$~97

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

\+ **W.P.(C) 4673/2025**

JARED OPONDO TAWO .....Petitioner

Through: Mr. S. Vijay K. and Mr. Utkarsh Tripathi, Advs.

versus

THE COMMISSIONER OF CUSTOMS .....Respondents

Through: Mr. Shubham Tyagi, SSC with Ms. Navruti Ojha, Adv. for Customs. (M: 9650049869)

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE RAJNEESH KUMAR GUPTA

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

% 21.05.2025

1. This hearing has been done through hybrid mode.

2. The present petition has been filed by the Petitioner under Article 226 of the Constitution of India inter alia seeking directions to the Respondent for release of the gold bangle/kada detained by the Respondent on 27th February, 2024.

3. The Petitioner is a Kenyan national who had travelled from Kenya to India on 27th February, 2024 and he was intercepted at the IGI Airport, Delhi. One gold bangle/kada weighing 50 grams was seized from him and detained by the Customs Department vide Detention Receipt No. 3894. The Petitioner seeks release of the said goods.

4. Upon instructions, the ld. Counsel for Customs Department submits that the Petitioner has signed a pre-printed standard form wherein the Petitioner has requested not to receive the Show Cause Notice (hereinafter,

'*SCN*') and personal hearing and that the case may be decided on merits.

5. This Court, in the cases of ***Mr Makhinder Chopra vs. Commissioner of Customs, New Delhi, 2025:DHC-1162-DB*** and ***Amit Kumar v. The Commissioner of Customs, 2025:DHC:751-DB*** has discussed various issues arising in such cases where the goods have been detained from a tourist by the Customs Department, including the issue of personal jewellery being part of personal effects under the Baggage Rules, 2016 and waiver of SCN and personal hearing by way of a preprinted waiver form. The relevant extracts of the said decisions are as under:

> ***"Mr Makhinder Chopra vs. Commissioner of Customs, New Delhi, 2025:DHC-1162-DB***
>
> *"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.*
>
> *xxx xxx xxx*
>
> *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.*"

<u>Amit Kumar v. The Commissioner of Customs, 2025:DHC:751-DB</u>

*"19. **<u>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.</u>** 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, the order-in-original dated 6th August, 2024 has been passed in the following terms:

*" **<u>ORDER</u>***

*i. I deny the **'free allowance'** if any admissible to the passenger, **Jared Opondo Tawo** for various acts of commission and omission;*

*ii. I declare the passenger, **Jared Opondo Tawo** is **"an ineligible Passenger"** for the purpose of the Notification No. 50/2017-Cus dated 30.06.2017 (as amended) read with Baggage Rules, 2016 (as amended)*

*iii.I order **absolute** confiscation of **"One elongated piece of gold bent in kada shape, having purity 993, wight 50 grams, valued at Rs. 2,67,522"** recovered from the Pax **Jared Opondo Tawo** and detained vide **DR No**. **DR/INDEL4/27.02.2024/003894 dated 27.02.2024**, under Section under Section 111(d), 111(j) & 111(m) of the Customs Act, 1962;*

*iv. I also impose a penalty of **Rs.30,000/- (Rupees Thirty Thousand Only)** on the passenger **Jared Opondo Tawo** under Section 112(a) & 112(b) of the Customs Act, 1962."*

7. Given that the Petitioner is a Kenyan national who was wearing only a

gold bangle/kada weighing 50 grams and considering the fact that the Petitioner is willing to re-export the same, the detention is not sustainable. The said kada clearly constitutes a *personal effect* of the Petitioner who is a foreign national.

8. The order-in-original is set aside. Accordingly, let the gold bangle/kada be released to the Petitioner. Warehousing/storage charges in the present case shall be waived off.

9. The petition is disposed of in these terms. Pending application(s), if any, also stand disposed of.

PRATHIBA M. SINGH, J

RAJNEESH KUMAR GUPTA, J

MAY 21, 2025
dj/ss