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

\+ **W.P.(C) 11028/2025**

ANIL KUMAR SHARMA .....Petitioner

Through: Mr. Mohammed Ather Ansari and Mr. S. Vijay Kant, Advs.

versus

THE COMMISSIONER OF CUSTOMS & ORS. .....Respondents

Through: Mr. Vishal Chadha, SSC Mr. Chandan Kumar, Adv.

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE SHAIL JAIN

O R D E R

% 29.07.2025

1. This hearing has been done through hybrid mode.

2. This is a petition challenging the detention of the *gold chain* weighing 117 grams (hereinafter "*detained good*"), which was seized by the Customs Authority *vide* detention receipt dated 18th February, 2024.

3. The case of the Petitioner is that he had travelled to Dubai and upon his return to India he was intercepted at the Indira Gandhi International Airport, New Delhi, whereby the detained good was seized. The detention receipt has been issued in this regard. However, the stand of the Petitioner is that till date, no Show Cause Notice has been issued and no personal hearing has been granted. It is also submitted that no order-in-original has been passed.

4. Ld. Counsel for the Customs Department submits that there may have been a waiver of Show Cause Notice and personal hearing by the Petitioner in the present case.

5. The Court has heard the parties and perused the documents placed on record. At the outset it is noted that under Section 110 of the Customs Act,

1962, it is impermissible for any detention to be confirmed without providing a personal hearing to the party concerned. Further, waiver of personal hearing or the Show Cause Notice has already been held to be contrary to law in the decision by this Court in various decisions including in ***Amit Kumar v. The Commissioner of Customs, 2025:DHC:751 DB***. The relevant paragraphs of the said judgment are extracted hereunder:

> *"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.*
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> *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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> *18. A Co-ordinate Bench of this Court recently* ***in Mohammad Zaid Saleem vs. The Commissioner of Customs (Airport & General) [W.P.(C) No. 2595/2019]****, has held clearly that if a SCN is not given within six months of the seizure, the goods would be liable to be released. The relevant portion of the above stated judgment is extracted below:*

"Before parting with this petition, it is pertinent to note that the matters in issue in the present matter are squarely covered by decision in the case of Chaganlal Gainmull v. Collector of Central Excise, where it was held that if the show cause notice was not issued within six months from the date of seizure, the consequence would be that the person from whom the gold was seized would become entitled to its return. Although the aspect of extension of period of detention for another six months vide the Proviso to Section 110(2) of the Act was introduced w.e.f 29.03.20184 the ratio still holds sway to the effect that issuing of notice to the owner for detention of seized goods is mandatory and the Apex Court frowned upon the fact that no explanation was offered by the Respondents as to why they were constrained to dispose of the seized gold, when it was neither perishable nor hazardous, and there was no answer as to why the gold was disposed of without any notice being"

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"

6. In the present case, no order-in-original has also been passed and, therefore, the Department cannot argue that the initial detention by the Customs Authority at the Airport would automatically become absolute confiscation of the detained goods without a Show Cause Notice being issued and without an order being passed after providing a personal hearing.

7. Accordingly, there is no valid ground to sustain the detention in the present case and the same is untenable in light of the law settled by various

decisions of the Supreme Court and this Court. The detention of the detained gold item is accordingly set aside.

8. The detained item of the Petitioner shall be released to the Petitioner upon payment of warehousing charges as applicable on the date of detention.

9. The petition is disposed of in these terms. All pending applications, if any, are also disposed of.

PRATHIBA M. SINGH, J.

SHAIL JAIN, J.

JULY 29, 2025
pd/msh