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

Date of decision: 29th May, 2025

\+ **W.P.(C) 5084/2025**

ASMIN .....Petitioner

Through: Mr. Aditya Raj, Mr. Pratham Diwakar and Mr. Pravej Hasan, Advocates.
Mr. Ashish Panday, Mr. Ajay Singh, Mr, Akshat Raghuvanshi, Advocates.

versus

COMMISSIONER OF CUSTOMS .....Respondent

Through: Ms. Anushree Narain, SSC with Mr. Ankit Kumar, Advocate.

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 Article 226 of the Constitution of India seeking release of the jewellery detained by the Customs Department *vide* Detention Receipt dated 11th February, 2024.

3. The Petitioner is an Indian citizen. It is stated that the Petitioner was returning to India from Mecca, Saudi Arabia after performing religious pilgrimage *("Umrah")* on 11th February, 2024. The Customs Department intercepted her upon her arrival at the Indira Gandhi International Airport, New Delhi. The Petitioner was wearing two gold bangles weighing 128 grams, respectively, (hereinafter "*the detained jewellery*") which were detained by the Customs Department.

4. It is the case of the Petitioner that the detained jewellery has not been

released till date. It is also stated that no show cause notice (hereinafter "*SCN*") has been issued in this matter and no personal hearing was also granted.

5. Ms. Anushree Narain, ld. Sr. Standing Counsel for the Customs Department submits that the Order-in-Original has been passed on 19th August, 2024. A copy of the same has been handed over by the ld. Counsel and the same is taken on record.

6. Heard ld. Counsels for the parties. The Court has also perused the documents as also the Order-in-Original placed on record. A perusal of the said order would show that the standard pre-printed waiver had been signed by the Petitioner, as recorded in the order. The relevant paragraphs of the order-in-original are set out below:

> *"2. The passenger **Asmin (DOB 01.01.1966)** (hereinafter referred as '**the Pax**') having Indian Passport Number **B8448601** arrived at IGI Airport Terminal-3, New Delhi by the Flight No. **SV 756 Dated 11.02.2024** and opted for Green Channel and she was intercepted by the Customs Officer after she had crossed the Green Channel and during the X-Ray of her baggage and DFMD **"Two yellow metal bangles, weight 128 grams"** were found and the same were detained vide Detention Receipt (DR) **DR/INDEL4/11.02.2024/28021 dt. 11.02.2024**. The DR bears remark **"Green Channel Violation".***
>
> *3. The Pax tendered her **statement dated 11.02.2024** under Section 108 of the Customs Act, 1962 in which she admitted that she had arrived at IGI Airport Terminal-3, New Delhi by Flight No. **SV 756 Dated 11.02.2024**; that she was intercepted by the Customs Officer after she had crossed the Green Channel and during X-Ray of her baggage and DFMD **"Two yellow metal bangles, weight 128 grams"** were recovered from her. **The Pax***

__in her statement dated 11.02.2024__ stated that the said goods __did not belong to her.__ She admitted her acts of omission and commission; that she is well aware of the fact that there is Customs duty on import of above goods; that she intentionally did not declare the recovered goods; that she agreed with the description, quantity and value assessed by the Department; that she had tendered her true & correct statement and understood the same in vernacular; that on being asked, she admitted the act of omission and commission on her part. She further stated that she had tendered her statement without any duress, pressure or threat. Further, she requested that she did not require any Show Cause Notice and Personal Hearing and the case may be decided on merit.

4. The AR Advocate Manohar Lal Verma (D/14802/2023) of The Pax **Asmin** *visited this office and submitted a letter dated* ***13.03.2024*** *wherein she submitted that she had arrived at IGI Airport, Terminal-3, New Delhi by Flight No.* ***SV 756 Dated 11.02.2024*** *and brought the above said detained goods. She further requested that the said detained goods may please be appraised and* ***release*** *to her after observing necessary legal formalities. The Pax regretted her mistake of opting for Green Channel and also requested for lenient view in the matter. She is ready to pay the applicable Customs Duty, fine and penalty for the same after taking lenient view as these goods* ***does not belong to her and were meant for personal use. She did not want any Show Cause Notice and Personal Hearing in the matter and requested for order for release. She submitted that she departed from India on 22.01.2024 and returned on 11.02.2024.***

5. On physical examination of the detained goods by the Jewellery Appraiser in the presence of AR of the Pax on ***13.03.2024,*** *it was found that detained goods comprise of "****Two gold bangles having purity 996, weight 128***

Signature Not Verified
Signed By:NAMITA DHYANI
Signing Date:02.06.2025 18:37:30

grams, valued at Rs. 7,44,582/-". Accordingly, for the purpose of determination of the competency of Adjudicating Authority, the detained goods have been appraised and the valuation of the detained goods has been accomplished on ***13.03.2024*** *by taking* ***11.02.2024 (as the relevant date),*** *which is the* ***correct*** *date of detention of goods and facts admitted by the Pax in her statement, as the relevant date for appraisal of detained goods.*

S.No.	*Description and number of goods*	*Average purity*	*Gross Weight in grams*	*Net Weight in grams*	*Assessable value (in Rs.)*
1	*Two gold bangles*	*996*	*128*	*128*	*744,582*
Total			***128***	***128***	***744,582***

7. Value has been determined in terms of the following notifications:

Gold rate notification No.	*12/2024*	*15.02.2024*	*639*	*USD per 10 gm*
Exchange rate notification No.	*13/2024*	*15.02.2024*	*83.90*	*Rupees per USD*

8. From a perusal of the above paragraphs, it appears that the authorised representative of the Petitioner had appeared for the Petitioner before the Customs Authority. The order-in-original has finally directed absolute confiscation and payment of fine and penalty of Rs.1,00,000/-.

9. The same is set out below:

"31. In view of the foregoing, I pass the following order:

ORDER

> *i) I deny the '**Free Allowance**' if any admissible to the Pax **Ms Asmin** for not declaring the detained goods to the Proper Officer at Red Channel as well to the Customs Officer at Green Channel who intercepted her and recovered the detained goods from her.*
>
> *ii) I declare the passenger, **Asmin** 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** the above said detained goods i.e. "**Two gold bangles having purity 996, weight 128 grams, valued at Rs. 7,44,582/-**" recovered from the Pax Asmin and detained vide DR No. **DR/INDEL4/11.02.2024/28021 dt. 11.02.2024**, under Section 111(d), 111(i), 111(j) & 111(m) of the Customs Act, 1962;*
>
> *iv) I also impose **a penalty of Rs.1,00,000/- (Rupees One Lac Only)** on the Pax, **Asmin** under Section 112(a) & 112(b) of the Customs Act, 1962."*

10. It is noted that no Show Cause Notice has been issued in this case as the Customs Department is relying on the standard pre-printed waiver that was obtained from the Petitioner. The validity of such pre-printed waiver of SCN and personal hearing has been considered by this Court in various matters, including in ***Amit Kumar v. The Commissioner of Customs, 2025:DHC:751-DB*** and ***Mr Makhinder Chopra vs Commissioner of Customs New Delhi, 2025:DHC:1162-DB.*** The operative portion of the judgement in ***Amit Kumar (supra)*** is as under:

> *"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"

11. Further, this Court in ***Makhinder Chopra (supra)*** had analysed Section 124 of the Customs Act, 1962 (hereinafter "*the Act*") while

considering the issue of waiver of show cause notice and personal hearing. The Court while replying on the decision in ***Amit Kumar (supra)*** held as under:

> *"23. As mentioned above, the Customs Department has relied upon the undertaking in a standard form dated 17th June, 2024 signed by the Petitioner, wherein the Petitioner has waived of issuance of the show cause notice and personal hearing. It is admitted position that no show cause notice has been issued to the Petitioner on the basis of the said undertaking.*
>
> *24. The issuance of a show cause notice before confiscation of goods by the Customs officials is covered under Section 124 of the Act, which reads as under: "*
>
> > *"124. Issue of show cause notice before confiscation of goods, etc.— No order confiscating any goods or imposing any penalty on any person shall be made under this Chapter unless the owner of the goods or such person—*
> >
> > *(a) is given a notice in writing with the prior approval of the officer of Customs not below the rank of an Assistant Commissioner of Customs, informing him of the grounds on which it is proposed to confiscate the goods or to impose a penalty;*
> >
> > *(b) is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of confiscation or imposition of penalty mentioned therein; and*
> >
> > *(c) is given a reasonable opportunity of being heard in the matter:*
> >
> > *Provided that the notice referred to in*

clause (a) and the representation referred to in clause (b) may, at the request of the person concerned be oral.

Provided further that notwithstanding issue of notice under this section, the proper officer may issue a supplementary notice under such circumstances and in such manner as may be prescribed."

25. ***<u>A perusal of the above Section would show that the principles of natural justice have to be followed by the Customs Department before detention of the goods. The Section provides a three-fold requirement:</u>***

<u>i) a notice in writing informing the grounds of confiscation;</u>

<u>ii) An opportunity of making a representation in writing against the said grounds of confiscation;</u>

<u>iii) A reasonable opportunity of personal hearing</u>*.*

26. In terms of proviso to the said Section, the Customs Authority may issue an oral show cause notice to the tourist in lieu of a written show cause notice at the request of the said tourist. ***<u>However, in the opinion of the Court the undertaking in a standard form as relied upon by the Customs Department waiving the issuance of show cause notice and personal hearing would not satisfy the requirements of Section 124 of the Act.</u>***

27. This Court recently in Amit Kumar v. The Commissioner of Customs, 2025:DHC:751 DB was considering similar facts wherein the Petitioner had also signed an undertaking waiving show cause notice and personal hearing. The Court had analysed and *discussed the validity of such undertaking vis-à-vis Section 124 of the Act. [...]*

*28 **In view of the above observations, it is clear that the undertaking signed by the Petitioner in the present case cannot be sustained in law**. Accordingly, the Customs Department has failed to satisfy the requirements of Section 124 of the Act in the present case. Therefore, the detention of the Petitioner's gold chain has to be set aside.*

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*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.**"*

12. Thus, the law is well settled, that the Customs Department cannot rely on pre-printed waiver of show cause notice as the same would be contrary to the requirements of Section 124 of the Act. In light of the above discussions, it is clear that the continued detention or seizure of goods by the Customs Department would be untenable in law, where the show cause notice or the personal hearing have been waived *via* a pre-printed waiver.

13. Accordingly, in the facts of this case, since no show cause notice has been issued to the Petitioner due to a pre-printed waiver, the detained jewellery would be liable to be released to the Petitioner.

14. In view thereof, the impugned order-in-original is set aside to the effect

that it orders absolute confiscation. However, in the facts of this case, the Petitioner shall pay the penalty of Rs.1,00,000/- and 50% of the warehousing/storage charges.

15. The Petitioner may collect the detained jewellery through an Authorised Representative, in which case, the detained jewellery 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.

16. Let the detained jewellery be released within a period of four weeks.

17. Accordingly, the petition stands disposed of. Pending applications, if any, are also disposed of.

PRATHIBA M. SINGH
JUDGE

RAJNEESH KUMAR GUPTA
JUDGE

MAY 29, 2025
v/msh