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

\+ **W.P.(C) 13169/2025**

SANDEEP .....Petitioner

Through: Mohd. Mazhar Siddiqui, Md. Ather Ansari and Mr. S. Vijay Kant, Advs. (M:7011359907)

versus

COMMISSIONER OF CUSTOM AND ORS. .....Respondents

Through: Mr. Atul Tripathi, SSC with Mr. Gaurav Mani Tripathi & Mr. Shubham Mishra, Advs.

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE SHAIL JAIN

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

% 28.08.2025

1. This hearing has been done through hybrid mode.

2. The present petition has been filed by the Petitioner - Mr. Sandeep, who is a resident of Morocco holding a residence card of the said country and had travelled from New Delhi to Dubai on 6th April, 2024.

3. Upon the Petitioner's arrival in New Delhi, two gold articles, being one gold *kada* weighing 50 grams and one gold chain weighing 35 grams *(hereinafter, 'detained articles')* were seized and detained after appraisement. The case of the Petitioner is that the detained articles are his personal effects and thus, he has sought release of the same.

4. The Petitioner, challenges the order in original dated 4th July, 2024 *(hereinafter, 'the impugned order'),* wherein absolute confiscation and penalty of Rs.60,000/- has been directed in the following terms.

"ORDER

i) I deny the 'Free Allowance' if any, admissible to the Pax Sandeep 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 Sandeep as 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:
(i) One gold kada having average purity 996 with gross and net weight 50 grams having Assessable value Rs.3,20,256/-
(ii) One gold chain having average purity 996 with gross and net weight 35 grams having Assessable value Rs.2,24,179/-
(iii) The total weiyht of the gold items is 85 grams and the total Assessable value is Rs.5,44,434/-
recovered from the Pax Sandeep and detained vide DR No. 52505 dated 06.04.2024 under section 111(d), 111 (i), 111(j) and 111(m) of the Customs Act, 1962;
iii) I also impose a penalty of Rs. 60,000/- (Rupees Sixty Thousand Only) on the Pax Sandeep under section 112 (a) and 112(b) of the Customs Act, 1962."

5. Upon the detention of the articles, the Petitioner confirmed that an oral show cause notice had been received but no personal hearings were afforded to him. The same has also been recorded in the impugned order in the following terms:

"4. Mr. Mohammed Ather, Advocate having Enrolment No.2999/09 visited this office and submitted an

Authority Letter/Special Power of Attorney dated 15.04.2024 on behalf of the Pax. Mr. Mohammed Ather, Advocate (hereinafter referred to as the AR of the Pax) has his residence address as Near 788 Biri Factory, Mohalla Gher Pachchaiyan, Amroha, PO Amroha Distt, Uttar Pradesh. The AR of the Pax submitted a request letter dated: 24.04.2024 for Re-export of the detained goods. It is further inter alia submitted that the pax had arrived from Dubai by flight no. IX-136 dated 05.04.2024 and opted for the Green Channel but did not declare any dutiable item which he brought in his baggage namely Gold jewellery and hence they were detained. It is further submitted that the detained goods are meant for personal use and as such requested for Re-Export of the detained goods. ***It is also submitted that the Pax regrets his mistake of opting for Green Channel and requested for a lenient view to be taken in the matter and that the case be decided on merit and as such did not want any show cause notice and personal hearing in the matter. An oral SCN has been received.*** *The AR of the Pax has submitted a Attested Photo Copy of the following, which is Notarised, as a relevant document for Re-export of the said detained item:-*

KINGDOM OF MOROCCO
REGISTRATION CARD

VALID FROM – 27.05.2021
UNTIL - 27.05.2026

No. BE79596T

Director General of National Security
(Signed)
Abdellatif Hammouchi

Reason for stay – BUSINESS
Address BD DE LA CORNICHE ETG 5 APPT 147 LOT REZK INVEST CASABLANCA

”

6. Ld. Counsel for the Petitioner submits that the Petitioner had already made a request for re-export of detained articles on 24th April, 2024 itself, but the same was not considered.

7. It is noticed that the impugned order has been passed, stating that the Petitioner had waived of SCN and personal hearing. Such waiver of hearing would not be in accordance with law as the same is usually on the basis of a pre-printed form. This Court has held repeatedly that standard pre-printed waivers of Show Cause Notice and personal hearing would not be valid in law as held in ***Amit Kumar v. The Commissioner of Customs, 2025:DHC:751-DB.*** The relevant portion of the said order reads 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__.

[...]

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 ***Mr Makhinder Chopra vs Commissioner of Customs New Delhi, 2025:DHC:1162-DB*** had analysed Section 124 of the Customs Act, 1962 (hereinafter "*the Act*") 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:

"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. [...]

*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. Accordingly, in view of the settled law discussed above the detained articles would be liable to be released on this ground itself.

10. Moreover, the Petitioner, being a resident of Morocco and the fact that the detained articles would also constitute his *personal effects*, the same shall be released.

11. In view of the legal position as discussed above, the impugned order is set aside.

12. The items shall now be released to the Petitioner for the purpose of re-export upon the payment of warehouse charges, as applicable on the date of detention. In respect of the same, let the Petitioner contact the following officer who shall assist the Petitioner with the requisite procedure:

Officer: Mr. Sandeep Lamba, Superintendent, Customs
Address: Office of Commissioner, Customs, IGI Airport, Terminal - 3, New Delhi
Mob. No: 7405345000
Email: igilegaldelhi@gmail.com

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

PRATHIBA M. SINGH, J.

SHAIL JAIN, J.

AUGUST 28, 2025/*dk/ss*