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

\+ **W.P.(C) 9083/2025**

INDERPAL SINGH .....Petitioner

Through: Dr. Ashutosh and Ms. Fatima, Advocates.

versus

COMMISSIONER OF CUSTOMS .....Respondent

Through: Mr. Gibran Naushad, Sr. Standing Counsel with Mr. Harsh Singhal and Mr. Suraj Shekhar Singh, Advocates.

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE RAJNEESH KUMAR GUPTA

O R D E R

% 23.07.2025

1. This hearing has been done through hybrid mode.

2. The present petition has been filed on behalf of the Petitioner-Inderpal Singh under Articles 226 and 227 of the Constitution of India *inter alia* assailing the detention order dated 23rd January, 2024 *(hereinafter, 'detention order')*, vide which, goods of the Petitioner being, one gold chain weighing 60 grams and 4 I-Phone 15 pro max mobile phones, were seized by the Customs department.

3. A brief background of the case is that on 23rd January, 2024 the Petitioner arrived at the Indira Gandhi International Airport, New Delhi from Sharjah, Dubai. He was wearing a gold chain weighing about 60 grams and was carrying with himself four I-Phone 15 pro max (250gb) mobile phones. The said goods were seized by the Customs department.

4. Thereafter, vide the Order-in-Original dated 29th March, 2024, the office of the Commissioner of Customs ordered confiscation of the goods of the Petitioner in the following terms:

"ORDER

i) I deny the 'Free Allowance' if any, admissible to the Pax Inderpal Singh 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, Inderpal Singh, is 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 "Four I Phone 15 PRO MAX 256 GB, valued at Rs.4,76,246.60" recovered from the Pax Mr. Inderpal Singh and detamed vide DR No. DR/INDEL4/23.01.2024/003595 dt. 23.01.2024 under section 111(d), 111(j) and 111(m) of the Customs Act, 1962;***

*iv) I order confiscation of "One gold chain having par****ity 987, weight 60 grams, valued at Rs.3,67,045" recovered from the Pax Mr. Inderpal Singh and detained vide DR No. DR/INDEL4/23.01.2024/003595 dt. 23.01.2024 under section 111(d), 111(j) and 111(m) of the Customs Act, 1962****;*

v) ***I give an option to redeem the goods confiscated, above at sub-para (iv) above only on payment of fine of Rs.45,000/- (Rupees Forty Five Thousand Only) along-with applicable rate of Customs duty on tariff valuation as on the date of detention of goods.*** *I allow release of the detained goods within 120 days of issue of this order under Section 125(3) of Customs Act, 1962. The redemption is to be allowed after the completion of legal formalities in this regard and also fulfillment of any regulatory clearances/approvals required. The offer of redemption, if accepted, shall be subject to*

condition that the Pax shall not dispute the identity and valuation of the detained goods. The offer of redemption shall cease after 'One Hundred Twenty Days' from date of the receipt of this order;
vi) ***<u>I also impose a penalty of Rs.85,000/- (Rupees Eighty Five Thousand Only) on the Pax Mr. Inderpal Singh under section 112 (a) and 112(b) of the Customs Act, 1962</u>.***"

5. The case of the Petitioner is that the gold chain is a personal effect of the Petitioner in terms of the Baggage Rules, 2016. Further, no Show Cause Notice has been issued till date and no personal hearing has been given.

6. On behalf of the Respondent, reliance is placed upon the waiver of the oral show cause, which was signed by the Petitioner.

7. Such an oral show cause would not be valid in law as per the principles laid down in ***Amit Kumar v. Commissioner of Customs [(2025) SCC OnLine Del 647].*** The relevant extract of the said decision reads as under :

> *"15. A perusal of Section 124 of the Act would show that even after an oral show cause notice is given, the authority has the discretion to issue supplementary notice under circumstances which may be prescribed. For ready reference, Section 124 of the Act is set out below:—*
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> *"**124. Issue of show cause notice before confiscation of goods, etc**.— No order confiscating any goods or imposing any penalty on any person shall be made under this Chapter unless the owner of the goods or such person—*
>
> > *(a) is given a notice in [writing with the prior approval of the officer of Customs not below the rank of [an Assistant Commissioner of Customs], informing] him of the grounds on which it is proposed to confiscate the goods or to impose a penalty;*

(b) is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of confiscation or imposition of penalty mentioned therein; and

(c) is given a reasonable opportunity of being heard in the matter:

Provided that the notice referred to in clause (a) and the representation referred to in clause (b) may, at the request of the person concerned be oral.
[Provided further that notwithstanding issue of notice under this section, the proper officer may issue a supplementary notice under such circumstances and in such manner as may be prescribed.]"

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 lip-service. 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 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.

18. A Co-ordinate Bench of this Court recently in Mohammad

Zaid Saleem v. The Commissioner of Customs (Airport & General) [W.P.(C) No. 2595/2019], has held clearly that if a SCN is not given within six months of the seizure, the goods would be liable to be released. The relevant portion of the above stated judgment is extracted below:

> *"Before parting with this petition, it is pertinent to note that the matters in issue in the present matter are squarely covered by decision in the case of Chaganlal Gainmull v. Collector of Central Excise, where it was held that if the show cause notice was not issued within six months from the date of seizure, the consequence would be that the person from whom the gold was seized would become entitled to its return. Although the aspect of extension of period of detention for another six months vide the Proviso to Section 110(2) of the Act was introduced w.e. f 29.03.20184 the ratio still holds sway to the effect that issuing of notice to the owner for detention of seized goods is mandatory and the Apex Court frowned upon the fact that no explanation was offered by the Respondents as to why they were constrained to dispose of the seized gold, when it was neither perishable nor hazardous, and there was no answer as to why the gold was disposed of without any notice being issued to the person from whom it was seized."*

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."

8. However, in the present case, an Order-in-Original has been passed directing absolute confiscation of the phones and some fines, *etc.,* Further, a

penalty to the tune of Rs. 85, 000/- has also been imposed on the Petitioner.

9. The Order-in-Original dated 29th March, 2024 is an appealable order. Though the time for appeal has already lapsed, considering the fact that no personal hearing had been granted in this case, the Petitioner is permitted to file an appeal before the Appellate Authority within thirty days. The same shall be disposed of within three months from the date of filing of the appeal.

10. Insofar as the gold chain of the Petitioner is concerned, subject to payment of Rs. 45,000/- the gold chain may be released to the Petitioner.

11. It is made clear that the appeal would only be related to the four iPhone Pro Max detained vide the detention order.

12. Upon payment of Rs. 45,000/-, the warehousing charges and all the other duties will be waived off, insofar as the gold chain is concerned.

13. The petition is disposed of in these terms. Pending application(s), if any, also stand disposed of.

PRATHIBA M. SINGH, J.

RAJNEESH KUMAR GUPTA, J.

JULY 23, 2025/*nd/rks*