



\$~21

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 29th May, 2025

+ **W.P.(C) 3550/2025**
MS GULZAN ORAZGULYYEVAPetitioner
Through: Mr. S Vijay Kanth, Adv.

versus

THE COMMISSIONER OF CUSTOMS & ANR.Respondents
Through: Ms. Anushree Narain, SSC with Mr. Ankit
Kumar, Adv.

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 writ petition has been filed under Article 226 of the Constitution of India seeking release of the jewellery detained by the Customs Department *vide* Detention Receipt dated 12th September, 2024.
3. It is the case of the Petitioner that she is a citizen of Turkmenistan and holding a Turkmenistanian passport. The Petitioner was traveling from Turkmenistan to India with her husband for medical treatment on 12th September, 2024. The Customs Department intercepted her upon her arrival at the Indira Gandhi International Airport, New Delhi and gold jewellery, which according to her were old and used ornaments gifted by family members during her marriage were seized.
4. The gold jewellery seized consisted of one gold chain and two gold bracelets weighing about 246 grams (hereinafter "*the detained jewellery*").



According to the Petitioner, no show cause notice has been issued in respect of such seizure till date.

5. Medical records pertaining to the Petitioner's health have also been placed on record along with the petition.

6. On 21st March, 2025, notice was issued in this matter. Ld. Counsel for the Respondent has today submitted that the Order-in-Original has been passed which is dated 22nd January, 2025. The said order is stated to have been communicated to the Petitioner through the Ministry as the Petitioner is a Turkmenistanian national.

7. Heard the ld. Counsels for the parties. The Court has also perused the documents placed on record including the Order-in-original. The operative portion of the order reads:

"2. The passenger Ms. Guljan Orazgulyyeva (D.O.B.- 27.10.1984) holding Turkmenistan Passport number A1804537 (here after referred to as the Pax') arrived from Iran at IGI Airport Terminal-3, New Delhi by the flight T5 555 dated 12.09.2024 and opted for Customs Green Channel while she was intercepted by the Customs officer after she had already crossed the Green Channel. During her personal & baggage search "01 yellow metal chain and 02 yellow metal bracelets appearing to be gold weighing 246 gram" were found and the same was detained vide Detention Receipt (DR) No. DR/INDELA/12.09.2024/005107 dated 12.09.2024. The DR bears remark "Green channel violation"

3. The Pax tendered her statement dated 12.09.2024 under Section 108 of the Customs Act, 1962 in which she admitted that she had arrived from Turkmenistan at IGI Airport Terminal-3, New Delhi by the flight T5 555 dated 12.09.2024; that she was intercepted by the Customs Officer after she had crossed the Green Channel and after X-Ray of his baggage/DFMD "01



him.

ii) I declare the passenger, Ms. Guljan Orazgulyyeva 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 the above said detained goods i.e. "(one gold chain purity 991 weighing 119 grams, two gold bracelets purity 990 weighing 127 grams(collective weight 246 grams valued at Rs. 17,89,187/-)" recovered from the Pax Ms. Guljan Orazgulyyeva and detained vide DR No. DR/INDEL4/12.09.2024/005107 dated 12.09.2024, under Section 111(d), 111(i), 111(j) & 111(m) of the Customs Act, 1962;

iv) I also impose a penalty of Rs. 1,80,000/- (Rs. One Lakh Eighty Thousand Only) on the Pax, Ms. Guljan Orazgulyyeva under Section 112(a) & 112(b) of the Customs Act, 1962."

8. The above order directs absolute confiscation of the jewellery items weighing collectively at 246 grams.

9. 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 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.

xxxx

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”

10. 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.

xxxx

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.

11. 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.

12. Once the goods are detained, it is mandatory to issue a Show Cause Notice and afford a personal hearing to the Petitioner. The time prescribed under Section 110 of Act, is a period of six months. However, subject to complying with the requirements therein, a further extension for a period of six months can be taken by the Customs Department for issuing the show cause notice. In this case, the one year period itself has elapsed, yet no show cause notice has been issued. Accordingly, the detention is impermissible.

13. In view of the above discussion and considering the fact that no show



cause notice was issued to the Petitioner in this matter, the absolute confiscation is set aside, subject to the undertaking of the Petitioner that the detained jewellery would be re-exported, as the as the Petitioner is a foreigner.

14. In the fact of this case, however, the Petitioner shall pay entire warehousing charges along with the penalty of Rs.1,80,000/-.

15. Accordingly, let the Petitioner shall appear before the Customs Authority on 9th June, 2025.

16. The Petitioner may collect the detained goods 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.

17. Petition is disposed of in these terms. All pending applications, if any, are also disposed of.

PRATHIBA M. SINGH
JUDGE

RAJNEESH KUMAR GUPTA
JUDGE

MAY 29, 2025

Rahul/msh