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

Date of decision: 22nd January, 2025.

+ **W.P.(C) 10482/2024**

ANJALI PANDEY

.....Petitioner

Through: Mr. D.S. Chadha, Adv. (Mob: +919818563676)

versus

UNION OF INDIA AND ORS

.....Respondents

Through: Mr. Anurag Ojha, Senior standing Counsel with Mr. Subham Kumar, Mr. Vipul Kumar and Mr. Dipak Raj, Advocates (Mob: +916200388793)

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE DHARMESH SHARMA

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.

Brief Background

2. The present petition has been filed under Article 226 and 227 of the Constitution of India seeking issuance of an appropriate writ for directing the Respondents to release and return the seized gold ornaments belonging to the Petitioner.

3. The Petitioner is a Thai national who had travelled to Delhi from Thailand on 13th March, 2024. Upon her arrival at the Indira Gandhi International Airport, New Delhi, she was intercepted by the Customs officials who enquired as to whether she was carrying any gold. The Petitioner was wearing three gold bangles which she showed to the Customs officials. Thereafter, the Petitioner was asked to take them off and the said bangles were seized. A detention receipt was issued on the same date *i.e.*, 13th March, 2024.



4. According to the Petitioner, the said gold bangles were part of the jewellery which she was wearing in the usual course and there was nothing special in the same. The Petitioner's three gold bangles weighed about 113 Kgs valued at about Rs.7,42,410/- as per the detention receipt. After the gold bangles were seized, no show cause notice has been issued to the Petitioner till date. Hence, the present writ petition has been filed seeking return of the said gold bangles.

5. On 30th August, 2024, the Court had issued notice to the Respondents in this writ petition and a counter affidavit was sought.

Submissions of the Parties

6. The Petitioner has filed written submissions and has relied upon various decisions of this Court and the Supreme Court, including the judgement in ***Directorate of Revenue Intelligence & Ors. v. Pushpa Lekhumal Tolani***, (2017) 16 SCC 93, wherein the Court has considered jewellery to be part of personal effects.

7. Ld. Counsel for the Petitioner has also relied upon the decision of this Court in ***Nathan Narayansamy v. Commissioner of Customs, W.P.(C) 6855/2023*** passed on 15th September, 2023, to submit that gold being part of the personal effects of the tourist of foreign origin could not have been seized by the Customs Department.

8. In the counter affidavit the stand of the Department is that jewellery is excluded from the ambit of 'personal effects'. Mr. Jha, Ld. Counsel for the Department, submits that in terms of the Baggage Rules, 2016 (hereinafter "***Baggage Rules***"), since there was an exclusion of jewellery, whenever any foreign tourist carries jewellery, the same ought to be declared.



Analysis & Findings

Jewellery vis-à-vis personal effects under the Baggage Rules, 2016

9. The present case would be governed by the Baggage Rules that came into force on 1st April, 2016, passed under Section 79 of the Customs Act, 1962 (hereinafter “the Act”). The relevant provisions of the Baggage Rules *qua* personal effects and jewellery are reproduced hereinunder for ease of reference:

“2(vi) “Personal effects” means things required for satisfying daily necessities but does not include jewellery.

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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) 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.

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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.*

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

10. It can be seen from the said rules that a tourist of foreign origin is allowed clearance of articles free of duty as part of his baggage that are either his personal effects and travel souvenirs or are articles that are not prohibited, as mentioned in **Annexure - I** of the Baggage Rules, up to the value of fifteen thousand rupees, if the same are carried on the person or in the accompanied baggage of such tourist.

11. Further, any jewellery of twenty grams with a value cap of Rs. 50,000/- in case of a man and forty grams with a value cap of Rs. 1,00,000/- in case of a woman, only can be cleared free of duty upon return to India, subject to the condition that the concerned passenger is residing abroad for more than one year.



12. The Court notes the Guide for Travellers, prepared by the Central Board of Indirect Taxes & Customs (hereinafter “CBIC”), wherein in respect of jewellery, it is stated as under:-

“Question 6. Who can bring Jewellery as baggage, free of duty?”

Ans. An Indian passenger who has been residing abroad for over one year is allowed to bring jewellery, free of duty in his bonafide baggage upto 20 grams with a value cap of Rs. 50,000/- (in case of a gentleman passenger) or up to 40 grams with a value cap of Rs. 1,00,000/- (in the case of a lady passenger).”

13. The Indian Customs Declaration Form (hereinafter “Declaration Form”) issued by the CBIC as part of the Guide for Travellers has also been perused by the Court, which would show that gold and gold jewellery is being treated as prohibited articles where the same is beyond the prescribed limits under Rule 5 of Baggage Rules, including gold bullion.

14. The Supreme Court in ***Pushpa Lekhumal Tolani (supra)***, has considered whether jewellery being carried by a tourist as part of her baggage would qualify as smuggling under the Act read with the Baggage Rules, 1998, that was in force during the relevant period. The Supreme Court clearly holds that it is not permissible to completely exclude jewellery from the ambit of ‘personal effects’. Accordingly, the Court declared that the seized jewellery items therein were the *bona fide* jewellery of the tourist for her personal use and was intended to be taken out of India. The relevant extract from the judgment of the Supreme Court is also set out below:-

“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.**

Conclusion:

16) We are of the considered opinion that in the absence of any facts on record about the nature and mode of concealment and also any finding of the lower authority that jewellery was kept in a way to evade detection on examination of the baggage, it has to be held that there was no concealment as such. It is seen that the respondent chose the Green Channel for clearance of her baggage. She committed no violation of law or infraction of any instruction for clearance of the baggage through the green channel as she being a tourist had no dutiable goods to declare under the Baggage Rules. The presumption that the jewellery found in her baggage cannot be considered as personal effects owing to its high monetary value is rebutted herewith and we hold that the respondent was entitled to import personal jewellery duty free.

17) In the facts and circumstances of this case, it will be just and proper to expunge the remarks against the appellant from the judgment passed by the High Court. Therefore, the strictures passed against the appellant are expunged.

18) In view of the foregoing discussion, we are of the



considered opinion that the High Court was right in setting aside the show-cause notice dated 12.12.2002 and order dated 14.08.2003 passed by the competent authority. There is no scope to interfere in the orders passed by the Division Bench of the High Court. There is no merit in this appeal and the appeal is, therefore, dismissed with no order as to costs. However, it is made clear that the present conclusion is confined only to the disposal of this appeal.”

15. In ***Saba Simran v. Union of India & Ors., (2024:DHC:9155-DB)*** 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 Court considered the ambit of ‘personal effects’ *vis-à-vis* jewellery under the Baggage Rules, in effect from time to time. The relevant paragraphs of the said judgement are as under:

“13. When the 2016 Rules ultimately came to be promulgated, Rule 2(vi) specifically introduced a definition with respect to “personal effects”. As noticed in the preceding parts of this judgment, Rule 2(vi) while defining “personal effects” explicitly excludes items of jewellery. The word ‘jewellery’ as it now appears in that definition clause must necessarily be read in conjunction with the previous versions of the Baggage Rules which operated from time to time as well as the clarificatory Circular referred to above. However, both Rules 3(a) as well as 4(b) employ the phrase “used personal effects” and which expression existed even in the prior versions of the rules and have been noticed hereinabove.

14. Rule 2(vi) of the 2016 Rules essentially adopts the same concept of ‘used personal effects’ as was intended under the 1998 Rules, and by way of abundant caution, a definition now stands placed in the 2016 Rules and which purports to define the expression “personal effects” with sufficient clarity. However, the same would not detract



from the distinction which the respondents themselves acknowledged in the Circular and intended customs officers to bear in mind the distinction which must be recognised to exist when construing and identifying 'personal jewellery' as opposed to 'jewellery' per se.

*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.***

16. 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.

Applicability of the Baggage Rules qua tourists of foreign origin

17. The issue of tourists of foreign origin coming to India with jewellery has been dealt with by this Court in various decisions, including in the following:

- i) *Nathan Narayansamy v. Commissioner of Customs (supra)*;
- ii) *Farida Aliyeva v. Commissioner of Customs, (2024:DHC:9533-DB)*

18. In *Nathan Narayansamy (supra)* the Co-ordinate Bench of this Court was dealing with a similar situation wherein certain jewellery was recovered and seized from the baggage items of a tourist holding Malaysian passport. The Court considered the provisions of the Baggage Rules qua a tourist of foreign origin and 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."

19. Thus, in ***Nathan Narayansamy (supra)***, the Coordinate Bench of this Court has clearly held that the Baggage Rules would not have any application to foreign nationals. Further, the predecessor Bench of this Court in ***Farida Aliyeva (supra)*** while relying upon with approval on the decision in ***Nathan Narayansamy (supra)***, directed release of jewellery seized from a tourist who was travelling from Azerbaijan to India.

20. Admittedly, the Petitioner is a foreign national coming from Thailand. She visits India once or twice a year to see her parents and family. The three gold bangles that she may have worn would be a part of her personal effects and there was no requirement for her to declare the same.

21. It is also noted that though the detention receipt of the gold bangles had been issued way back on 13th March, 2024 but till date no show cause notice has been issued. As can be seen from the said detention receipt, no contact details of the Petitioner have been noted in the same and therefore, it is inexplicable as to how the Customs Department had intended to issue the show cause notice to the Petitioner without the contact details.

22. The present case is fully covered by the decision in ***Nathan Narayansamy (supra)*** and ***Farida Aliyeva (supra)*** as also ***Saba Simran (supra)*** as relied upon by the Petitioner.

23. It is also relevant to note the recent decision of this Court in ***Qamar Jahan v. Union of India, represented by Secretary, Ministry of Finance &***



Ors. (2025:DHC:174-DB), wherein the Court has taken into consideration the Baggage Rules and the various other cases where *bona fide* tourists and travellers could be put into difficulty in view of the Baggage Rules. The Court had directed as under:

“11. On a query from the Court, Mr. Shubham Tyagi, *Id. Counsel for the Customs Department*, as also Mr. Harpreet Singh, *Id. Counsel*, who regularly appears for the Customs and is present in Court, have informed the Court, that if any traveller is coming from abroad and is carrying jewellery which is more than the value as prescribed in Rule 5 of the Baggage Rules, the same would have to be declared by the said traveller. Further, where the declaration has been made the applicable duty would not have to be paid and an undertaking would have to be given, *inter alia*, stating that the said traveller intends to carry the declared jewellery back.

12. A perusal of the Baggage Rules or the Declaration Form does not show that this position, *qua* declaration of the jewellery, is duly clarified to travellers/tourists visiting India.

13. It is seen by this Court in a number of writ petitions, that even small quantities of jewellery is sometimes seized by the Customs Department if the passenger is walking through the green channel - which is for passengers not having any dutiable or prohibited goods. Moreover, the Court is of the view that the Baggage Rules may also require a re-look, considering the market rate of gold at present, where forty grams of gold would be costing much more the value cap of Rs. 1,00,000/- prescribed under Rule 5 of Baggage Rules. With the maximum limit of Rs.1,00,000/-, the gold that could be purchased may only be around 15 grams.

14. The *Id. Counsel for the Customs Department* also points out that there are many cases, wherein it is seen that travellers are undertaking frequent travel almost



every week or two weeks, with the sole intention to smuggle gold into India.

15. While, there is no doubt that any illegal smuggling of gold deserves to be curbed, at the same time, bona-fidely and genuine tourists/travellers, including people from Indian Origin such as the OCI Cardholders, PIOs etc., could be travelling for social engagements in India or social events such as marriages etc., with gold, which could be of a much higher value than the permissible limits. Such tourists and travellers ought not to be expected to file detailed declarations, which could make the entire process of entering India and exiting from airports extremely unfriendly or onerous.

16. The Customs Officials in such cases would also be vested with too much arbitrary power and discretion, which may result in harassment of genuine passengers.

17. Accordingly, this Court of the view that the Baggage Rules are required to be re-looked by the CBIC and a policy decision ought to be taken by the Government of India on both fronts:-

- (i) to ensure that there is no harassment of genuine tourists and travellers, whether Indian or foreigners into India;*
- (ii) that illegal smuggling of gold is properly curbed.*

18. The values of gold that would be permissible under the Baggage Rules would also have to be re-looked by the CBIC as the same appears to be completely not in tune with the current market value of gold.

19. Let this matter be referred to the Chairman, CBIC for reconsideration of the Baggage Rules 2016. Let the reconsideration be undertaken in coordination with any other Departments or Ministries as may be required and the report be filed before this Court regarding the reconsideration and the manner thereof. The report shall be filed by the next date of hearing."



24. A perusal of the above discussion makes it clear that the Baggage Rules have to be interpreted in a manner that does not lead to unnecessary burden upon the tourist, being either of Indian or foreign origin. Accordingly, the term “personal effects” cannot exclude personal jewellery or ornaments, as is clear from a harmonious reading of the Baggage Rules.

Conclusion and Directions

25. Considering the above discussion, the jewellery of the Petitioner which has been seized deserves to be released. Let the same be released within a period of two weeks from today to the Petitioner.

26. If the said jewellery has been disposed of for any reason, then the value of the seized jewellery as on date shall be paid to the Petitioner within a period of four weeks. If the same is not paid by 15th March, 2025, interest @8% p.a. would also be liable to be paid by the Customs Department.

27. The Petitioner shall collect the seized gold bangles or the monetary compensation, as the case may be, in person from the Customs Department.

28. Further, considering the large number of cases where the Customs Department has seized or detained jewellery from tourists, either of Indian or foreign origin, and the directions passed by this Court in *Qamar Jahan (supra)* to the Central Board of Indirect Taxes (hereinafter “CBIC”) to reconsider the Baggage Rules, the Court deems fit to pass the following directions for the interim period till the CBIC has reconsidered the Baggage Rules:

- i. Detention receipt should contain contact details of the tourist including email address and mobile/ WhatsApp number;
- ii. Coloured images of the gold ornaments/ jewellery detained from



the tourist should be attached to the detention receipt;

iii. Copy of the said images should be provided to the concerned tourist and the same shall also be retained on record of the Customs Department.

29. The above directions shall be followed henceforth by the Customs Department in all cases where jewellery is seized or detained from tourists of either Indian or foreign origin.

30. Let the said directions be also taken into consideration by the Chairman, CBIC while reconsidering the Baggage Rules pursuant to the directions passed by this Court in *Qamar Jahan (surpa)*.

31. Registry is directed to communicate this order to the OSD (Legal), CBIC through email (Osd-legal@gov.in) for necessary information and compliance. Let Mr. Anurag Ojha, Id. Counsel, also communicate this order to the OSD (Legal), CBIC for necessary information and compliance.

32. Petition is allowed in above terms. Pending applications, if any, are also disposed of.

PRATHIBA M. SINGH, J.

DHARMESH SHARMA, J.

JANUARY 22, 2025/ns/ms