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

\+ **W.P.(C) 5943/2025**

RAJESH SANKHALA .....Petitioner

Through: Ms. Richa Kumari, Mr. Pawan & Mr. Yatin Bhutani, Advs.

versus

COMMISSIONER OF CUSTOMS .....Respondent

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

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE RAJNEESH KUMAR GUPTA

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

% 29.05.2025

1. This hearing has been done through hybrid mode.

2. The Petitioner has filed the present petition under Article 226 of the Constitution of India, *inter alia,* seeking release of the gold jewellery detained *vide* Detention Receipt No. 3518 dated 12th January, 2024 and appraised *vide* Detention Receipt No. 52957 dated 27th February, 2024.

3. The Petitioner is an Indian citizen. The case of the Petitioner is that he had arrived in India from Uganda on 12th January, 2024. The Petitioner was intercepted at the Indira Gandhi International Airport, New Delhi and one gold chain weighing 45 grams and one gold ring weighing 15 grams (hereinafter "*the detained jewellery*") were detained by the Customs Department. The Petitioner is also stated to have signed a pre-printed standard statement under Section 108 of the Customs Act, 1962 (hereinafter "*the Act*") and waiver of the show cause notice and personal hearing. The detained jewellery was appraised in the presence of the Petitioner on 28th February,

2024.

4. It is stated that no show cause notice (hereinafter "*SCN*") was issued to the Petitioner and no personal hearing notice was given. Thereafter, the Order-in-Original dated 29th April, 2024 was passed.

5. It is submitted by the ld. Counsel for the Petitioner that the detained jewellery are the used personal effects of the Petitioner under the Baggage Rules, 2016 (hereinafter "*the 2016 Rules*"), and thus, the detained jewellery deserves to be released.

6. Heard ld. Counsels for the Parties. The Court has also perused the documents placed on record. The Order-in-Original records as under:

> *"2. The passenger Rajesh Sankhala holding Indian passport No. P3533421 (hereinafter referred as 'the Pax') arrived at the IGI Airport Terminal-3, New Delhi by flight G9-463 dated 12.01.2024 and opted for Green Channel. He was intercepted by the Customs Officer after he had already crossed the Green Channel and during his personal & baggage search "One chain of yellow metal and one ring of yellow metal appearing to be gold having total weight 60 grams" was found and were detained vide Detention Receipt (DR) No. DR/INDEL4/12.01.2024/003518 dated 12.01.2024 with remark Green Channel violation .*
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> *3. The Pax tendered his statement dated 12.01.2024 under Section 108 of the Customs Act, 1962 in which he interalia stated that he was intercepted by the Customs Officer after he had already crossed the Green Channel and during the DFMD and baggage scan, the above said items were recovered from him; that the above mentioned recovered items belonged to him; that he admitted the act of omission and commission on his part; that he was well aware of the fact that there was Customs Duty on import of above goods; that he intentionally did not declare the recovered items; that*

he would be agreeing 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, 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.***

4 The Pax submitted a letter dated 28.02.2024 wherein it was inter-alia submitted that he had arrived from EBB (Uganda) by flight no. G9 463 dated 12.01.2024 and opted for the Green Channel but did not declare any dutiable item which he brought in his baggage namely Gold jewellery and hence they were detained. It is further submitted that the detained goods are meant for personal use and as such requested for Release of the detained goods. It is also submitted that he regrets his mistake of opting for Green Channel and requested for a lenient view to be taken in the matter and that the case be decided on merit and ***as such did not want any show cause notice and personal hearing in the matter. An oral SCN has been received.***

5. On physical examination of the detained goods by the Jewellery Appraiser with Keratometer in the presence of the Authorized representative of Pax on 28.02.2024. 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 accompanied by taking 12.01.2024 (as the .relevant date), which is the date of detention of goods. The Appraisement report of the Jewellery Appraiser is as under:-

S. No.	*Description and number of goods*	*Average purity*	*Gross weight in grams*	*Net weight in grams*	*Assessable value (in Rs.)*
1	*One gold chain*	*999*	*45*	*45*	*273,885*

2	*One gold ring*	*998*	*15*	*15*	*91,295*
Total			*60*	*60*	*265,180*

Value has been determined in terms of the following notifications:

Gold rate notification no.	*95/2023*	*29.12.2023*	*669*	*USD per 10 gm*
Exchange rate notification no.	*01/2024*	*04.01.2024*	*84.25*	*Rupees per USD*

7. Finally, the Order-in-Original directed as under:

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

ORDER

i) I deny the 'Free Allowance' if any, admissible to the Pax Rajesh Sankhala 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 declare the passenger Rajesh Sankhala as an "ineligible Passenger" for the purpose of the Notification No. 50/2017-Customs dated 30 .06.2017 (as amended) read with Baggage Rules, 2016 (as amended).

iii) I order absolute confiscation of "(i) One Gold chain having average purity 999 with gross and net weight as 45 grams having Assessable value Rs. 2,73,885/-; and (ii) One Gold ring having average purity 998 with gross and net weight as 15 grams having Assessable value Rs.91,295/- the two items collectively valued at Rs.3,65,180/-" recovered from the Pax Raiesh Sankhala and detained vide DR No

DR/INDEL4/12.01.2024/003815 dated 12.01.2024, 09.10.2023 under section 111 (d), 111 (i), 111 (j) and 111 (m) of the Customs Act, 1962;

iv) I also impose a penalty of Rs. 40,000/- (Rupees Forty Thousand Only) on the Pax Rajesh Sankhla under section 112 (a) and 112(b) of the Customs Act, 1962."

8. The Petitioner went in appeal against the above Order-in-Original. In the appeal before the Commissioner of Customs (Appeals), *vide* Order-in-Appeal dated 30th December, 2024, the detained jewellery items were directed to be released, subject to payment of redemption fine, as under:

"ORDER

6.0 In light of discussions and findings as above, I allow the appeal partially against OIO No. 1455/0003518/12.01.2024/WH/2024-25 dated 29.04.2024 passed by the Assistant Commissioner of Customs, T-3, IGI Airport, New Delhi and order that the impugned "One Gold chain having purity 999, weight 45 grams, valued at Rs.2,73,885/- and One Gold ring having purity 998, weight 15 grams having valued at Rs. 91,295/- (both collectively valued at Rs.3,65,180/-) ***be released to the appellant/authorized representative after payment of redemption fine of Rs.37,000/- (Rupees Thirty Seven Thousand Only) under Section 125 of the Customs Act, 1962 along with applicable Customs Duty****. The penalty under Section 112(a) and 112(b) of the Customs Act, 1962 is upheld to Rs.40,000/- (Rupees Forty Thousand Only). The Appeal is disposed off with such modifications and consequential relief as above."*

9. However, the Customs Department has filed a revision petition before the Revisional Authority and the same has not yet been decided.

10. Considering the weight of the detained jewellery being about 60 grams,

these clearly appear to be personal effects and used personal jewellery of the Petitioner. Thus, in view of the settled position of law laid down by the Supreme Court in the ***Directorate of Revenue Intelligence and Ors. v. Pushpa Lekhumal Tolani, [(2017) 16 SCC 93],*** and by this Court in ***Saba Simran v. Union of India & Ors., 2024:DHC:9155-DB*** as also ***Mr Makhinder Chopra vs. Commissioner Of Customs New Delhi, 2025:DHC:1162-DB,*** as to the personal jewellery falling within the scope of personal effects under the 2016 Rules, the detained jewellery deserves to be released.

11. Moreover, the Order-in-Appeal has not been challenged by the Petitioner, and considering the fact that no SCN was issued and detention itself is under a cloud, the Order-in-Appeal is partially directed to be given effect to.

12. Accordingly, let the Petitioner appear before the Customs Authority on 9^{th} June, 2025 and upon paying the redemption fine and penalty of Rs.37,000/- and Rs.40,000/- respectively, the detained jewellery shall be released.

13. In the facts of this case, no warehousing charges shall be collected from the Petitioner and no customs duty would be liable to be charged.

14. 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.

15. The copy of Order-in-Appeal had been handed over and the same is taken on record.

16. Petition is disposed of in these terms. All pending applications, if any, are also disposed of.

PRATHIBA M. SINGH, J.

RAJNEESH KUMAR GUPTA, J.

MAY 29, 2025
Rahul/msh