$~42

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

Date of Decision: 31st October, 2025

\+ **W.P.(C) 16559/2025**

SHAMEEM .....Petitioner

Through: Ms. Richa Kumari and Mr. Pawan, Advs.

versus

COMMISSIONER OF CUSTOMS .....Respondent

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

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE SHAIL JAIN

Prathiba M. Singh, J. **(Oral)**

1. This hearing has been done through hybrid mode.

2. The present petition has been filed by the Petitioner under Article 226 of the Constitution of India, *inter alia*, assailing the Order-in-Original dated 23rd June 2023 (hereinafter, *'impugned order'*) passed by the Office of the Commissioner of Customs (Airport & General). The Petitioner further seeks release of the two gold bars of the Petitioner, collectively weighing 230 grams, seized by the Customs Department *vide* Detention Receipt bearing no. DR/INDEL4/23-02-2022/000010.

3. The case of the Petitioner is that he had arrived in India from Saudi Arabia on 23rd February, 2022. Upon arrival at the Indira Gandhi International Airport, New Delhi, the Petitioner was intercepted by the concerned official of the Customs Department and the said gold bars of the Petitioner were seized. According to the Petitioner, no Show Cause Notice (hereinafter,

'SCN') was issued to the Petitioner.

4. The impugned order records that the Petitioner had waived the SCN and personal hearing. The impugned order proceeded to absolutely confiscate the goods of the Petitioner in the following terms:

> *"i). I order absolute confiscation of detained goods of the Dentention Receipt as detailed in Annexure -A to this order under Section 111 of the Customs Act, 1962.*
> *ii). I also impose a penalty against each respective DR No. equal to the amount, as mentioned in Column No. 17 of Annexure -A to this order under section 112 (a) 112 (b) and section 114AA of the Customs Act, 1962."*

5. The case of the Petitioner is that he is an *'eligible passenger'*, being a resident of Saudi Arabia for more than 2 years prior to the detention. Ld. Counsel for the Petitioner submits that the Petitioner has already filed an appeal assailing the impugned order in 2023. However, the same has not been decided. Ld. Counsel prays that the detention be set aside as the Petitioner is willing to pay the applicable duty.

6. Heard. In terms of Section 128A(4A) of the Customs Act, 1962, any appeal has to be decided within a period of six months. In the present case, the appeal was filed on 2nd August, 2023 and more than 3 years have passed.

7. Further, this Court has held repeatedly that standard pre-printed waivers of SCN 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. Recently, the Supreme Court in ***Union of India &Anr. v. Jatin Ahuja, Civil Appeal No. 3489/2024*** dated 11th September, 2025, has also held that without a SCN under Section 110 of the Customs Act, 1962, the goods of the Petitioner would be liable to be unconditionally released. The relevant

observation in ***Union of India &Anr. v. Jatin Ahuja (Supra)*** stated 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.* ***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.***

[...]

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 ***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."***

9. Under these circumstances, the Court is of the opinion that the Petitioner being an *'eligible passenger'*, the goods of the Petitioner are liable to be released to him, subject to payment of the applicable Customs Duty and

the warehouse charges as applicable on the date of detention. However, no redemption fine or penalty shall be charged from the Petitioner.

10. The Petitioner to appear before the Customs Department on **17th November, 2025 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.

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

> ***Mr. Sandeep Lamba, Superintendent, Customs***
> ***Office of Commissioner, Customs***
> ***IGI Airports, T-3, New Delhi***
> ***Mobil No.7405345000***
> ***Email id: igilegaldelhi@gmail.com***

12. The petition is disposed of in these terms. Pending applications, if any, are disposed of.

PRATHIBA M. SINGH
JUDGE

SHAIL JAIN
JUDGE

OCTOBER 31, 2025/*pt/ck*