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

Date of decision: 29th May, 2025

+ **W.P.(C) 7078/2025 & CM APPL. 34564/2025**

YASIR VADAKKE KANHIROLIPetitioner
Through: Mr. Aamir Chaudhary, Mr. Aman
Yadav & Mr. Sakshi Yadav, Advs.
versus
COMMISSIONER OF CUSTOMS T-3 IGI
AIRPORTRespondent
Through: Mr. Harpreet Singh, SSC with Ms.
Suhani Mathur & Mr. Jai Ahuja, Advs.

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 under Articles 226 and 227 of the Constitution of India, *inter alia*, seeking release of the silver polished gold chain weighing 176 grams (hereinafter, '*detained jewellery*'), seized by the Customs Department *vide* Detention Receipt dated 26th October 2023.
3. On the last date of hearing *i.e.*, 23rd May, 2025, the Court had noticed that in the present case, the detention of the detained jewellery has been challenged, however the Petitioner's credential and passport details etc., were not on record. Accordingly, the Court had directed the Petitioner to place the same on record by the next date of hearing.
4. Further, the Court had also directed Mr. Harpreet Singh, ld. Senior



Standing Counsel to seek instructions in the matter as to whether the Order-in-Original has been passed.

5. The Petitioner has placed on record his passport and residency card. The Petitioner holds an Indian passport, however, he is a resident of Bahrain.

6. The case of the Petitioner is that he was travelling from Bahrain to India on 26th October, 2023, and upon his arrival at the Indira Gandhi International Airport, New Delhi, he was intercepted by the Customs Department. The Petitioner is stated to have been wearing the detained jewellery which was seized by the Customs Department. The Petitioner is also stated to have given his statement under Section 108 of the Customs Act, 1962 (hereinafter “*the Act*”).

7. It is stated that till date no show cause notice has been issued and no personal hearing has been granted to the Petitioner. The Petitioner is also willing to give an undertaking that he would re-export the detained jewellery. The detained jewellery has not yet been appraised.

8. On behalf of the Customs Department Mr. Harpreet Singh, Id. SSC, submits that the Petitioner is stated to have signed a standard waiver in the form of a statement which has been recorded under Section 108 of the Act.

9. Heard the Id. Counsels for the parties. The Court has also perused the documents placed on record.

10. 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.

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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”

11. 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 relying 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.

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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."

12. 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.

13. 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.

14. In view of the above discussion, the detention of the Petitioner's jewellery is accordingly set aside.

15. Considering that the Petitioner is willing to re-export the detained jewellery, it is directed that the Petitioner shall appear for appraisal before the Customs Authority on 9th June, 2025. After accepting the undertaking for re-export and payment of storage charges/warehousing charges, the detained jewellery shall be released to the Petitioner.

16. The Petitioner may collect the detained jewellery through an Authorised Representative, in which case, the detained jewellery 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. Accordingly, the petition stands disposed of. Pending applications, if any, are also disposed of.

PRAITHIBA M. SINGH
JUDGE

RAJNEESH KUMAR GUPTA
JUDGE

MAY 29, 2025/Rahul/msh