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* IN THE HIGH COURT OF DELHI AT NEW DELHI

\+ **W.P.(C) 7385/2025**

MOHAMMAD HOSSEIN KARI .....Petitioner

Through: Mohammed Ather Ansari & Mr. S Vijay Kant, Advs.

versus

THE COMMISSIONER OF CUSTOMS OFFICE OF THE COMMISSIONER OF CUSTOMS GENERAL NEW CUSTOM HOUSE & ORS. .....Respondent

Through: Ms. Anushree Narain, SSC, with Ankit Kumar Adv. (M: 9910014337)

CORAM:

JUSTICE PRATHIBA M. SINGH
JUSTICE RAJNEESH KUMAR GUPTA

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

% 27.05.2025

1. This hearing has been done through hybrid mode.

2. The present writ petition has been filed under Articles 226 and 227 of the Constitution of India, *inter alia*, seeking release of the gold jewellery detained by the Customs Department *vide* Detention Receipt dated 19th April, 2023.

3. The Petitioner is a resident of Iran and is an OCI Card Holder bearing No. A- 462782. It is the case of the Petitioner that he was travelling from Iran to India on 19th April, 2023.

4. The Petitioner was intercepted by the Customs Department upon his arrival at the Indira Gandhi International Airport, New Delhi and one silver coated gold bracelet and 2 gold rings weighing a total of 77 grams were seized *(hereinafter 'the detained articles').*

5. It is the case of the Petitioner that an application seeking release of the detained articles was filed on 14th May, 2025. However, no show cause notice *(hereinafter, 'SCN')* was issued with respect to the detention and hence, the Petitioner has filed the present petition seeking release of detained articles.

6. It is also submitted by the ld. Counsel for the Petitioner that the detained articles, being worn by the Petitioner are the personal effects under the Baggage Rules, 2016 *(hereinafter 'the Rules')*.

7. Ms. Narain, ld. Counsel, on instructions submits that the order-in-original was passed on 29th February, 2024, however, ld. Counsel for the Petitioner submits that the same was not served upon the Petitioner. Let a copy be handed over to ld. Counsel for the Petitioner today.

8. A perusal of the order-in-original dated 29th February, 2024 would show that the Petitioner had given a detailed representation and had also sought release of the detained articles. The order-in-original records as under:

> *"4. The Pax Mr. Mohammad Hossein (Pax) submitted a letter on **25.04.2023** for **Re-export** of Goods stating that he had arrived from **Iran** to IGI Airport Terminal-3, New Delhi by the flight **W5071 Dated 19.04.2023** and brought above said detained goods. he further submitted that he regretted his mistake of opting for green channel and also requested for lenient view in the matter. And he is ready to pay the fine and penalty, if any, for the same after taking lenient view as the recovered detained goods were meant for his personal use. he also stated that he did not want any show cause notice and personal hearing in the matter and requested for **order for re-export**."*

9. From the above, it is clear that the Petitioner was made to sign a standard pre-prepared waiver of SCN and personal hearing. Further, the

order-in-original also records that the Petitioner also agreed for re-export of the detained articles.

10. This Court, in various cases has decided upon the issue of standard waiver of SCN. 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,*** this Court 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***
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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."*
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> ***Amit Kumar v. The Commissioner of Customs, 2025:DHC:751-DB***
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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. 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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> * * * *
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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) <u>used personal effects</u> 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.

* * * *

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.

* * * *

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. <u>Gold or silver in any form other than ornaments.</u>
6. Flat Panel (Liquid Crystal Display/Light-Emitting Diode/Plasma) television."

12. 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."***

13. 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__."

14. 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."

15. Further, this Court in ***Mr Makhinder Chopra vs. Commissioner of Customs, New Delhi, 2025:DHC-1162-DB*** has held as under:

*"17. A conspectus of the above decisions and provisions would lead to the conclusion that **<u>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.</u>** 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.*

16. 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.

17. The detained jewellery being personal effects of the Petitioner, and no show cause notice having been issued, 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.

18. In any event, the Petitioner being an Iranian National is willing to re-export the detained articles. In view of the above discussion, the detention of the Petitioner's jewellery is accordingly set aside.

19. The Petitioner may collect the detained jewellery in person or 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.

20. Let the detained jewellery be released within a period of four weeks subject to the condition of re-export.

21. In the fact of this case, it is made clear that no storage charges shall be insisted upon by the Central Warehousing Corporation for release of the detained jewellery to the Petitioner.

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

PRATHIBA M. SINGH, J.

RAJNEESH KUMAR GUPTA, J.

MAY 27, 2025
dj/ss