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* **IN THE HIGH COURT OF DELHI AT NEW DELHI*****Date of Decision: 21st May, 2025***

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W.P.(C) 4503/2025**YOGESH ANAND**

.....Petitioner

Through: Ms. Richa Kumari, Advocate.

versus

COMMISSIONER OF CUSTOMS

.....Respondent

Through: Mr. Atul Tripathi, SSC with Mr. Shubham Mishra and Mr. Gaurav Mani Tripathi, Advocates for R/CBIC.

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 under Articles 226 of the Constitution of India seeking release of the goods of the Petitioner detained by the Customs Department *vide* Detention Receipt dated 10th October, 2024.
3. The case of the Petitioner is that he is an Indian passport holder and a resident of the United Arab Emirates and was travelling from Dubai to India on 28th September, 2024. Upon landing at the Indira Gandhi International Airport, New Delhi, he was intercepted by the Customs Department. The following articles (*hereinafter*, '*detained goods*') of the Petitioner are stated to have been seized by the Customs Department.

• 01 Yellow Metal kada appearing gold



- **01 Yellow Metal Chain appearing gold**
- **iPhone 16 Pro 256 GB**

4. It is submitted that the detained goods i.e. the gold kada and gold chain are his *personal effects* and the iphone is also a used mobile phone. Hence, the same are liable to be released. It is further submitted on behalf of the Petitioner that no show cause notice has been issued with respect to the detention of his goods.

5. Mr. Atul Tripathi, Id. Sr. Standing Counsel, has upon instructions placed on record the order in original dated 16th May, 2025. The operative portion be read as under:

- “i) *I deny the 'Free Allowance' if any, admissible to the Pax Yogesh Anand for not declaring the detained goods to the Proper Officer at Red Channel as well to the Customs Officer at Green Channel who intercepted him and recovered the detained goods from him.*
- ii) *I order Absolute confiscation of "One chain made of gold having purity 998 and weighing 60 grams valued at RS. 4,68,247/- (Four Lakh Sixty Eight Thousand Two Hundred Forty Seven Only) and Kada made of gold having purity 993 and weighing 84 grams valued at Rs. 6,52,262/-"(Six Lakh Fifty Two Thousand Two Hundred Sixty Two) collectively valued at (Rs.11,20,509/-(Eleven Lakhs Twenty Thousand Five Hundred Nine only)) detained vide DR No. DR/INDEL4/06.10.2023/002790 dated 06.10.2023 under Section 111(d), 111(j), 111(l) & 111(m) of the Customs Act, 1962.*
- iii) *I order confiscation of the above said detained goods i.e. "One I phone 16 pro max 256 GB valued at Rs. 1,16,458" (One Lakh Sixteen Thousand Four Hundred Fifty Eight Only) detained vide DR No.*



DR/INDEL4/10.10.2024/005274 dated 10.10.2024, under Section 111(d), 111(j), 111(1) & 111(m) of the Customs Act, 1962;

- iv) *I give an option to redeem the goods confiscated above mentioned in 12(iii) on payment of Rs. **15,000/- (Fifteen thousand Only)** along with applicable rate of Customs Duty on Tariff Valuation as on the date of detention of seized goods. I allow release of the detained goods within 120 days of issue of this order under Section 125(3) of the Customs Act, 1962). The redemption to be allowed after the completion of legal formalities in this regard and also fulfillment of any regulatory clearances/ approvals required. The offer of redemption, if accepted, shall be subject to condition that the Passenger shall not dispute the identity and valuation of the goods. The offer of redemption shall cease after 120 days of the receipt of this order.*
- v) *I also impose a **penalty of Rs. 1,00,000/- (one lakh Only)** on the Pax, **Yogesh Anand** under Section 112(a) and 112(b) of the Customs Act, 1962.”*

6. Heard. The Court has considered the submissions made by the parties and has also perused the documents placed on record, including the photographs of the Petitioner wearing the detained articles. A reading of the order-in-original dated 16th May, 2025 would show that the adjudication authority, while passing the same, has directed absolute confiscation of both the gold jewellery items and redemption has been permitted only for the iPhone 16 Pro.

7. In the opinion of this Court, having considered the facts of the case and the documents placed on record, the detained articles clearly appear to be the used *personal effects* of the Petitioner.

8. In terms of the Rule 2(vi) read with Rule 3 of the Baggage Rules, 2016



(hereinafter 'the Rules') the Petitioner would be permitted clearance of articles, free of duty in his bona fide baggage, including used personal effects. The relevant provisions of the Rules are extracted hereunder:

"2(vi) "Personal effects" means things required for satisfying daily necessities but does not include jewellery.

* * * *

*3. Passenger arriving from countries other than Nepal, Bhutan or Myanmar:- An Indian resident or a foreigner residing in India or a tourist of Indian origin, not being an infant arriving from any country other than Nepal, Bhutan or Myanmar, shall be allowed clearance free of duty articles in his bona fide baggage, that is to say, -
(a) used personal effects and travel souvenirs; and
(b) articles other than those mentioned in Annexure-I, up to the value of fifty thousand rupees if these are carried on the person or in the accompanied baggage of the passenger:*

Provided that a tourist of foreign origin, not being an infant, shall be allowed clearance free of duty articles in his bona fide baggage, that is to say, (a) used personal effects and travel souvenirs; and (b) articles other than those mentioned in Annexure- I, up to the value of fifteen thousand rupees if these are carried on the person or in the accompanied baggage of the passenger:

*Provided further that where the passenger is an infant, only used personal effects shall be allowed duty free.
Explanation.- The free allowance of a passenger under this rule shall not be allowed to pool with the free allowance of any other passenger.*

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5. Jewellery.- A passenger residing abroad for more than one year, or return to India, shall be allowed clearance free of duty in his bona fide baggage of jewellery upto a weight, of twenty grams with a value cap of fifty thousands rupees if brought by a gentleman passenger, or forty grams with a value cap of one lakh rupees if brought by a lady passenger.

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ANNEXURE-I
(See Rules 3, 4 and 6)

1. Fire arms.
2. Cartridges of fire arms exceeding 50.
3. Cigarettes exceeding 100 sticks or cigars exceeding 25 or tobacco exceeding 125 gms.
4. Alcoholic liquor or wines in excess of two litres.
5. **Gold or silver in any form other than ornaments.**
6. Flat Panel (Liquid Crystal Display/Light-Emitting Diode/Plasma) television.”

9. The issue whether gold jewellery worn by a passenger would fall within the ambit of personal effects under the Rules, has now been settled by various decisions of the Supreme Court as also this Court. The Supreme Court in ***Directorate of Revenue Intelligence and Ors. v. Pushpa Lekhumal Tolani, (2017) 16 SCC 93***, while considering the relevant provisions of the Customs Act, 1962 (hereinafter “the Act”) read with the Baggage Rules, 1998, that were in force during the relevant period, held that it is not permissible to completely exclude jewellery from the ambit of ‘personal effects’. The



relevant paragraphs of the said order read as under:

*“13. Insofar as the question of violation of the provisions of the Act is concerned, we are of the opinion that the respondent herein did not violate the provisions of Section 77 of the Act since the necessary declaration was made by the respondent while passing through the green channel. Such declarations are deemed to be implicit and devised with a view to facilitate expeditious and smooth clearance of the passenger. Further, as per the International Convention on the Simplification and Harmonisation of Customs Procedures (Kyoto 18-5-1973), a passenger going through the green channel is itself a declaration that he has no dutiable or prohibited articles. **Further, a harmonious reading of Rule 7 of the Baggage Rules, 1998 read with Appendix E (2) (quoted above), the respondent was not carrying any dutiable goods because the goods were the bona fide jewellery of the respondent for her personal use and was intended to be taken out of India.** Also, with regard to the proximity of purchase of jewellery, all the jewellery was not purchased a few days before the departure of the respondent from UK, a large number of items had been in use for a long period. It did not make any difference whether the jewellery is new or used. There is also no relevance of the argument that since all the jewellery is to be taken out of India, it was, therefore, deliberately brought to India for taking it to Singapore. **Foreign tourists are allowed to bring into India jewellery even of substantial value provided it is meant to be taken out of India with them and it is a prerequisite at the time of making endorsements on the passport. Therefore, bringing jewellery into India for taking it out with the passenger is permissible and is not liable to any import duty.***

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15. [...] Also, from the present facts and circumstances of



the case, it cannot be inferred that the jewellery was meant for import into India on the basis of return ticket which was found to be in the possession of the respondent. Moreover, we cannot ignore the contention of the respondent that her parents at the relevant time were in Indonesia and she had plans of proceeding to Indonesia. Some of the jewellery items purchased by the respondent were for her personal use and some were intended to be left with her parents in Indonesia. The High Court has rightly held that when she brought jewellery of a huge amount into the country, the respondent did not seem to have the intention to smuggle the jewellery into India and to sell it off. Even on the examination of the jewellery for costing purposes, it has come out to be of Rs 25 lakhs and not Rs 1.27 crores as per DRI. The High Court was right in holding that it is not the intention of the Board to verify the newness of every product which a traveller brings with him as his personal effect. It is quite reasonable that a traveller may make purchases of his personal effects before embarking on a tour to India. It could be of any personal effect including jewellery. Therefore, its newness is of no consequence. The expression “new goods” in their original packing has to be understood in a pragmatic way.”

10. In *Saba Simran v. Union of India & Ors.*, 2024:DHC:9155-DB, Division Bench of this Court was seized with the issue of deciding the validity of the seizure of gold jewellery by the Customs Department from an Indian tourist. The relevant paragraphs of the said judgement are as under:

*“15. The expression ‘jewellery’ as it appears in Rule 2(vi) would thus have to be construed as inclusive of articles newly acquired as opposed to used personal articles of jewellery which may have been borne on the person while exiting the country or carried in its baggage. **Thus,***



personal jewellery which is not found to have been acquired on an overseas trip and was always a used personal effect of the passenger would not be subject to the monetary prescriptions incorporated in Rules 3 and 4 of the 2016 Rules.

16. This clearly appeals to reason bearing in mind the understanding of the respondents themselves and which was explained and highlighted in the clarificatory Circular referred to above. That Circular had come to be issued at a time when the Appendices to the 1998 Rules had employed the phrase “used personal effects, excluding jewellery”. The clarification is thus liable to be appreciated in the aforesaid light and the statutory position as enunciated by the respondents themselves requiring the customs officers to bear a distinction between “personal jewellery” and the word “jewellery” when used on its own and as it appears in the Appendices. This position, in our considered opinion, would continue to endure and remain unimpacted by the provisions contained in the 2016 Rules.

11. The above mentioned decision of the Division Bench of this Court was challenged before the Supreme Court in **SLP(C) No. 011281 /2025** titled **Union of India & Ors. V. Saba Simran**. The Supreme Court, while dismissing the said challenge, held as under:

- “1. Delay condoned.*
- 2. Having heard the learned counsel appearing for the petitioners and having gone through the materials on record, we see no reason to interfere with the impugned order passed by the High Court.*
- 3. The Special Leave Petition is, accordingly, dismissed.*
- 4. Pending application(s), if any, stands disposed of.”*

12. This Court in **Mr Makhinder Chopra vs. Commissioner Of Customs**



New Delhi, 2025:DHC:1162-DB, had the occasion to consider the relevant provisions of the Rules, as also the decisions of the Supreme Court and this Court. After analysing the same, this Court held as under:

“17. A conspectus of the above decisions and provisions would lead to the conclusion that jewellery that is bona fide in personal use by the tourist would not be excluded from the ambit of personal effects as defined under the Baggage Rules. Further, the Department is required to make a distinction between ‘jewellery’ and ‘personal jewellery’ while considering seizure of items for being in violation of the Baggage Rules.”

13. Thus, it is now settled that the used jewellery worn by the passenger would fall within the ambit of personal effects in terms of the Rules, which would be exempt from detention by the Customs Department.

14. Moreover, the one detained iPhone 6 pro is also permissible for daily necessity and use of the Petitioner.

15. Further, in the present case, the fact that no show cause notice has been issued upon the Petitioner is also not in dispute. This Court, while deciding upon the issue of non-issuance of show cause notice in various cases has held that once the goods are detained, it is mandatory to issue a show cause notice and afford a hearing to the Petitioner. The time prescribed under Section 110 of The Customs Act, 1962, is a period of six months and subject to complying with the formalities, a further extension for a period of six months can be taken by the Department for issuing the show cause notice. In this case, since no show cause notice has been issued till date, the detention is therefore impermissible.

16. In view of the above discussion, the detention of the Petitioner’s



detained articles is set aside and the same shall be released to the Petitioner within four weeks, subject to verification and payment of full storage charges.

17. The Petitioner may appear before the concerned official for appraisal of the detained article and shall thereafter collect it either in person or through an Authorised Representative, in which case, the detained article 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.

18. The present writ petition is disposed of in above terms. All pending applications, if any, are also disposed of.

PRATHIBA M. SINGH
JUDGE

RAJNEESH KUMAR GUPTA
JUDGE

MAY 21, 2025

v/ss