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

\+ **W.P.(C) 10928/2025**

HARDYAL SINGH .....Petitioner

Through: Ms. Richa Kumari, Mr. Pawan & Mr. Prashant Chaudhary, Advs.

versus

COMMISSIONER OF CUSTOMS .....Respondent

Through: Ms. Monica Benjamin, SSC with Ms. Nancy Jain Adv. (8882573792)

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE SHAIL JAIN

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

% 31.07.2025

1. This hearing has been done through hybrid mode.

2. The present petition has been filed by the Petitioner- Hardyal Singh under Article 226 of the Constitution of India, *inter alia*, seeking release of the following goods:

- One gold chain, weighing 105 grams;
- Two iPhone 15 Pro Max (256 GB)

The said goods have been seized by the Customs Department *vide* detention receipt bearing no. 4091 dated 27th March 2024 (New detention receipt no. 54089 dated 31st May 2024)

3. The case of the Petitioner is that he had arrived from Dubai to New Delhi on 27th March 2024. Upon arrival at the Indira Gandhi International Airport, New Delhi, the Petitioner was intercepted by the concerned officials of the Customs Department and above-mentioned goods of the Petitioner were

detained.

4. The appraisement of the said goods is stated to be done on 31st May 2024. However, no Show Cause Notice (hereinafter, '*SCN*') was issued in this matter in terms of Section 110 of the Customs Act, 1962 and no personal hearing has also been granted to the Petitioner till the filing of the present writ petition.

5. Ld. Counsel for the Petitioner submits that after filing of the present writ petition, a personal hearing notice has been received calling the Petitioner for personal hearing on 4th August 2025, 11th August 2025 and 18th August 2025.

6. Ms. Monica Benjamin, ld. SSC for the Respondent hands across a copy of the standard form waiver signed by the Petitioner's authorized representative, who has also signed the *Vakalatnama* in the present writ petition. As per the said standard form, the Petitioner has waived the SCN and personal hearing in this matter. The said standard form also states that oral SCN has been received by the Petitioner.

7. Heard. This Court has repeatedly held that even if the SCN has been waived and oral SCN has been given to the Petitioner, personal hearing cannot be waived. This has been clarified in the decision ***Amit Kumar v. The Commissioner of Customs, 2025:DHC:751-DB*** and ***Mr Makhinder Chopra vs Commissioner of Customs New Delhi, 2025:DHC:1162-DB.*** 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 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.

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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"

8. Further, this Court in ***Makhinder Chopra (Supra)*** had analysed Section 124 of the Customs Act, 1962 while considering the issue of waiver of Show Cause Notice and personal hearing. The Court while relying on the decision in ***Amit Kumar (Supra)*** held as under:

"23. As mentioned above, the Customs Department has relied upon the undertaking in a standard form dated 17th June, 2024 signed by the Petitioner, wherein the Petitioner has waived of issuance of the show cause notice and personal hearing. It is admitted position that no show cause notice has been issued to the Petitioner on the basis of the said undertaking.

24. The issuance of a show cause notice before confiscation of goods by the Customs officials is covered under Section 124 of the Act, which reads as under: "

"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."

25. ***A perusal of the above Section would show that the principles of natural justice have to be followed by the Customs Department before detention of the goods. The Section provides a three-fold requirement:***

i) a notice in writing informing the grounds of confiscation;

ii) An opportunity of making a representation in writing against the said grounds of confiscation;

iii) A reasonable opportunity of personal hearing.

*26. In terms of proviso to the said Section, the Customs Authority may issue an oral show cause notice to the tourist in lieu of a written show cause notice at the request of the said tourist. **However, in the opinion of the Court the undertaking in a standard form as relied upon by the Customs Department waiving the issuance of show cause notice and personal hearing would not satisfy the requirements of Section 124 of the Act.***

27. This Court recently in Amit Kumar v. The Commissioner of Customs, 2025:DHC:751 DB was considering similar facts wherein the Petitioner had also signed an undertaking waiving show cause notice and personal hearing. The Court had analysed and discussed the validity of such undertaking vis-à-vis Section 124 of the Act. [...]

*28 **In view of the above observations, it is clear that the undertaking signed by the Petitioner in the present case cannot be sustained in law**. Accordingly, the Customs Department has failed to satisfy the requirements of Section 124 of the Act in the present case. Therefore, the detention of the Petitioner's gold chain has to be set aside.*

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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.**"*

9. Thus, the law is well settled, that the Customs Department cannot rely

on pre-printed waiver of SCN as the same would be contrary to the requirement of Section 124 of the Customs Act, 1962. In light of the above discussions, it is clear that the continued detention or seizure of goods by the Customs Department would be untenable in law, where the SCN or the personal hearing have been waived *via* a pre-printed waiver.

10. Section 110 of the Customs Act, 1962 itself is very clear that once the goods are detained, it is mandatory to issue a SCN and afford a hearing to the Petitioner. The time prescribed under Section 110 of the Customs Act, 1962, is a period of six months and subject to complying with the formalities, a further extension for a period of six months can be taken by the Department for issuing the SCN.

11. On facts, the goods of the Petitioner were seized on 27th March 2024 and more than one-year period itself has elapsed. Since no SCN has been issued in the present case, the detention itself becomes untenable.

12. In the present case as also in several other cases, it is noticed that whenever a person approaches the Court by filing a writ petition, immediately within the next two days, notice for personal hearing is issued despite no SCN having been issued.

13. Under such circumstances, the notice of personal hearing recently issued to the Petitioner would be of no help to the Customs Department to stop the release of the detained goods.

14. In terms of the settled precedents, the gold chain would also clearly constitute as a '*personal effect*' of the Petitioner under the Baggage Rules, 2016. Under such circumstances, all the three detained goods be released to the Petitioner subject to payment of warehousing charges as would be applicable on the date of detention.

15. The petition is disposed of in the aforesaid terms. Pending applications, if any, are also disposed of.

PRATHIBA M. SINGH, J.

SHAIL JAIN, J.

JULY 31, 2025
kk/ck