$~1(SDB)

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

\+ **W.P.(C) 8217/2025**

NITISH KHARBANDA .....Petitioner

Through: Ms. Richa Kumari, Mr. Pawan, Mr. Tarun Gulia & Mr. Yatin Bhtani, Advs.

versus

COMMISSIONER OF CUSTOMS .....Respondent

Through: Mr. Aditya Singla, SSC CBIC with Ms. Arya Suresh Nair, Ms. Shreya Lamba, Advs.

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE SHAIL JAIN

O R D E R

% 06.02.2026

1. The hearing has been done through hybrid mode.

CM APPL. 8165/2026 (for modification) in W.P.(C)-8217/2025

2. This is an application filed by the Respondent-Commissioner of Customs under Section 151 of the Code of Civil Procedure, 1908 seeking modification of order dated 23rd July 2025 read with order dated 18th December, 2025 whereby the goods of the Petitioner have been directed to be released.

3. In this matter, no Show Cause Notice (hereinafter, '*SCN*') was issued to the Petitioner and following the decision in ***Amit Kumar v. The Commissioner of Customs**, **2025:DHC:751-DB,*** this Court had directed release of the goods of the Petitioner on the ground that no SCN had been issued. The relevant portion of the order dated 23rd July, 2025 passed by the this Court reads as under:

> *"5. Heard. This Court has already held in the case of **Amit Kumar v. The Commissioner of Customs,***

2025:DHC:751-DB *that such waiver of SCN and personal hearing that too when obtained on a Standard Performa, would be contrary to law. 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 lipservice. 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*
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> *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.*
>
> *xxxx*
>
> *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."

6. Accordingly, since there is no SCN issued in this matter, no personal hearing was given at all to the Petitioner and no Order-in-Original has been passed, the detention is no longer tenable. Moreover, the personal hearing notice has also been issued to the Petitioner after more than one year of detention. Accordingly, the detention is set aside. The goods of the Petitioner shall be released within four weeks subject to payment of entire warehousing charges. The warehousing charges shall be payable in terms of applicable charges on the date of detention.
7. Accordingly, the petition stands disposed of. Pending applications, if any, are also disposed of."

4. Thereafter, the Supreme Court has also rendered the decision being ***Union of India & Anr. v. Jatin Ahuja, Civil Appeal No. 3489/2024*** wherein it was held that without a SCN under Section 110 of the Customs Act, 1962, the goods of the Petitioner would be liable to be released unconditionally. The relevant observation in ***Union of India & Anr. v. Jatin Ahuja (Supra)*** are as under:

"17. It is difficult for us also to subscribe to the views expressed by the Bombay High Court in Jayant Hansraj Shah's case (supra). ***We are of the view that the only power that has been conferred upon the Revenue to extend the time period is in accordance with the first proviso to Sub-section (2) of Section 110 of the Act, 1962. The Delhi High Court is right in saying that any***

effort to say that the release under Section 110A of the Act, 1962 would extinguish the operation of the consequence of not issuing show-cause notice within the statutory period spelt out in Section 110(2) would be contrary to the plain meaning and intendment of the statute.

18. The Delhi High Court has done well to explain that this is so because Section 110A, is by way of an interim order, enabling release of goods like fast moving or perishable etc. The existence of such power does not, in any way, impede or limit the operation of the mandatory provision of Section 110(2).

19. ***In the case in hand, indisputably the car was seized under sub-section (1) and furthermore no notice in respect of the goods seized was given under clause (a) of section 124 of the said Act within six months of the seizure. The consequence, therefore, in such a case is that the goods shall be returned to the person from whose possession they were seized. The first proviso to sub-section (2) of section 110 of the said Act, however, provides that the Principal Commissioner of Customs or Commissioner of Customs may, for reasons to be recorded in writing, extend the six months' period by a period not exceeding six months and inform the person from whom such goods were seized before the expiry of the period so specified. The proviso therefore contemplates that the period of six months mentioned in sub-section (2) of section 110 of the said Act can be extended by the higher authority for a further period not exceeding six months, for reasons to be recorded in writing. The proviso also requires the higher authority to inform this to the person from whom such goods were seized before the expiry of the period of six months mentioned in sub-section (2) of section 110.*** *We find that in respect of the seized car, there is neither any notice under clause (a) of section 124 issued to the respondent within six months of the seizure nor the* *period of six months ever came to be extended for a further period of six months.* ***<u>In the absence of there being any notice as required by the first proviso even within the extended period upto one year, the consequence that ought to follow is release of the seized car.</u>***

[...]

24. The appeals before us are all anterior in time to the coming into force of the second proviso to Section 110(2) of the Act, 1962. Although, it is not necessary for us to say anything further, yet ***<u>we may clarify that the time period to issue notice under Clause (a) of Section 124 is prescribed only in sub-section (2) of Section 110 of the Act, 1962. This time period has nothing to do ultimately with the issuance of show-cause notice under Section 124 of the Act, 1962. The two provisions are distinct and they operate in a different field."</u>***

5. In the present application, the prayer is that the Petitioner ought to pay applicable customs duty.

6. Considering that the detained goods *i.e.,* one gold *kada*, weighing 100 grams and one gold chain, weighing 75 grams are *personal effects* of the Petitioner, customs duty would not be liable to be paid by the Petitioner.

7. Insofar as the Customs Department intending to file an Special Leave Petition (hereinafter, *'SLP'*) is concerned, the protection has already been granted for a period of six months from 18th December, 2025 that the goods shall not be disposed of by the Petitioner.

8. Even as of today, it is not clear if the SLP has been filed by the Customs Department or not. In any event, it is clarified that the release of the goods of the Petitioner shall be subject to the outcome of the SLP, if any, filed by the

Customs Department.

9. Accordingly, let the goods of the Petitioner be released. It is made clear that warehousing charges shall not be charged from 23rd July, 2025 till the date of release.

10. No further directions are called for in this petition.

11. The Petitioner shall appear before the Customs Department on **25th February, 2026 at 11:00 AM** in person or through an Authorised Representative, in which case, a proper email from the Petitioner or some form of communication to be sent to the Customs Department that the Petitioner has authorised the concerned Authorised Representative to appear on behalf of the Petitioner.

12. The Nodal Officer mentioned below shall facilitate the Petitioner's appearance before the competent authority for compliance with the present order:

Mr. Mukesh Gulia, Superintendent, Legal
Office of Commissioner, Customs
IGI Airports, T-3, New Delhi
Email id: igilegaldelhi@gmail.com

13. The application is disposed of in the aforesaid terms.

PRATHIBA M. SINGH, J.

SHAIL JAIN, J.

FEBRUARY 06, 2026
kk/ck