$~92 & 93

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

Date of decision: 21st May, 2025

\+ **W.P.(C) 1586/2025**

SUNNY MANOHARLAL SHARMA .....Petitioner

Through: Mr. D.S.Chadha, Ms. Prabjyoti K Chadha and Ms. Harsimran Kaur, Advocates.

versus

COMMISSIONER OF CUSTOMS NEW DELHI .....Respondent

Through: Mr. Satish Aggarwala, SSC

\+ **W.P.(C) 1823/2025**

RAJU GANDABHAI DESAI .....Petitioner

Through: Mr. D.S.Chadha, Ms. Prabjyoti K Chadha and Ms. Harsimran Kaur, Advocates.

versus

COMMISSIONER OF CUSTOMS NEW DELHI .....Respondent

Through: Mr. Satish Aggarwala, SSC

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 petitions have been filed under Article 226 of the Constitution of India, seeking release of gold jewellery detained by the Customs Department *vide* Detention Receipt No. 15066 in ***W.P.(C) 1586/2025*** and Detention Receipt No. 15067 in ***W.P.(C) 1823/20254*** dated 20th June, 2024.

3. The case of the Petitioners is that they are both Indian passport holders and were travelling from Dubai to India on 20th June, 2024. Upon landing at

the Indira Gandhi International Airport, New Delhi, they were intercepted by the Customs Department and the following goods were detained:

Name of the Noticee	Description	Average Purity	Gross Weight in Gms	Tariff Value (In Rs.)	Market Value (In Rs.)
Mr. Sunny Manoharlal Sharma (Noticee-1)	One (01) gold kada	995	200	12,54,384/-	14,58,600 /-
	One (01) gold chain	997	78	4,89,210/-	5,68,854/-
	One (01) gold ring	997	10	62,719/-	72,930/-
Mr. Raju Gandabhai Desai (Noticee-2)	One (01) gold kada	995	200	12,54,384/-	14,58,600 /-
	One (01) gold chain	997	76	4,76,666/-	5,54,268/-
Total			**564**	**35,37,363 /-**	**41,13,252 /-**

4. It is submitted on behalf of the Petitioners that they were intercepted at IGI Airport, New Delhi after crossing the green channel. The scanning of the Petitioners' baggage did not reveal any objectionable material, however, the jewellery worn by the Petitioners were detained. Show cause notice was issued on 13th December, 2024 *(hereinafter, 'the SCN')*. It is the stand of the Petitionersp that the SCN is issued beyond the permissible period of limitation under Section 110(2) of the Customs Act, 1962.

5. As observed by this Court on the last date, there are several facts which have been brought to the knowledge of this Court in the present case. Firstly, the date of detention of the detained goods is 20th June, 2024. However, the consequent SCN was issued for the first time on 13th December, 2024. In the SCN it has been recorded that the goods have already been assessed for the purpose of disposal on 22nd August, 2024. Additionally, on the last date, this

Court also perused the Status Report dated 19th February, 2025 which was found to be extremely sketchy.

6. Accordingly, on the last date, the Court found that there is no recording of the fact as to whether any intimation was given to the Petitioners before the gold was put up for disposal. The ld. Counsel for the Customs Department, as also the Customs officials concerned, present in Court on the last date were not aware if the detained goods have been disposed of or not. Thus, on the last date, the Court had directed as under:

> *"8. The Customs shall accordingly file a proper counter affidavit in these matters responding to all the contentions of the Petitioners, in the petitions,*
> *and also state as to whether:*
> *i) Whether the gold has been disposed of;*
> *ii) Any intimation was given prior to disposal of gold;*
> *iii) If disposed, what is the amount recovered from the disposed of the gold;*
> iv) *Whether the gold items should be permitted to be disposed of prior to the issuance of Show Cause Notice*."

7. In compliance with the directions passed by this Court, a counter affidavit has been filed by the Customs Department, stating as under:

> *"9. With reference to para No.6, anything averment to the record of the Court and the department is wrong and denied. It is submitted that a list of cases along with original files was sent to the Commissioner (Appeals) vide letter dated* ***21.08.2024*** *for approval of Pre-trial Disposal of the seized goods including the case file of the petitioner and Raju Gandabhai Desai. The Commissioner (Appeals) vide letter dated 29.08.2024 sent back the files in original after completion of inventory/panchanama certification* ***(proceedings for disposal)*** *of the seized gold carried out on 23.08.2024 in the presence of Committee Members at the valuable Disposal Section. After that letters dated 18.09.2024 were written to Disposal Section* ***for disposal of*** *the case properties and for issuance of RFD (Ripe for Disposal) certificate*

where pre-trial certification was conducted on 23.08.2024 ***including the case properties of Raju Gandabhai Desai (one gold bangle and one gold chain weighing about 276 gms)*** *and another letter dated 18.09.2024 was also written to disposal Section for* ***non disposal*** *of the cases for which pre-trial could not be completed on 23.08.2024 due to some reasons including the case properties of the* ***Sunny Sharma (one gold bangle, one gold chain and one gold ring total weighing 288 gms).*** *Show Cause Notice in the matter was issued on 13.12.2024.*

10. With reference to para No.7, it is submitted that when the process for disposal of the seized goods was initiated by the department, intimation letters for disposal of the seized goods were written to the petitioner and Raju Gandabhai Desai on 21.08.2024, Annexure-C hereto. As per records available, it is submitted that that goods have been disposed of in respect of Raju Gandabhai Desai ***(one gold bangle and one gold chain weighing about 276 gms)*** *whereas the goods in respect of Sunny Sharma* ***(one gold bangle, one gold chain and one gold ring total weighing 288 gms)*** *have not been disposed of yet."*

8. In view of the above, let the proceedings in the SCN dated 13th December, 2024 continue. In so far as the detained goods which have not been disposed of in respect of Mr. Sunny Manohar Lal Sharma are concerned, the same shall not be disposed of during the pendency of the proceedings.

9. Further, insofar as the ***Instruction No. 27/2021-Customs*** dated 3rd December, 2021 is concerned, the Customs Department ought to consider that the disposal happens only of confiscated gold and not when the show cause notice proceedings *qua* the detained gold are pending. This is more so in the case of jewellery which could even be of sentimental value for travellers. The ***Instruction No. 27/2021-Customs***, as it stands, permits disposal after three months of seizure. The relevant portion is stated as under:

"5. All the field formations shall also ensure that the seized/confiscated gold is disposed of, in the manner prescribed above, within three months of seizure."

10. However, a show cause notice under Section 110 of the Customs Act, 1962, can be issued within six months of seizure of goods. Thus, from a combined reading of ***Instruction No. 27/2021-Customs*** and Section 110 of the Customs Act, 1962, it can be inferred that the disposal of the gold can happen even before issuance of the show cause notice. This seems quite anomalous and incongruous. Accordingly, let the CBIC also consider whether the ***Instruction No. 27/2021-Customs*** requires reconsideration.

11. The show cause notice proceedings shall be concluded in accordance with law and an order shall be passed within a period of three months.

12. A fresh notice for personal hearing shall be issued to the Petitioners on the following email address and mobile no.:

- ***Mob. No. 9818563676***
- ***Email: prabjyotikaur@yahoo.co.in***

13. The present petition is disposed of in said terms. Pending applications, if any, are also disposed of.

14. Registry is directed to communicate this order to the OSD (Legal), CBIC through email (Osd-legal@gov.in) for necessary information and compliance. Let Mr. Satish Aggarwala, ld. Sr. Standing Counsel, also communicate this order to the OSD (Legal), CBIC for necessary information and compliance.

PRATHIBA M. SINGH
JUDGE

RAJNEESH KUMAR GUPTA
JUDGE

MAY 21, 2025/*v/ss*