiver of show cause notice and personal hearing. The Court while replying on the decision in ***Amit Kumar (supra)*** held as under:

“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. [...]

28 **In view of the above observations, it is clear that the undertaking signed by the Petitioner in the present case cannot be sustained in law.** Accordingly, the Customs Department has failed to satisfy the requirements of Section 124 of the Act in the present case. Therefore, the detention of the Petitioner's gold chain has to be set aside.

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34. **Since, the Court has made clear that the practice of making tourists sign undertaking in a standard form waiving the show cause notice and personal hearing is contrary to the provisions of Section 124 of the Act, hereinafter, the Customs Department is directed to discontinue the said practice. The Customs Department is expected to follow the principles of natural justice in each case where goods are confiscated in terms of Section 124 of the Act.**"



12. Thus, the law is well settled, that the Customs Department cannot rely on pre-printed waiver of show cause notice as the same would be contrary to the requirement of Section 124 of the Act. In light of the above discussions, it is clear that the continued detention or seizure of goods by the Customs Department would be untenable in law, where the show cause notice or the personal hearing have been waived *via* a pre-printed waiver.

13. Accordingly, in the facts of this case, since no show cause notice has been issued to the Petitioner due to a pre-printed waiver, the detained goods would be liable to be released to the Petitioner.

14. However, since the Petitioner is already before the Revisional Authority, in so far as the gold chain is concerned, the same is directed to be released upon payment of the redemption fine and storage charges only.

15. Further, in so far as the three iPhones are concerned, let the Revisional Authority decide the same within a period of two months, bearing in mind the order passed by this Court in *Chaksu Garg (supra)*, where the Adjudicating Authority had given an option to redeem the seized iPhones upon payment of Rs. 32,000/- as redemption fee.

16. The Revisional Authority's order shall be communicated to the Petitioner at the following e-mail address and mobile number:

E-mail: yadavricha493@gmail.com

Mobile No. : 8766321884

17. All the rights and remedies of the Petitioner are left open.

18. For the release of the chain, the Petitioner shall appear before the Customs Authority on 09th June, 2025. The redemption fine and storage charges alone would be paid by the Petitioner.

19. The Petitioner may collect the gold chain personally or through an



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Authorised Representative, in which case, the gold chain shall be released after receiving a proper email from the Petitioner or some form of communication that the Petitioner has no objection to the same being released to the concerned Authorised Representative.

20. Accordingly, the present writ petition is disposed of in above terms. All the pending applications, if any, are also disposed of.

PRATHIBA M. SINGH
JUDGE

RAJNEESH KUMAR GUPTA
JUDGE

MAY 29, 2025/MR/msh