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

Date of Decision: 21st May, 2025

+ **W.P.(C) 5942/2025 & CM APPL. 27090/2025**

HARJIT SINGH A S CHAN SINGHPetitioner

Through: Mr. D. S. Chadha, Advocate.

versus

COMMISSIONER OF CUSTOMS NEW DELHIRespondent

Through: Mr. Jatin Singh, 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 October, 2024.
3. The Petitioner is a Malaysian citizen and has a Malaysian Passport. It is the case of the Petitioner that on 11th October, 2024 the Petitioner had travelled to India and upon arrival at the Indira Gandhi International Airport, New Delhi, he was intercepted by the Customs Department. The Customs Department seized two items of 100 grams each, *i.e.*, one gold *wire/chain* and one gold *kada*, (hereinafter “*the detained jewellery*”) on the same date.
4. It is submitted by the Id. Counsel for the Petitioner that the Petitioner



being a foreign citizen would be an eligible passenger in terms of the Baggage Rules, 2016 (hereinafter “*the Rules*”). Further, it is submitted that the detained jewellery are the personal effects of the Petitioner under the Rules and in terms of Section 110 of the Customs Act no Show Cause Notice (hereinafter “SCN”) having been issued in this matter for a period of six months, the detention cannot continue.

5. On the other hand, Mr. Jatin Singh, Id. Counsel appearing for the Customs Department submits that the Petitioner may file an appeal in this case.

6. Heard the Id. Counsels for the parties. The Court has also perused the documents placed on record. In the opinion of the Court, having considered the facts of the case and the documents placed on record, the detained jewellery clearly appear to be used personal gold items of the Petitioner.

7. In terms of Rule 2(vi) read with Rule 3 of the Rules, the Petitioner would be permitted clearance of articles, free of duty in their 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.

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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.”

8. 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 the ***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.”

9. In *Saba Simran v. Union of India & Ors.*, 2024:DHC:9155-DB, the 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.**”*

10. 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.”*

11. 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.”

12. At this stage it would be relevant to consider the decision of the Madras High Court in ***Thanushika vs. The Principal Commissioner of Customs (Chennai), W.P. No. 5005/2024*** (decided on 31st January, 2025) wherein the High Court was dealing with a case where the gold jewellery of a Sri Lankan tourist was seized by the Customs Department. The High Court after analysing various provisions of the Act and the Rules held that the said Rules would only apply to baggage and would not extend to any article “carried on the person” as mentioned in Rule 3 of the Rule. This Court in ***Makhinder***



Chopra (supra) having considered the above decision, observed as under:

“19. Thus, it is now settled law that the Customs Officials are required to consider the facts of each case and apply their mind before detaining the goods of a tourist, either of Indian or foreign origin. The Customs Officials have to be conscious of the fact that personal effects including jewellery of tourists are protected by the law from detention and same cannot be detained in a mechanical manner.”

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. In view of the above and considering the facts of the case, it is clear that the detained jewellery are the personal effects of the Petitioner.

15. The detained jewellery being personal effects of the Petitioner, the detention of the same itself would be contrary to law. Accordingly, the detained jewellery would be liable to be released on this ground itself. However, there are other issues that are required to be considered in the present matter *i.e.*, limited applicability of Rules *qua* a foreign national and non-issuance of the SCN within the prescribed period under the Act.

16. Insofar as the issue of limited applicability of Rules *qua* a foreign national is concerned, this Court has considered the said issue in several cases including **Nathan Narayansamy vs. Commissioner of Customs, W.P.(C) 6855/2023**. In **Nathan Narayansamy (supra)** the Co-ordinate Bench of this Court was also dealing with a similar situation wherein certain jewellery was recovered and seized from the baggage items of a tourist holding Malaysian passport. The Court had considered the provisions of the Rules *qua* a tourist



of foreign origin and had held as under:

“4. Undisputedly, and since the petitioner held a foreign passport, it would be the Proviso to Rule 3 alone which would apply. In terms of the said Proviso, a tourist of foreign origin is permitted clearance of duty free articles in his bona fide baggage, and the articles and the limits/restrictions of those articles which are not allowed duty free are mentioned in Annexure-I. As we read Entry 5 in Annexure-I, it speaks of gold or silver in any form other than ornaments. The chain and the kada which were found on the person of the petitioner would undoubtedly fall in the category of jewellery and ornaments. Clause 5 of Annexure-I would therefore not sustain the seizure of the articles in question.

5. While learned counsel for the respondent had also drawn our attention to Rule 5 of the Baggage Rules, we note that the same pertains to a passenger who is returning to India after having resided abroad for more than one year. That would clearly not apply to the petitioner here who is undisputedly a foreign national. Rule 5 in any case appears to be relating to an "eligible passenger" and which pertain to an Indian national upon his return to the country after having lived abroad for the period prescribed.”

17. Thus, in **Nathan Narayansamy (supra)**, the Co-ordinate Bench of this Court has clearly held that the Baggage Rules would have limited application to foreign nationals. Further, this Court in **Anjali Pandey vs. Commissioner of Customs, 2025:DHC:372-DB** and **Makhinder Chopra (supra)**, has also directed release of the jewellery seized from a tourist of foreign origin relying on the decisions discussed hereinabove.

18. It is an undisputed fact that the Petitioner is a Malaysian passport



holder. In view of the law discussed above, on the ground of limited applicability of the Rules to the tourist of foreign origin and as the detained jewellery is part of personal effects, the detention would have to be set aside.

19. Further, once the goods are detained, it is mandatory to issue a show cause notice and afford a personal hearing to the Petitioner. The time prescribed under Section 110 of Act, is a period of six months. However, subject to complying with the requirements therein, a further extension for a period of six months can be taken by the Customs Department for issuing the show cause notice. In this case, the one year period itself has elapsed, yet no show cause notice has been issued. Accordingly, the detention is impermissible.

20. In view of the above discussion, the submission of the Id. Counsel for the Customs Department is untenable, in-as-much as no SCN has been issued and no Order-in-Original has been passed.

21. Accordingly, the detention of the Petitioner's jewellery is accordingly set aside.

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

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

24. However, in the fact of this case, the applicable storage/warehousing charges shall be paid by the Petitioner.



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25. Accordingly, the writ petition is disposed of in above terms. All the pending applications, if any, are also disposed of.

PRATHIBA M. SINGH
JUDGE

RAJNEESH KUMAR GUPTA
JUDGE

MAY 21, 2025/MR/msh