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

Date of decision: 21st May, 2025

\+ **W.P.(C) 8360/2024**

VARIN MAHATHANAPIBAL .....Petitioner

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

versus

UNION OF INDIA AND ANR .....Respondents

Through: Mr. Aditya Singla, SSC, CBIC with Mr. Raghav Bakshi, Mr. RItwik Saha & Mr. Umang Mishra, Advs.

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 petition has been filed by the Petitioner under Article 226 of the Constitution of India, *inter alia,* seeking release of the jewellery detained by the Customs Department *vide* Detention Receipt dated 26th February, 2023.

3. The case of the Petitioner is that he is a foreign national, holding a Thai passport and was travelling to New Delhi from Thailand on 26th March, 2023, when he was intercepted by the Customs Department. The Customs Department is stated to have seized one silver coated metal *kada,* appearing to be gold, weighing 250 grams (hereinafter "*the detained jewellery*"). The Show Cause Notice dated 17th August, 2023 has also been issued to the Petitioner.

4. On the last date of hearing, *i.e.,* 27th March, 2025, the Court had heard

the parties at length and it was submitted that the detained jewellery had been disposed of. In view thereof, the Court had passed the following order:

> *"4. The Court has heard the matter at length. It appears that a Show Cause Notice has been issued by the Department in the matter on 7th August, 2023 and one silver coated metal kada made of gold having total weight of 250 gms valued at Rs.12,54,750/- has also been disposed of. The stand of the Customs Department is that an intimation was given prior to the disposal of the gold.*
>
> *5. Let the proof of intimation be placed on record on the next date of hearing.*
>
> *6. In addition, the value of the gold which has been sold and the amount released shall also be placed on record."*

5. Today, Mr. Singla, ld. Senior Standing Counsel appearing for the Customs Department, has placed on record the proof of intimation of the sale of the detained jewellery. As per the same, sale of the detained jewellery was duly communicated to the Petitioner through the Embassy *vide* letter dated 25th April, 2023. The office of the Commissioner has also given a communication to the following effect:

> *"The goods detained vide DR No. 001355 dated 26.02.2023 in the case of Mr Varin Mahathanapibal has been inventoried on 12.05.2023 and handed over to SPMCIL on 15.05.2023. Approx 12,71,660/- has been realised in proportion to the quantity of the gold of the pax. Further. Approx. Rs. 204/- against photography charges, Rs. 4869/- Melting and refining charges, and Rs. 30 Assay charges have been incurred by the department for processing of the gold. Therefore, the net value of the seized gold of the pax comes to Rs. 12,66,557/-. "*

6. Heard the ld. 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 Baggage Rules, 2016 (hereinafter "*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.*
>
> *   *   *   *
>
> *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.

* * * *

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."

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.***

* * * *

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. However, there is another issue that is required to be considered in the present matter *i.e.,* limited applicability of Rules *qua* a foreign national.

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 Thai 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 Court is inclined to allow the present writ petition.

19. However, the detained jewellery has already been disposed of by the Customs Department. This Court in ***Gor Sharian vs. The Commissioner of Customs, 2025:DHC:950-DB,*** was dealing with a similar situation where the detained goods were disposed of by the Customs Department without any intimation to the passenger. The Court was of the view, in the facts of that case, that the passenger would be entitled to the prevalent market rate of the disposed of goods. The relevant portion of the said order reads as under:

> *"14. The above conduct of the Customs Department is completely unreasonable, arbitrary and untenable. The*

Ld. Counsel for the Department has relied upon a Circular dated 6th September, 2022, which prescribes the manner in which the gold has to be returned. The relevant paragraph of the said Circular is extracted hereinbelow:

> *"3.1.2 Whenever seized gold has to be returned on account of any order from a judicial forum and the gold has already been disposed of, the amount to be refunded in lieu of such gold shall be calculated as given below:*
> *i. If the seizure is made in the Customs area, calculation shall be based on the tariff value of gold on the date of transfer of such seized/confiscated gold to SPMCIL; and*
>
> *ii. If the seizure is made at any place other than Customs area, calculation shall be based on the average market price of gold on the date of transfer of such seized/confiscated gold to SPMCIL."*

[...]

17. The disposal of the detained gold without intimation to the Petitioner is also contrary to law. Clause 3.1.2 of the Circular dated 6th September, 2022 would, therefore, have no application in the present case. The entire process followed by the Customs Department for the disposal of the detained gold, collecting the redemption fine and penalty as also deducting customs duty before payment of the value of the detained gold to the Petitioner would, therefore, not be tenable.

18. The Petitioner having succeeded in appeal before the Commissioner of Customs (Appeals) and the Customs Department having not challenged the Order-in-Appeal, the Petitioner cannot be made worse off at this stage. 19. Under these circumstances, this Court is of the opinion

> *that the Petitioner is entitled to the entire value of the detained gold as on the market rate prevalent today, which would be liable to be paid by the Customs Department within a period of three weeks. If the said amount is not paid within three weeks, costs of Rs.1,00,000/- would be liable to be paid by the Customs Department to the Petitioner.*
>
> *[...]*
>
> *22. In addition, the Customs Department shall ensure in future that the intimation of disposal of detained or confiscated property is given to the concerned party both via email as also the mobile number, so that the said party who has succeeded in Court or Tribunal against the detention of the property, are not deprived of their properties, as has happened in the present case."*

20. Thus, in view of the above discussion, let the amount which has been realized by the Customs Department be paid to the Petitioner with 6% statutory interest from the date of disposal *i.e.,* 15th May, 2023. The payment be credited by 15th July 2025, failing which the Petitioner is free to move an application for payment of prevalent market rate of gold with interest.

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

PRATHIBA M. SINGH
JUDGE

RAJNEESH KUMAR GUPTA
JUDGE

MAY 21, 2025
Rahul/msh