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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) 7297/2025

MOHD ABID

.....Petitioner

Through: Mr. Ashish Panday, Mr. Viraat
Tripathi, Mr. Ajay Singh & Mr.
Akshat Raghuvanshi, 9599437665.

versus

COMMISSIONER OF CUSTOMS

.....Respondent

Through: Ms. Anushree Narain, SSC with Mr.
Ankit Kumar, Adv (9910014337).**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 by the Petitioner-Mohd Abid under Article 226 of the Constitution of India *inter alia* seeking a direction to the Customs Department to release the goods being two gold bangles weighing about 58 grams (*hereinafter, 'the detained articles'*), belonging to the Petitioner, detained *vide* Detention Receipt dated 5th April, 2024.
3. It is the case of the Petitioner that he was travelling to India from Jeddah, Saudi Arabia after staying there for six months. The Petitioner is also employed in Jeddah, Saudi Arabia.
4. On the last date, i.e., 26th May, 2025, Id. Counsel for the Customs Department had sought time to seek instructions in the matter.
5. Today, Id. Counsel for the Customs Department submits that the Order-



in-Original dated 21st August, 2024 has already been passed in this matter. A perusal of the same shows that no show cause notice (*hereinafter*, 'SCN') was issued in the matter and no personal hearing has also been granted. Relevant paragraphs of the Order-in-Original dated 21st August, 2024 reads as under:-

"2. The passenger Mohd Abid (DOB 01.01.1992) (hereinafter referred as the Pax') arrived from Jeddah to IGI Airport Terminal-3, New Delhi by the Flight No. SV 758 Dated 05.04.2024 and opted for Green Channel and he was intercepted by the Customs Officer after he had crossed the Green Channel and during the X-Ray of his baggage and DFMD "Two yellow metal kada, weight 58 grams" were found and the same were detained vide Detention Receipt (DR) DR/INDEL4/05.04.2024/52590 dt. 05.04.2024. The DR bears remark "Green Channel Violation".

3. The Pax tendered his statement dated 05.04.2024 under Section 108 of the Customs Act, 1962 in which he admitted that he had arrived from Jeddah to IGI Airport Terminal-3, New Delhi by Flight No. SV 758 Dated 05.04.2024; that he was intercepted by the Customs Officer after he had crossed the Green Channel and during X-Ray of his baggage and DFMD "Two yellow metal kada, weight 58 grams" were recovered from him. The Pax in his statement dated 05.04.2024 stated that the said goods belonged to him. He admitted his acts of omission and commission; that he is well aware of the fact that there is Customs duty on import of above goods; that he intentionally did not declare the recovered goods; that he agreed with the description, quantity and value assessed by the Department; that he had tendered his true & correct statement and understood the same in vernacular; that on being asked, he admitted the act of omission and commission on his part. He further stated that he had tendered his statement without any duress, pressure or threat. Further, he requested that he did not require any Show



Cause Notice and Personal Hearing and the case may be decided on merit.

4. The AR Advocate Miss Fatima Bano (D/4293/2016) of The Pax Mr. Mohd Abid visited this office and submitted a letter dated 26.04.2024 wherein he submitted that he had arrived from Jeddah to IGI Airport, Terminal-3, New Delhi by Flight No. SV 758 Dated 05.04.2024 and brought the above said detained goods. He further requested that the said detained goods may please be appraised and release to him after observing necessary legal formalities. The Pax regretted his mistake of opting for Green Channel and also requested for lenient view in the matter. He is ready to pay the applicable Customs Duty, fine and penalty for the same after taking lenient view as these goods belong to him and were meant for personal use. He did not want any Show Cause Notice and Personal Hearing in the matter and requested for order for release. He submitted that he departed from India on 09.10.2023 and returned on 05.04.2024.”

6. As observed in the Order-in-Original dated 21st August, 2024, Id. Counsel for the Petitioner had appeared before the Customs Department and had submitted a letter dated 26th April, 2024.

7. A perusal of the Order-in-Original dated 21st August, 2024 also shows that absolute confiscation of the detained articles was directed by the Custom Department and a penalty of Rs. 55,000/- has also been imposed on the Petitioner.

8. In the opinion of this Court, considering the weight of the gold and the fact that no SCN was issued after the seizure of the Petitioner's detained articles, the Order-in-Original in itself, is not sustainable.

9. Moreover, after perusing the Order-in-Original and the directions given therein, it clearly appears that this was not a case of absolute confiscation of



items.

10. It is noted that no SCN 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 show cause notices 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



2025:DHC:4772-DB



Department would be untenable in law, where the show cause notice or the personal hearing have been waived *via* a pre-printed waiver.

13. Accordingly, in the facts of this case, since no show cause notice has been issued to the Petitioner due to a pre-printed waiver, the detention is set aside. The detained articles would be liable to be released to the Petitioner.

14. The Order-in-Original dated 21st August, 2024 is also set aside. The detained articles shall be released to the Petitioner, subject to payment of Custom Duty without any penalty or fine.

15. The warehouse charges are waived off. Let the Petitioner appear before the Custom officials on 10th June, 2025 for collecting the detained articles.

16. The Petitioner may collect the detained articles personally or through an Authorised Representative, in which case, the articles 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 present writ petition is disposed of in above terms. All the pending applications, if any, are also disposed of.

PRATHIBA M. SINGH
JUDGE

RAJNEESH KUMAR GUPTA
JUDGE

MAY 29, 2025/kk/ss