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

Date of decision: 19th February, 2025

\+ **W.P.(C) 2049/2025**

MR MAKHINDER CHOPRA .....Petitioner
Through: Mr. D S Chadha, Adv.
versus

COMMISSIONER OF CUSTOMS NEW DELHI .....Respondent
Through: Mr. Satish Aggarwala, SSC.

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE DHARMESH SHARMA

JUDGMENT

Prathiba M. Singh, J.

1. This hearing has been done through hybrid mode.

CM APPL. 9657/2025 (for exemption)

2. Allowed, subject to all just exceptions. Application is disposed of.

W.P.(C) 2049/2025

I. Background

3. The present case has been filed by the Petitioner-Makhinder Chopra under Article 226 of the Constitution of India seeking release of the gold chain which was detained by the Customs Department *vide* Detention Receipt No. 54120 dated 17th June, 2024.

4. The case of the Petitioner is that he arrived on 17th June, 2024 in India at IGI, Airport, New Delhi from Russia. The appellant has been a resident of Russia for the last 17 years. It is submitted that he was wearing a gold chain which is valued at about Rs. 7 lakhs when he came to India and the same was detained by the Department at the airport. It is further submitted that till date

no show cause notice has been issued.

5. Ld. Counsel for the Petitioner relies on the decision of this High Court in ***WP(C). 6855/2023*** titled '***Nathan Narayanswamy v. Commissioner of Customs***' dated 15th September, 2023 in support of its case.

6. On 17th February, 2025, ld. Counsel for the respondent had sought time to take instructions in the matter. Today, further time is prayed for filing a status report.

7. The ld. SSC for the Department has also handed over a copy of the detention receipt dated 17th June, 2024 signed by the Petitioner and the undertaking/appraisement report dated 18th June, 2024. The said undertaking is in a standard format, wherein the Petitioner is stated to have waived the issuance of the show cause notice and personal hearing. It is also stated in the said undertaking that the Appellant would pay the custom duty along with fine and penalty. The said undertaking reads as under:-

> *"On being asked I,* ***Makhinder Chopra (D. O. B. 28.03.1982)****, state that I have appeared before Air Customs Superintendent on 17.06.2024 to tender my statement under Section 108 of the Customs Act, 1962 in respect of above-mentioned item. On being asked, I state that I was intercepted by the Customs Officer after I had crossed the Green Channel and during the DFMD/Personal search the above said item i.e. One (01) yellow metal chain appearing to be made of gold recovered from me; On being asked, I state that the above mentioned recovered item belongs to me. I admit my omission and commission on my part; that I am well aware of the facts that the above mentioned items beyond permissible allowance are prohibited there is Customs duty on import of above Goods; that I will be agreeing with the description, quantity and value to be assessed by the department, and I am ready to pay the Customs Duty along with fine and penalty as applicable.* ***I also do not***

> ***need any Show Cause Notice or personal hearing in the matter.*** *I have tendered my statement true and correct and understood the same in vernacular. I have tendered the above statement without any duress, pressure or threat".*

8. In the present case, it is seen that the Petitioner was wearing a gold chain which has been valued at ₹6,52,190/- by the Department. Till date, no show cause notice has been issued on the ground that the issuance of the show cause notice has already been waived.

II. Issues for consideration:

9. In this case there are two issues, which in the Court's opinion are arising in a number of cases before the Court where the goods of tourists of both Indian and foreign origin are being routinely detained by the Customs Department:

(i) detention of jewellery or personal effects of a tourist, especially those of foreign origin, under the Baggage Rules, 2016; and

(ii) undertaking in a standard format for wavier of show cause notice and personal hearing signed by the concerned tourist.

III. Analysis and Findings:

III.(A) Jewellery vis-à-vis personal effects under the Baggage Rules, 2016

10. It is necessary to appreciate the Baggage Rules, 2016 (hereinafter "*the Baggage Rules*") that came into force on 1st April, 2016, passed under Section 79 of the Customs Act, 1962 (hereinafter "*the Act*"). The relevant provisions of the Baggage Rules *qua* personal effects and jewellery are reproduced hereinunder for ease of reference:

> *"**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."

11. It can be seen from the said rules that a tourist of foreign origin is allowed clearance of articles free of duty as part of his baggage that are either his personal effects and travel souvenirs or are articles that are not prohibited, as mentioned in ***Annexure - I*** of the Baggage Rules, up to the value of fifteen thousand rupees, if the same are carried on the person or in the accompanied baggage of such tourist.

12. Further, any jewellery of twenty grams with a value cap of Rs.50,000/- in case of a man and forty grams with a value cap of Rs.1,00,000/- in case of a woman, only can be cleared free of duty upon return to India, subject to the condition that the concerned passenger is residing abroad for more than one year.

13. In the Guide for Travellers, prepared by the Central Board of Indirect Taxes & Customs (hereinafter "CBIC"), in respect of jewellery, it is stated as under:-

> *"Question 6. Who can bring Jewellery as baggage, free of duty?*
>
> *Ans. An Indian passenger who has been residing abroad for over one year is allowed to bring jewellery, free of duty in his bonafide baggage upto 20 grams with a value cap of Rs. 50,000/- (in case of a gentleman passenger) or up to 40 grams with a value cap of Rs. 1,00,000/- (in the case of a lady*

passenger).”

14. The Indian Customs Declaration Form (hereinafter “Declaration Form”) issued by the CBIC as part of the Guide for Travellers has also been perused by the Court, which would show that gold and gold jewellery is being treated as prohibited articles where the same is beyond the prescribed limits under Rule 5 of Baggage Rules, including gold bullion.

15. The Supreme Court in ***Pushpa Lekhumal Tolani (supra)***, has considered whether jewellery being carried by a tourist as part of her baggage would qualify as smuggling under the Act read with the Baggage Rules, 1998, that was in force during the relevant period. The Supreme Court clearly holds that it is not permissible to completely exclude jewellery from the ambit of ‘personal effects’. Accordingly, the Court declared that the seized jewellery items therein were the *bona fide* jewellery of the tourist for her personal use and was intended to be taken out of India. The relevant extract from the judgment of the Supreme Court is also set out below:-

> *“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.

Conclusion:

16) We are of the considered opinion that in the absence of any facts on record about the nature and mode of concealment and also any finding of the lower authority that jewellery was kept in a way to evade detection on examination of the baggage, it has to be held that there was no concealment as such. It is seen that the respondent chose the Green Channel for clearance of her baggage. She committed no violation of law or infraction of any instruction for clearance of the baggage through the green channel as she being a tourist had no dutiable goods to declare under the Baggage Rules. The presumption that the jewellery found in her baggage cannot be considered as personal effects owing to its high monetary value is rebutted herewith and we hold that the respondent was entitled to import personal jewellery duty free.

17) In the facts and circumstances of this case, it will be just and proper to expunge the remarks against the appellant from the judgment passed by the High Court. Therefore, the strictures passed against the appellant are expunged.

18) In view of the foregoing discussion, we are of the considered opinion that the High Court was right in setting aside the show-cause notice dated 12.12.2002 and order dated 14.08.2003 passed by the competent authority. There is no scope to interfere in the orders passed by the Division Bench of the High Court. There is no merit in this appeal and the appeal is, therefore, dismissed with no order as to costs. However, it is made clear that the present conclusion is confined only to the disposal of this appeal."

16. In ***Saba Simran v. Union of India & Ors., (2024:DHC:9155-DB)*** 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 Court considered the ambit of 'personal effects' *vis-à-vis* jewellery under the Baggage Rules in effect from time to time. The relevant paragraphs of the said judgement are as under:

> *"13. When the 2016 Rules ultimately came to be promulgated, Rule 2(vi) specifically introduced a definition with respect to "personal effects". As noticed in the preceding parts of this judgment, Rule 2(vi) while defining "personal effects" explicitly excludes items of jewellery. The word 'jewellery' as it now appears in that definition clause must necessarily be read in conjunction with the previous versions of the Baggage Rules which operated from time to time as well as the clarificatory Circular referred to above. However, both Rules 3(a) as well as 4(b) employ the phrase "used personal effects" and which expression existed even in the prior versions of the rules and have been noticed hereinabove.*
>
> *14. Rule 2(vi) of the 2016 Rules essentially adopts the same concept of 'used personal effects' as was intended under the 1998 Rules, and by way of abundant caution, a definition now stands placed in the 2016 Rules and which purports to define the expression "personal effects" with sufficient clarity. However, the same would not detract from the distinction which the respondents themselves acknowledged in the Circular and intended customs officers to bear in mind the distinction which must be recognised to exist when construing and identifying 'personal jewellery' as opposed to 'jewellery' per se.*
>
> *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. 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."

18. At this stage, it would be apposite to refer to the judgement 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 the various provisions of the Act and the Baggage Rules has 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 Baggage

Rules. The relevant portion of the said judgement is extracted hereinunder:

> *"50. From a perusal of above provision, it is clear that the Clause (b) includes the articles other than those mentioned in Annexure-I, upto the value of fifty thousand rupees if these are 'carried on the person' or in the accompanied Baggage of the passenger*
>
> *51. The Customs Act, 1962, enables the Central Government to make Rules to the extent of the articles carried in the baggage of a passenger and not for the articles, which were carried on the person and hence, the inclusion of the word " carried on the person " is beyond the scope of the provisions of Section 79 of the Customs Act.*
>
> *52. When the provision of the Rule is beyond the scope of the provisions of the Act, only the provision of the Act will prevail over the Rules.* ***Thus, the word "carried on the person up to Rs.50,000/- " is clearly beyond the scope of the Act and it cannot be given any effect since it is contrary to the provisions of the Statute. Thus, it has to be construed only for the articles, which have not been mentioned in Annexure-1 and carried in the accompanied baggage of a passenger. In such case, the application of Baggage Rules, 2016, would not arise. Thus, the jewelery worn by the passenger will not fall within the provisions of the Baggage Rules, 2016****.*
>
> *53. On the other hand, if anyone worn any unreasonable amount of gold or jeweleries, they shall be brought under search, however, in the present case, it is not so. In India, as per our customs, it is normal to wear 10 nos. of bangles for a marriage function. In such case, it is for the Officers to apply their mind while detaining the gold. If 10 nos. of chains were worn by a person, then it would be suspectable and if anything is hide, then the provisions of Section 101 and 102 of the Customs Act, 1962, would apply since it clearly amounts to secreting the gold in their body under the pretext of worn in the body.*

54. ***Considering the above aspect only, while enacting the provisions of the Customs Act, the Parliament has consciously excluded the jewels worn by the passengers****. If there is any intention to put all the passengers into hassle, disrespecting their proprietorial rights, dignity, forgoing the customs, against the fundamental rights, let the Parliament take a decision and amend the provisions of the Act. Till then, the Officers have to apply their minds with regard to detaining the passenger and the gold worn by them as the same would not fall within the purview of the Baggage Rules, 2016.*

* * * *

56. ***In the present case, the Rule making body had made the Baggage Rules as if they are having inherent power of its own to make rules beyond the scope of the Statutes, and they have incorporated the word "carried on the person" as referred above****.*

* * * *

58. In the present case, admittedly, the Rule making Authorities made the Rules by traveling beyond the scope of the Act, which would amount to ultra vires. In such case, the Statute would prevails over the Rules. When such being the case, the Statute referred only with regard to the baggage and therefore, the Rule has to be confined and read only with regard to the baggage and not with regard to the articles "carried on the person"

* * * *

62. In the above cases, the Court had held that a Rule Making Authority has to make the Rules within the scope of the parent Act and no Rules shall exceed beyond the scope of the parent Act since it would amount to ultra vires. ***Thus, in the present case, the Baggage Rule, 2016 will apply only to the baggage and the Rule made to the***

> ***extent that the article "carried on the person" will not include baggage, which was in excess of powers conferred by the Rule making Authority and would amount to ultra vires. Therefore, the jewelery worn in person will not come under the purview of baggage.***
>
> *63. Since this Court has held that the provision "as carried on the person" of the Baggage Rules, 2016 is ultra vires, the detention of gold under the Baggage Rules, 2016, in the present case would not apply, unless and otherwise if it is secreted in person, for which, the proceedings shall be initiated under Section 101 of the Customs Act, 1962, however, that is not the present case, except to the extent of false charges framed by the 2nd respondent against the petitioner."*

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.

III.(B) Applicability of the Baggage Rules qua tourists of foreign origin

20. It is noted that the Petitioner is a Russian passport holder and thus, the extent of applicability of the Baggage Rules to a tourist of foreign origin has to be kept in mind. This issue has also been discussed by various decisions of the of this Court including in ***Nathan Narayansamy vs. Commissioner of Customs***, ***W.P.(C) 6855/2023***, wherein the Co-ordinate Bench of this Court was dealing with a similar situation wherein certain jewellery was recovered and seized from the baggage items of a tourist holding Malaysian passport. The Court considered the provisions of the Baggage Rules *qua* a tourist of foreign origin and held as under:

> *"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. Rule 5 in any case appears to be relating to an "eligible passenger" and which pertain to an Indian national upon his return to the country after having lived abroad for the period prescribed."*

21. Thus, in ***Nathan Narayansamy (supra)***, the Co-ordinate Bench of this Court has clearly held that the Baggage Rules would have limited application to foreign nationals. Further, the predecessor Bench of this Court in ***Farida Aliyeva v. Commissioner of Customs, (2024:DHC:9533-DB)*** while relying upon the decision in ***Nathan Narayansamy (supra)***, directed release of jewellery seized from a tourist who was travelling from Azerbaijan to India. This Court recently in ***Anjali Pandey vs. Commissioner of Customs, 2025:DHC:372-DB,*** has also directed release of the jewellery seized from a tourist of foreign origin relying on the decisions discussed hereinabove.

22. It is an undisputed fact that the Petitioner is a Russian passport holder. In view of the law discussed above, on the ground of limited applicability of the Baggage Rules to the tourist of foreign origin and as jewellery is part of personal effects, the detention of Petitioner's gold chain would have to be set aside. However, there is another aspect of this case which has bearing on the validity of the detention of the Petitioner's gold chain.

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 wavier and an informed wavier.*
> *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 29.03.20184 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"*

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.

Conclusion and Directions

29. Under these circumstances, the detention of the Petitioner's gold chain would be contrary to law and accordingly, the same is set aside.

30. The gold chain of the Petitioner shall be released to the Petitioner subject to payment of any charges within four weeks.

31. The Petitioner shall personally collect the said goods or through an authorised person. Prior to the release, the Customs official shall either speak to the Petitioner through mobile phone or video conferencing before releasing the said good.

32. The documents handed over by the Department are taken on record.

33. At this stage, it is noted that this Court has in ***Qamar Jahan v. Union of India, Represented by Secretary, Ministry of Finance& Ors. 2025:DHC:174-DB*** has directed the Central Board of Indirect Taxes and

Customs (hereinafter "*CBIC*") to reconsider the Baggage Rules in respect of the confiscation of goods of tourists.

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.

35. Registry is directed to communicate this order to the OSD (Legal), CBIC through email (Osd-legal@gov.in) for necessary information and compliance. Let Mr. Satish Aggarwala, ld. Counsel, also communicate this order to the OSD (Legal), CBIC for necessary information and compliance.

36. The present petition is disposed of in above terms. Pending application, if any, is also disposed of.

PRATHIBA M. SINGH
JUDGE

DHARMESH SHARMA
JUDGE

FEBRUARY 19, 2025/*Ch/ms*
(corrected & released on 24th February, 2025)