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* IN THE HIGH COURT OF DELHI AT NEW DELHI

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

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W.P.(C) 18552/2025

NAND KISHOR SHARMA

.....Petitioner

Through: Mr. Pramod Kant Saxena, Adv.

versus

COMMISSIONER OF CUSTOMS

.....Respondent

Through: Mr. Aakarsh Srivastava, SSC

CORAM:**JUSTICE PRATHIBA M. SINGH****JUSTICE SHAIL JAIN****Prathiba M. Singh, J. (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 one gold chain weighing 49 grams which was detained by the Customs Department *vide* detention receipt bearing No. 54471 dated 18th June, 2024.
3. A brief background of the Petitioner's case is that, the Petitioner is an Indian passport holder bearing No. Z6929990 and had travelled to India on 18th June, 2024. Upon arrival at the Terminal-3, Indira Gandhi International Airport, New Delhi, the Petitioner was intercepted by the concerned officials of the Customs Department and the gold chain of the Petitioner was detained by the Customs Department.
4. The Petitioner's case is that no Show Cause Notice (hereinafter, 'SCN') has been issued to the Petitioner by the Customs Department



5. On the last date of hearing *i.e.*, 8th December, 2025, this Court directed the Customs Department to produce the gold chain of the Petitioner before the Court. The same has been produced today in a sealed box.
6. The Court has perused the seized gold chain which has been produced today. Mr. Srivastava, Id. SSC submits that the same weighs 46 grams.
7. Id. Counsel for the Petitioner submits that the Petitioner was not afforded a personal hearing in this matter.
8. Mr. Srivastava, Id. SSC submits that Petition had waived the SCN and personal hearing. Moreover, Id. SSC submits that the Special Power of Attorney of the Petitioner had received an oral SCN from the Customs Department.
9. Heard. 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.”*

10. 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."

11. More recently, the Supreme Court in the decision in ***Union of India & Anr. v. Jatin Ahuja, Civil Appeal No. 3489/2024*** held 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."

12. In view thereof, in terms of the judgment in *Jatin Ahuja (Supra)*, it is a settled position in 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.

13. This Court is of the opinion that in view of the decision in *Union of India & Anr. v. Jatin Ahuja (Supra)*, at least a personal hearing notice ought to have been given by the Customs Department and an order ought to have been passed in accordance with law.

14. 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.

15. The gold chain 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.

16. 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***

17. 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.

18. The gold chain produced today has been returned to the concerned official from the Customs Department who is present in Court today.



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19. 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*

Signature Not Verified

Signed By: TANISHKA
GUPTA
Signing Date: 20.12.2025
18:33:43

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