**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**ORDINARY ORIGINAL CIVIL JURISDICTION**

**WRIT PETITION NO.1094 OF 2024**
**WITH**
**IN PERSON APPLICATION (L) NO.5655 OF 2024**

Goldie Sud ...Petitioner

***Versus***

The Commissioner of Customs & Ors. ...Respondents

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Dr. Sujay Kantawala a/w Ms. Aishwarya Kantawala, Mr. Jeffry Caleb & Ms. Ayushi Jha i/by Anita U. Sonurlekar for the Petitioner.
Ms. Nithee Punde a/w Mr. Harshad Shingnapurkar for Respondent No.1.

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**CORAM : M. S. Sonak &**
**Jitendra Jain, JJ.**
**DATED : 28 July 2025**

**PC.:-** *(Per M. S. Sonak, J.)*

**1.** Heard learned counsel for the parties.

**2.** The Petitioner seeks the following substantive reliefs by instituting this petition:-

> *"(a) This Hon'ble Court may kindly be pleased to issue a Writ of Mandamus, and/or any other Writ, Order or Direction in the nature of Mandamus or Certiorari or Order for "In-Transit Re-Export" of subject gold bullion to the Petitioner or his agent, by quashing and setting aside the Seizer and Seizer Panchnama dated 14.01.2024 by the Respondent Nos. 5 to 7 and 9, of Gold Bullion comprising of 5 pieces of 995 purity weighing 3.00 kgs plus 6 pieces of 999 purity weighing 0.69984 Kg (totaling 11 pieces comprising 3.69984 Kgs.), along with quashing and setting aside of Summons and consequential actions thereof;*
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> *(b) This Hon'ble Court may kindly be pleased to pass such other and further orders / directions as may be necessary regard to the facts and circumstances of the present case."*

**3.** Dr. Kantawala, learned counsel for the Petitioner, submits that the seizure of gold in this case was patently illegal and without jurisdiction. He submits that the Petitioner come to India with approximately 3.696 kilograms of gold. However, upon bringing this gold into India, the Petitioner, without hesitation, walked up to the Red channel counter and made a declaration that he wished to re-export the gold in accordance with the permissible rules and procedures under Section 80 of the Customs Act, 1962. Dr. Kantawala submitted that in such circumstances, there was no reason to suspect or even *prima facie* conclude that the Petitioner was attempting to or intending to smuggle this gold into India.

**4.** Dr. Kantawala submitted that during the pendency of this petition, a show-cause notice dated July 1, 2024, was issued to the Petitioner. He sought leave to amend the petition to challenge this show-cause notice. He submitted that if the seizure was itself illegal and without jurisdiction, then there was no question of issuing any show cause notice.

**5.** Dr. Kantawala referred to the affidavit-in-reply by Mr. Girish B. Tilve, Deputy Commissioner of Customs, in this petition. He submitted that the facts pleaded by the Petitioner in this petition, regarding the Petitioner's arrival at CSMI airport and, after clearing immigration, proceeding towards the Red channel, are admitted. He states that the affidavit also admits that the Petitioner requested the facility of re-exporting this gold at the Red Channel counter and at the earliest instance. Dr. Kantawala submitted that since the factual averments are substantially admitted, there was no scope for any suspicion, seizure or show-cause notice.

**6.** Ms. Punde, learned counsel for the Respondents, argues that the affidavit filed by Mr. Tilve must be considered in its entirety. She pointed out that in the previous three instances, the Petitioner had similarly arrived at the airport, approached the Red channel counter, and requested re-export permission, which was granted. She emphasised that these three previous instances, combined with the fact that on this occasion the Petitioner was carrying approximately 3.696 kilograms of gold, were sufficient to warrant further investigation. She argued that any import of gold must comply with the Customs Notification dated 30 June 2017. She asserted that these conditions were breached in the present case.

**7.** Ms. Punde submitted that, in any event, a show cause notice dated 1 July 2024 had already been issued to the Petitioner, and it was open to the Petitioner to respond to it. She pointed out that in Mr. Tilve's affidavit, it was clearly stated that a summons had been issued to the Petitioner and the Petitioner was also requested to appear before the vigilance section for recording his statement regarding his complaint about the conduct of certain customs officials. She pointed out that his statement was also recorded, but the Petitioner, after that, did not cooperate with the customs authorities on the pretext of his ill-health.

**8.** Dr. Kantawala submitted that the Customs Notification relied upon by Ms. Punde applied to cases of import, not to any in-transit passenger who had requested permission to re-export at the earliest opportunity.

**9.** The rival contentions now fall for our determination.

**10.** Currently, we are not willing to broaden the scope of this petition by granting any permission to challenge the show-cause notice issued. However, even if such permission were granted, there would be no question of interfering with the show-cause notice, which is mainly based on factual allegations that require adjudication.

**11.** Regarding seizure, we note that on at least three instances prior to the instance of 14 January 2024, which is the subject matter of this petition, the Petitioner had arrived at the airport, approached the Red channel, declared the gold he was carrying, and requested permission to export. On all these occasions, such permission was granted.

**12.** On the occasion, which is the subject matter of this petition, the Petitioner again approached the Red channel counter and declared that he was carrying gold of 3.696 kilograms as an in-transit passenger. He again applied for permission to re-export in terms of Section 80 of the Customs Act, 1962.

**13.** On this occasion, the customs authorities raised some suspicion based on the Petitioner's conduct. The affidavit refers to the earlier three instances and the fact that the Petitioner was carrying a commercial quantity of gold, i.e. 3.696 kilograms. The Petitioner's conduct of always coming to India with gold and seeking leave to re-export some, coupled with the fact that the quantity of gold was also not small, raised such suspicion. The customs authorities have also relied on the Notification of 30 June 2017. The precise scope of such Notification is a matter which can be investigated in the show-cause notice proceedings. However, based on the circumstances outlined in the affidavit-in-reply, we are unable to agree with Dr. Kantawala that this was not a case where any suspicion could have been raised against the Petitioner, warranting further investigation. The gold was seized pending such investigations.

**14.** The affidavit also mentions the two summonses served on the Petitioner. It states that the Petitioner responded to the summons but did not attend. The affidavit clearly notes that the Petitioner attended in response to one of the summonses, and his statement was recorded in the vigilance section because he had lodged complaints against certain customs officials. Furthermore, the affidavit indicates that the Petitioner did not partake in further investigations due to his ill-health.

**15.** Upon cumulative consideration of all such circumstances, we do not think that this is a case where the Writ Court should interfere and exercise its discretionary and equitable jurisdiction to interdict the investigation. We do not agree with Dr. Kantawala's contentions that the admitted circumstances do not give any suspicion whatsoever or lead to the only inference that the Petitioner was following the law and the legal provisions to the letter. Quite deliberately, we have refrained from delving into details for the fear that our observations might unwittingly prejudice the Petitioner's defence in the show-cause proceedings. But by accepting even the petitioner's version, we do not regard this as a case where the seizure or further investigations warrant interference.

**16.** Ultimately, the question of whether the Petitioner was involved in smuggling or attempted to breach any legal provisions will be determined in accordance with the show cause notice proceedings initiated against the Petitioner. At this stage, however, we do not believe that any grounds have been established to halt the proceedings or to order the release of the seized gold without further investigation.

**17.** The limited relief that could be considered is a restraint on the Respondents from selling the seized gold pending the disposal of the adjudication proceedings. By our previous orders, we have already restrained the Respondents from selling the seized gold. This direction will continue until the disposal of the show cause notice proceedings and for a period of six weeks thereafter, in case any adverse orders are made against the Petitioner. This additional period of six weeks will commence from the date of service of the adverse order upon the Petitioner.

**18.** The show cause notice will have to be adjudicated and disposed of on its own merits and after considering the cause shown by the Petitioner on merits. None of the observations in this judgment and order need to influence the decision on the show cause notice. The observations are only *prima facie* and in the context of deciding whether we should exercise our discretionary jurisdiction in this matter and interdict any further proceedings. The observations are not a reflection of the merits or demerits of the rival contentions on behalf of the parties to these proceedings.

**19.** This petition is accordingly disposed of with the above directions without any costs order. The "in-person application" will not survive and is disposed of.

**20.** All concerned must act on an authenticated copy of this order.

**(Jitendra Jain, J.)** **(M. S. Sonak, J.)**