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

Date of decision: 7th August 2025

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W.P.(C) 10952/2025

NURGOZEL ACHILOVA

.....Petitioner

Through: Ms. Richa Kumari, Mr. Pawan, Mr. Prashant Chaudhary, Ms. Arti Gupta and Mr. Aman A., Advs.

versus

COMMISSIONER OF CUSTOMS

.....Respondent

Through: Mr. Atul Tripathi, SSC, CBIC Adv. with Mr. Gaurav Mani Tripathi & Mr. Shubham Mishra, Advs.

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE SHAIL JAIN

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.
2. The present petition has been filed by the Petitioner- Nurgozel Achilova under Article 226 of the Constitution of India, *inter alia*, seeking release of one gold chain weighing 132 grams, and one gold bracelet, weighing 66 grams, (*hereinafter*, 'gold items') of the Petitioner seized by the Customs Department *vide* detention receipt dated 16th July, 2024.
3. The case of the Petitioner who is a senior citizen and is suffering from impaired vision, is that she is a foreign national and belongs to Turkmenistan. The Petitioner is present in person in Court today.
4. It is submitted on behalf of the Petitioner that she had travelled to India for medical treatment on 16th July, 2024. Upon arrival at the Indira Gandhi International Airport, New Delhi, the Petitioner was intercepted by the



concerned Customs officials and the said gold items were detained by the Customs Department.

5. After the appraisal of the gold items, the Order-in-Original was passed by the Customs Department on 26th September 2024. The operative part of the said Order-in-Original reads as under:

“ORDER

- (i) *I deny the 'Free Allowance' if any admissible to the passenger Ms Nurgozel Achilova 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, Ms Nurgozel Achilova as "an ineligible Passenger" for the purpose of the Notification No. 50/2017-Cus dated 30.06.2017 (as amended) read with Baggage Rules, 2016 (as amended);*
- (iii) *I order absolute confiscation of One copper finished gold chain having average purity 989 with gross weight 132 grams having Assessable value Rs,8,92,927/- recovered from the Pax under Section 111(d), 111(i), 111(j) & 111(m) of the Customs Act, 1962;*
- (iv) *I order confiscation of One gold bracelet having average purity 586 with gross weight 66 grams having Assessable value Rs.2,64,538/- recovered from the Pax under Section 111(d), 111(j) & 111(m) of the Customs Act, 1962*
- (v) *I give an option to redeem the goods confiscated above i.e. One gold bracelet having average purity 586 with gross weight 66 grams having Assessable value Rs.2,64,538/- on payment of a fine of Rs.37,000/- (Rupees Thirty seven thousand only) under Section 125 of Customs Act,*



1962 and allow the same for re-export from India only by the Pax since the passenger is a Turkmenistan national. 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.1,20,000/- (Rupees One lakh twenty thousand only) on the passenger Ms Nurgozel Achilova under Section 112 (a) & 112 (b) of the Customs Act, 1962.

6. Thereafter, an appeal was filed by the Petitioner against the said Order-in-Original. However, the appeal was rejected *vide* the Order-in-Appeal dated 30th June, 2025.

7. In effect, therefore, the Order-in-Original 26th September 2024 was to be given effect to, as per which, the gold chain of the Petitioner has been absolutely confiscated and the gold bracelet of the Petitioner was permitted to be redeemed on payment of a fine of Rs. 37,000/-.

8. Ld. Counsel for the Petitioner submits that the said bracelet has since been redeemed by the Petitioner by paying fine to the tune of Rs. 37,000/- and penalty to the tune of Rs. 1,20,000/- in accordance with the Order-in-Original. However, the gold chain of the Petitioner continues to remain confiscated with the Customs Department.

9. On the last date of hearing, submission was made on behalf of the Respondent that the Petitioner had waived the Show Cause Notice and the



personal hearing. Hence, the same was not issued and the Order-in-Original was passed.

10. On the other hand, Id. Counsel for the Petitioner submits that the gold chain is her *personal effect* and thus, the continued detention of the same is contrary to the principles of law.

11. Heard. Photographs of the Petitioner wearing the gold chain in the past, along with her family, have been placed on record, which would show that the same is her used personal effect. The Petitioner is in fact an *eligible passenger* in terms of Baggage Rules, 2016 as well. Moreover, she suffers from impaired vision and had travelled to India for medical treatment.

12. In terms of Rule 2(vi) read with Rule 3 of the Baggage Rules, 2016 (*hereinafter, the “the 2016 Rules”*) the Petitioner would be permitted clearance of articles, free of duty in their bona fide baggage, including used personal effects. The relevant provisions of the Rules are extracted hereunder:

“2(vi) “Personal effects” means things required for satisfying daily necessities but does not include jewellery.

* * * *

*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.

* * * *

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

* * * *

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.”*

13. The issue whether gold jewellery worn by a passenger would fall within the ambit of personal effects under the Rules, has now been settled by various



decisions of the Supreme Court as also this Court. The Supreme Court in the *Directorate of Revenue Intelligence and Ors. v. Pushpa Lekhumal Tolani*, [(2017) 16 SCC 93], while considering the relevant provisions of the Customs Act, 1962 (hereinafter, *the 'Act'*) read with the Baggage Rules, 1998, that were in force during the relevant period, held that it is not permissible to completely exclude jewellery from the ambit of 'personal effects'. The relevant paragraphs of the said order read as under:

*“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.

* * * *

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.**

14. 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 Rules, 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.”

15. At this stage it would be relevant to consider the decision of the Madras High Court in *Thanushika vs. The Principal Commissioner of Customs (Chennai)*, W.P. No. 5005/2024 (decided on 31st January, 2025) wherein the High Court was dealing with a case where the gold jewellery of a Sri Lankan tourist was seized by the Customs Department. The High Court after analysing various provisions of the Act and the Rules held that the said Rules would only apply to baggage and would not extend to any article “carried on the person” as mentioned in Rule 3 of the Rule. This Court in *Makhinder Chopra (supra)* having considered the above decision, observed as under:

“19. Thus, it is now settled law that the Customs Officials are required to consider the facts of each case and apply their mind before detaining the goods of a tourist, either of Indian or foreign origin. The Customs Officials have to be conscious of the fact that personal effects including jewellery of tourists are protected by the law from detention and same cannot be detained in a mechanical manner.”

16. In *Saba Simran v. Union of India & Ors.*, 2024:DHC:9155-DB, the Division Bench of 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 relevant paragraphs of the said judgement are as under:

*“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.**”*

17. 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.”

18. Thus, it is now settled that used jewellery worn by the passenger, especially a foreign visitor, would fall within the ambit of personal effects in terms of the Rules, which would be exempt from detention by the Customs Department.

19. Additionally, the order-in-original in this case does not give any reason as to why the gold bracelet has been permitted to be redeemed but the gold chain has been absolutely confiscated. The same is completely illogical, inasmuch as the same logic would apply both for the bracelet and for the gold chain. The gold chain is weighing 132 grams and the bracelet is weighing 66 grams, the Petitioner was permitted to redeem the same. The detained jewellery being personal effects of the Petitioner, the detention of the same itself would be contrary to law.

20. It is further 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 SCN 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”



21. 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 an 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.

22. 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 Customs Act. In light of the above discussion, 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.

23. 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 gold chain would be liable to be released to the Petitioner.

24. Mr. Tripathi, Id. Counsel for the Department also submits that in terms of Section 129 DD of the Customs Act, the Petitioner has a remedy to approach the Revisional Authority against the Order-in-Appeal.

25. In the opinion of this Court, considering that the Order-in-Original dated 26th September 2024, sought to make a completely baseless distinction between two different gold items, which are both the personal effects of the Petitioner



and given the peculiar facts of this case, where the Petitioner is a senior citizen, who has travelled to India for medical treatment, the present writ petition has been entertained.

26. Accordingly, the Petitioner shall collect her gold chain, either in person or through an Authorised Representative, in which case, the detained goods 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.

27. The Petitioner being a foreign national, is willing to re-export the gold chain. Thus, the same is directed to be released in favour of the Petitioner, for re-export, subject to payment of 50% of the warehouse charges. Since the Indian Visa of the Petitioner is stated to be expiring by the end of August 2025, she shall visit the Customs Department on 13th August 2025, at 11:30 A.M. for the release of her gold chain.

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

PRATHIBA M. SINGH
JUDGE

SHAIL JAIN
JUDGE

AUGUST 7, 2025/pd/ss