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

Date of decision: 29th May, 2025

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W.P.(C) 7009/2025

MAHESH KUMAR SAINI

.....Petitioner

Through: Mr. Javed Khan, Adv.

versus

THE COMMISSIONER OF CUSTOMS

.....Respondent

Through: Mr Akash Verma, Sr. Standing
Counsel, CBIC with Ms. Aanchal
Uppal, Advocate.

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 by the Petitioner- Mahesh Kumar Saini under Article 226 of the Constitution of India, inter alia, seeking release of the gold *kada* of the Petitioner, weighing a total of 120 grams (*hereinafter, 'the detained article'*) seized by the Customs Department vide Detention Receipt dated 6th February, 2024 (*hereinafter, 'detention receipt'*).
3. The case of the Petitioner is that he was travelling from Qatar to New Delhi on 06th February, 2024. Further, at the T-3, IGI Airport, New Delhi, the Petitioner was intercepted by the Custom authorities and the said *kada* of the Petitioner was detained. The detention receipt being Detention Receipt No. 3716 was issued on 6th February, 2024. According to the Petitioner, no Show Cause Notice with respect to the detention (*hereinafter, 'SCN'*) has been issued to the Petitioner till date.



4. On the last date of hearing, Id. Counsel for the Customs Department was directed to seek instructions. Today, on instructions, it is submitted by the Id. Counsel that the SCN was indeed not issued to the Petitioner upon detention and the Petitioner also did not appear for the appraisalment of the detained articles.

5. This Court, while deciding the issue pertaining to non-issuance of the Show Cause Notice within the prescribed period under the Customs Act, 1962, has held that 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, since the detention in this case is of 06th February, 2024, and no SCN has been issued till date, the detention shall be impermissible.

6. Further, the detained articles also clearly appear to be used personal effects of the Petitioner. 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.*

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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.”*
7. 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.**

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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.”

8. 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.”

9. 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.”

10. 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.”

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



11. In view of the above and considering the facts of the case, it is clear that the detained articles are the personal effects of the Petitioner.

12. The detained articles being personal effects of the Petitioner, the detention of the same itself would be contrary to law. Accordingly, the detained articles would be liable to be released on this ground itself. The gold items shall be released by the Customs Department to the Petitioner subject to payment of full warehousing charges.

13. The Petitioner may collect the detained goods 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.

14. 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/kk/ss