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

Date of Decision: 18th December, 2025
Uploaded on: 20th December, 2025

\+ **W.P.(C) 16673/2025**

MOHAMMAD KHADIM KHAN .....Petitioner

Through: Mohd. Ather Ansari, Md. Mobin Akhtar, Md. Salman, Advs.

versus

THE COMMISSIONER OF CUSTOM & ORS. .....Respondents

Through: Mr. Vishal Chadha Senior Standing Counsel along with Mr. Chandan Kumar Adv.

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE SHAIL JAIN

<u>Prathiba M. Singh, J.</u> (Oral)

1. The hearing has been done through hybrid mode.

2. The present petition has been filed by the Petitioner under Articles 226 and 227 of the Constitution of India, *inter alia*, seeking release of the gold *kada* weighing 116 grams *(hereinafter. 'gold item')*, which was detained by the Customs Department *vide* detention receipt bearing no. DR/lNDEL4/16-01-2024/003547 dated 16th January, 2024.

3. A brief background of the Petitioner's case is that he is an Indian passport holder who has been residing in Saudi Arabia for the past 10 years. The Petitioner has purchased the gold item from Saudi Arabia. The Petitioner had travelled back to India on 16th January, 2024. Upon his arrival at the Indira Gandhi International Airport, New Delhi, he was intercepted by the concerned officials of the Customs Department and the

gold item was seized.

4. Ld. Counsel for the Petitioner submits that no Show Cause Notice has been issued to the Petitioner till date. Further, the submission of ld. Counsel for the Petitioner is that he is willing to pay the Customs duty.

5. On the last date of hearing *i.e.,* 3rd November, 2025, the Court directed the Customs Department to produce the gold items before the Court. The same have been produced today in a sealed box.

6. The Court has perused the seized gold items which have been produced today and the same do not appear to be personal jewellery of the Petitioner.

7. Mr. Chadha, ld. SSC submits that the Petitioner has not approached the Customs Department for appraisement of the gold items.

8. However, since there is no Show Cause Notice (hereinafter, *'SCN'*) issued to the Petitioner in this matter, in terms of ***Union of India & Anr. v. Jatin Ahuja, Civil Appeal No. 3489/2024***the detention would no longer be tenable.

9. It is the settled position in law, after ***Union of India & Anr. v. Jatin Ahuja* (*Supra*)** that without a SCN under Section 110 of the Customs Act, 1962, the goods of the Petitioner would be liable to be 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."***

10. In view thereof, in terms of the judgment in ***Jatin Ahuja (Supra)*****,** it is a settled position of law 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 Customs Department for issuing the SCN. In this case, the one year period itself has elapsed, thus no SCN can be issued. The detention is therefore impermissible and the detained articles of the Petitioner are directed to be released to the Petitioner.

11. The Petitioner shall appear before the Customs Department on **8th January, 2026** 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. The Petitioner shall join virtually for verification of identity.

12. The gold items of the Petitioner shall be released by the Customs Department subject to payment of applicable Customs Duty and warehousing charges as applicable on the date of detention.

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

Mr. Mukesh Gulia, Superintendent, Legal
Office of Commissioner, Customs
IGI Airports, T-3, New Delhi
Email id: igilegaldelhi@gmail.com

14. In addition, if the Customs Department wishes to initiate any action under Section 124 of the Customs Act, 1962, it is free to do so in accordance with law, if permissible.

15. The gold items produced today have been returned to the concerned official from the Customs Department who is present in Court today.

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

PRATHIBA M. SINGH
JUDGE

SHAIL JAIN
JUDGE

DECEMBER 18, 2025/*pt/ck*