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

\+ **W.P.(C) 2651/2025**

RAJ KUMAR SINGH .....Petitioner

Through: Mr. Mandeep Baisala and Mr. Dhananjay Singh, Advs.

versus

UNION OF INDIA & ANR. .....Respondents

Through: Mr. Vinish Phoghat, CGSC for UOI. Mr. Harpreet Singh, Sr. Standing Counsel along with Ms. Suhani Mathur and Mr. Jai Ahuja, Advs. (M: 9811253531)

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE RAJNEESH KUMAR GUPTA

<u>O R D E R</u>

% **12.03.2025**

1. This hearing has been done through hybrid mode.

2. The present petition has been filed under Article 226 of the Constitution of India challenging the Order-in-Original dated 5th December, 2024 by which the Petitioner has been saddled with redemption fine of Rs.78,000/- and penalty of Rs.78,000/-.

3. On the last date *i.e.,* 3rd March, 2025 the Court had heard the Petitioner in detail and recorded as under:

> *"4. This is yet another unfortunate case where the Petitioner who is a resident of Bahrain, arrived at Terminal-3, IGI Airport, New Delhi on 3rd December, 2024 at around 3:00 A.M. The Petitioner opted for the green channel and was admittedly wearing a Rolex GMT Master li Oyster Perpetual Gent's watch. According to the Petitioner the said watch was gifted by his wife to him upon being purchased on an invoice in Bahrain. The copy of the invoice dated 11th December, 2023 has been*

placed on record.

5. He was, however, intercepted and questioned for two hours by the Customs officer in the early hours of the morning on 3rd December, 2024. Finally, the Petitioner decided to hand over the watch to the Customs Authority so as to reach his residence. The watch was detained vide the detention receipt dated 3rd December 2024, being D.R.(Old) No. 5539.

6. It is the case of the Petitioner that he was made to sign a Standard Performa waiving his right to show cause notice and personal hearing. The watch, accordingly, was confiscated and subsequently, the impugned Order-in-Original has been passed on 5th December 2024.

7. Ld. Counsel for the Petitioner submits that the Petitioner in fact showed photographs of him wearing this watch over for the last period of one year prior to detention and it is his case that the same is a personal effect.

8. This Court has already held in the cases of ***Mr. Makhinder Chopra v. Commissioner of Customs, New Delhi 2025:DHC:1162-DB*** *and* ***Amit Kumar v. The Commissioner of Customs, 2025:DHC:751-DB*** *that such a waiver of show cause notice and personal hearing through a Standard Performa is contrary to law.*

9. Despite repeated judgments, it appears that the Customs Authorities do not seem to be implementing the judgments that are passed by this Court as also the Supreme Court.

10. Under these circumstances, issue notice. Mr. Harpreet Singh, ld. Sr. Standing Counsel accepts notice.

11. ***Let the Detaining Officer who has signed the detention receipt dated 3rd December 2024 remain present in Court on the next date of hearing.***

12. Let a copy of the present petition be supplied to Mr. Harpreet Singh so as to enable him to seek instructions *in this matter.*

13. Let a copy of the order be sent to the concerned detaining officer for the necessary information and compliance.

14. If the goods are not disposed of, the same shall not be disposed of till the next date of hearing.

15. List on 12th March, 2025."

4. Pursuant to the above order, the Detaining Officer is present in the Court today. He submits that he was not the Intercepting Officer. He is a person who has only signed the detention receipt. On querying, the only reason given for intercepting the passenger and for confiscating the watch is that the value of the watch is beyond the prescribed limit of Rs.50,000/- in terms of Baggage Rules, 2016.

5. As mentioned in the previous order, this Court in various judgments including ***Mr. Makhinder Chopra v. Commissioner of Customs, New Delhi 2025:DHC:1162-DB*** and, ***Amit Kumar v. The Commissioner of Customs, 2025:DHC:751-DB,*** has held that a waiver of show cause notice and personal hearing through a Standard Proforma is contrary to law. The operative portion of ***Amit Kumar (Supra)*** reads as under:

*"14**. When a request for release of goods is being made by the person whose goods have been detained, the said person cannot be expected to read a printed form, where –***

- ***waiver of Show Cause Notice has been agreed to,***
- ***waiver of personal hearing has been agreed to and***
- ***it has also been recorded that an oral SCN has been received***.

Such signing of the standard form would not be in compliance with the principles of natural justice, inasmuch as, the waiver under Section 124 of the Act would have to be a conscious wavier and an informed wavier.

15. A perusal of Section 124 of the Act would show that even after an oral show cause notice is given, the authority has the discretion to issue supplementary notice under circumstances which may be prescribed. For ready reference, Section 124 of the Act is set out below:-

"124. Issue of show cause notice before confiscationof goods, etc.—

…."

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"*

6. Further, this Court in a very similar circumstance, had released a *'Rolex'* watch for non-provision of SCN in ***Mohamed Shamiuddeen v. Commissioner Of Customs & Ors. (W.P.(C) 2030/2025,*** *vide order dated* ***19th February, 2025).*** The operative portion of the judgment reads as under:

"2. This hearing has been done through hybrid mode. The present writ petition has been filed by the Petitioner-Mohamed Shamiuddeen under Articles 226 & 227 of the Constitution of India read with Section 151 of the Code of Civil Procedure, 1908 ***seeking unconditional release of the wrist watch detained vide Detention Receipt No.05869 dated 17th October, 2023*** *(Old DR No.2876 dated 16th October, 2023).*

3. The brief facts are that the ***Petitioner is an Indian passport holder, but is a permanent resident of Hong Kong***. ***The Hong Kong permanent identity card has been attached with the petition.*** *The Petitioner had arrived in India at IGI, Airport, New Delhi from Hong Kong on 16th October, 2023.* ***The Petitioner was intercepted by the Customs Department at the airport and after a search of his possessions, the Petitioner's Rolex wrist watch was seized.***

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8. *Though the Petitioner ought to have disclosed the fact that he had submitted the documents in response to email dated 20th February, 2024, in a belated manner, however,* ***the fact that show cause notice was not issued in this case cannot be ignored by the Court.***

9. Following the decision in Amit Kumar (supra) the

detention of the subject goods is itself liable to be set aside due to non-issuance of show cause notice, and the goods are accordingly directed to be released to the Petitioner within a period of two weeks.”

7. Even in the present case, the Petitioner is a non-resident Indian who lives in Bahrain and in fact it is recorded in the Order-in-Original that the Petitioner has a Kingdom of Bahrain identity card. The impugned order categorically records that the Petitioner waived his right to receive a show cause notice and personal hearing. However, the words used indicate that the said waiver was in fact obtained *via* a Standard Proforma. Paragraph 3 of the impugned order is extracted below:

> *“3. The Pax tendered his statement related 03.12.2024 under Section 108 of the Customs Act, 1962 in which he admitted that he had arrived from Bahrain to IGI Airport Terminal-3, New Delhi by the flight IX 146 Dated 02.12.2024; that he was intercepted by the Customs Officer after crossing the Green Channel and after his personal and baggage examination,.One Rolex Watch (Sl. No. 90D394T4)" was recovered from him.* ***Also, in his statement dated 03.12.2024 it was submitted by the Pax that the said goods belonged to him; that he admitted the act of omission and commission on his part; that he was well aware of the facts that there was Customs Duty on the recovered items; that he intentionally had not declared the recovered items; that he would be agreed with the description and quantity assessed by the department and ready to pay the Customs duty along with fine and penalty as applicable' He further stated that he had tendered his statement true and correct and understood the same in vernacular, without any duress, pressure or threat' Further, he requested that he did not want Show Cause Notice and Personal Hearing and his case may be decided on merit.***
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> *4. The Pax visited this office and submitted a letter dated 04.12.2024 wherein he inter-alia stated that he had*

*arrived from Bahrain to IGI Airport Terminal-3, New Delhi by the flight IX 146 Dated 02.12.2024 and brought "One Rolex Watch (Sl. No. 90D394T4)". **The Pax has submitted "Kingdom of Bahrain's Identity Card bearing personal Number as 870776193 and Expiry Date 12.09.2028" in support of his claim for Re-export.** He further requested that the said goods may be allowed for re-export to him, as he is ready to pay fine and penalty after taking lenient view as he had brought the goods for his personal use. He submitted that he did not want any show cause notice and personal hearing in the matter."*

8. Under these circumstances, following the decision in ***Mohamed Shamiuddeen (Supra)*** the Order-in-Original is set aside.

9. The Rolex watch already stands released to the Petitioner upon payment of the penalty and fine *vide* payment receipt dated 10th December, 2024. The Petitioner, therefore, also seeks (1) a refund of the fine, the penalty paid, along with (2) a compensation of Rs.5,00,000/- for the mental agony and the harassment caused.

10. Accordingly, the penalty amount and the redemption fine which has been paid by the Petitioner shall be refunded to the Petitioner along with simple interest @ 6% in terms of the Customs Act, 1962.

11. The writ petition is allowed in the above terms. All pending applications, if any, are also disposed of.

PRATHIBA M. SINGH, J.

RAJNEESH KUMAR GUPTA, J.

MARCH 12, 2025
dj/Ar.