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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 17th September, 2025

+ **W.P.(C) 6116/2025**

PAWAN KUMARPetitioner

Through: Mr. S. Vijay Kanth, Adv.

versus

THE COMMISSIONER OF CUSTOMSRespondent

Through: Ms. Arya Suresh, Adv. for Mr. Aditya
Singla, SSC, CBIC (7558898905)

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE SHAIL JAIN

JUDGMENT

Prathiba M. Singh, J.

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, *inter alia*, challenging the detention of a gold chain of the Petitioner which is stated to be weighing 58 grams and two iPhones 15 Pro (128 GB) which were detained upon the Petitioner's arrival at the Indira Gandhi International Airport, New Delhi on 14th May, 2024. The Petitioner further prays for setting aside the personal hearing letter dated 3rd April, 2025 issued by the Respondent-Customs Department.
3. The case of the Petitioner is that no Show Cause Notice (hereinafter 'SCN') has been issued to the Petitioner, and therefore the seized goods are liable to be returned in terms of Section 124 of the Customs Act, 1962.
4. On the other hand, the case of the Customs Department is that on the date of detention, the SCN was orally waived by the Petitioner. However,



following the directions given by this Court in ***W.P.(C) 198/2025*** titled ***Qamar Jahan v. Union of India, Represented by Secretary, Ministry of Finance & Ors.***, personal hearing was given to the Petitioner *vide* personal hearing notice dated 3rd April, 2025 on three dates *i.e.*, 11th April, 2025, 17th April, 2025 and 21st April, 2025. However, the Petitioner failed to appear.

5. Ld. Counsel for the Petitioner responding to above submission, contends that the email dated 26th April, 2025 is clear and since no SCN is issued, the goods are liable to be returned. The email dated 26th April, 2025 sent by the Petitioner reads as under:

“Sir’

This is a reply on behalf of Pawan Kumar to your letter dated 03.04.2025, whereby you have informed him that his case in respect of DR no. 4420 dated 14.05.2024 is pending before the Competent Authority, and granted him an opportunity of personal hearing, and directed him to present himself before the competent authority from 10.00 AM to 6 PM on any of the dates: 11.04.2025 or 17.04.2025 or 21.04.2025.

In the present matter, your office has acted in violation of the provisions of the Customs act, and deliberately failed to provide the mandatory show cause notice to Pawan Kumar within the six months from the date of the seizure of his goods as enshrined in Section 124 of the said act and therefore your office is liable to return his goods in compliance of Section 110 (2) of the said act.

*The relevant portion of Section 110(2) reads as:
(2) Where any goods are seized under sub-section (1) and no notice in respect thereof is given under clause (a) of section 124 within six months of the seizure of the goods, the goods shall be returned to the person from whose possession they were seized.*

It is pertinent to mention that the personal hearing in absence of the show cause notice holds no



sanctity in the eyes of law and hence serves no purpose.

Therefore, in the light of the facts and circumstances mentioned above, it is most humbly apprised that Mr. Pawan Kumar not appeared in the personal hearing offered by your office. Accordingly, it is hereby requested that his goods must be released in compliance of Section 124 read with Section 110 of the Customs Act, 1962.

This is for your kind information, record and necessary action.”

6. The Customs Department used to follow a practice of waiver of SCN in a standard form being obtained from the passengers and, therefore, the SCNs were not being issued by the Customs Department regularly. This issue was considered by the Court in *Qamar Jahan (Supra)* and in order to resolve the issues relating to the passed detentions, the Court had *vide* order dated 27th March, 2025 directed as under:

“Oral SCN, waiver of SCN and personal hearing

14. Insofar as oral SCN and waiver of SCN and personal hearing are concerned, it is submitted that under Section 124 of the Act, oral SCN is permissible. However, it is submitted that the preprinted form for waiver of SCN and personal hearing have been done away with by the Customs Department.

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.

16. In view of the above, let the Department look into the applicable provisions of law and as part of the next status report, place before the Court, the mechanism which the Department wishes to adopt for issuing oral SCN and providing the opportunity of personal hearing in compliance with the law.”

7. The above directions in ***Qamar Jahan (Supra)*** have thereafter been considered from time to time. This Court has held that under Section 110 of the Customs Act, 1962, if the SCN is not given within the time prescribed, the detention would be untenable. In fact, in the counter affidavit, the statement of the Petitioner under Section 108 of the Customs Act, 1962 has been placed on record, wherein such waiver has been recorded by the Customs Department. The waiver of SCN in a pre-printed format would also be not permissible. This Court has held repeatedly that standard pre-printed waivers of SCN and personal hearing would not be valid in law as held in ***Amit Kumar v. The Commissioner of Customs, 2025:DHC:751- DB***. The relevant portion of the said order reads 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.**

[...]

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.”

8. Ld. Counsel for the Petitioner relies upon Master Circular dated 10th March 2017 issued by the Central Board of Excise and Customs, wherein it is clearly stated as under:

“2.1 Show Cause notice (SCN): Show Cause Notice (SCN) is the starting point of any legal proceedings against the party. It lays down the entire framework for the proceedings that are intended to be undertaken and therefore it should be drafted with utmost care. Issuance of SCN is a statutory requirement and it is the basic document for settlement of any dispute relating to tax liability or any punitive action to be undertaken for contravention of provisions of Central Excise Act and the rules made thereunder. A SCN offers the noticee an



*opportunity to submit his oral or written submission before the Adjudicating Authority on the charges alleged in the SCN. **The issuance of show cause notice is a mandatory requirement according to the principles of natural justice which are commonly known as audi alteram partem which means that no one should be condemned unheard.***

9.1 Waiver of SCN: *The issue of waiver of SCN has been dealt with in circular issued vide F.No. 137/46/2015-Service tax dated 18.08.2015. The crux of the clarification given is that on receipt of written request of the assessee the requirement of written SCN may be waived and the charges alongwith duty payable may be explained orally. This clarification was given in the context of closure of cases on payment of duty, interest and penalty. However, where the issue is likely to be litigated at a later date by the assessee, it would be appropriate that a written SCN be issued. This would hold true in particular for offences of serious nature or where the duty involved is high. Conclusion of proceedings may be approved by an officer equal in rank to the officer who is competent to adjudicate such cases. The cases can be closed by the competent authority in DGCEI/Executive Commissionerate/Audit Commissionerate, as the case may be. If multiple issues involving different monetary values arise from the same proceedings, then the sum total involved in all the issues arising from the same proceedings should be considered for conclusion of proceedings.”*

9. The repeated position which has been reiterated in several judgments is that waiver of SCN is an impermissible position and in this case, the SCN has not been issued for more than a year and personal hearing was only granted after passing of interim directions in ***Qamar Jahan (Supra)***. The Petitioner, however, chose not to attend the same. Since the detention would no longer be permissible, this Court is of the opinion that considering the weight of the gold items and the nature of the goods detained, the same deserve to be



released subject to payment of applicable customs duty.

10. Accordingly, the seized goods be released subject to payment of applicable customs duty. Warehousing charges, as applicable on the date of detention, would be liable to be paid by the Petitioner. The exemption for one iPhone 15 Pro (128 GB) shall also be granted to the Petitioner in terms of the Baggage Rules, 2016.

11. The Petitioner shall appear before the Customs Department for payment of customs duties and warehousing charges for the gold items and one iPhone on **6th October 2025** at **11:00 AM**.

12. The Nodal Officer mentioned below shall facilitate the Petitioner's appearance before the competent authority for compliance with the present order:

***Mr. Sandeep Lamba, Superintendent, Customs
Office of Commissioner, Customs
IGI Airports, T-3, New Delhi
Mobil No. 7405345000
Email id: igilegaldelhi@gmail.com***

13. The petition is disposed of in these terms. Pending applications, if any, are disposed of.

**PRATHIBA M. SINGH
JUDGE**

**SHAIL JAIN
JUDGE**

SEPTEMBER 17, 2025/kk/ck