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

+ **W.P.(C) 1809/2025**

SAINATH SRINIVASAN

.....Petitioner

Through: Mr. Ashish Panday, Mr. Ajay Singh,
Mr. Akshat Raghuvanshi, Adv. (M:
9599437665)

versus

UNION OF INDIA & ORS.

.....Respondents

Through: Ms Ira Singh SPC with Mr Aakash
Meena, (GP) Adv. for R-1. (M:
9818117987)
Mr. Shubham Tyagi, SSC, CBIC with
Ms. Navruti Ojha and Mr Manish
inspectors, IGI Airport (M-
9650049869) for R-2.

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE DHARMESH SHARMA

ORDER

% **20.02.2025**

1. This hearing has been done through hybrid mode.
2. The present petition has been filed under Articles 226 and 227 of the Constitution of India seeking issuance of an appropriate writ directing the Respondents to release the gold jewellery detained from the Petitioner.
3. The case of the Petitioner is that he is a Non-Resident Indian employed in Singapore. He was intercepted on his arrival on 10th April, 2024 from Singapore at the IGI Airport, New Delhi. The Petitioner was wearing a gold chain weighing about 99 gms which was seized and detained by the Customs Department. The Petitioner had a proper work permit and invoice for the said gold chain which he showed to the Customs officials.

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4. The Petitioner relies upon the NRI certificate issued by the High Commission of India in Singapore as also the invoice dated 9th April, 2024 from Money Max Jewellery Pte Ltd. showing the purchase of the gold chain.

5. It is the case of the Petitioner that no show cause notice has been issued till date in respect of the said detention. The Petitioner, therefore, prays for release of the goods detained. The Petitioner is also willing to take the gold chain back with him.

6. On the last date i.e. on 13th February, 2025, the Court after considering the matter had observed as under:

“6. The Court notes with some consternation that personal jewellery of bona fide travellers, of both Indian and Foreign origin, are routinely subjected to detention by the Customs Department. Further, even small pieces of jewellery like this which are personal effects are seized by the Customs. Repeated cases are coming before this Court where goods of both foreigners and Indian citizens are detained, even though they are being worn by the persons concerned. The Court has repeatedly held that this would be contrary to law laid down by the Supreme Court as also this Court in several decisions.

7. Id. Counsel for the Respondent, seeks time to take instructions in this matter. It is made clear that if no instructions are given by the next date, the Court would have option but to direct release of the detained goods permitting the Petitioner to carry the same back to Singapore.”

7. As can be seen from the above, the Court had noted that such detention of personal jewellery of *bona fide* travellers would not be permissible in law. Mr. Tyagi, Id. SSC (CBIC) for UOI was to seek instructions.

8. Today, Id. SSC has sought instructions and submits that the Petitioner



had signed an undertaking that he waives any written show cause notice as also personal hearing. The same is recorded in a standard form undertaking that the oral show cause notice has been received.

9. The Court has also been presented another undertaking of the Petitioner, which reads as under:

“Dated: 10.04.2024

On being asked I, Srinivasan Sainath, state that I have appeared before Air Customs Superintendent on 10.04.2024 to tender my statement under Section 108 of the Customs Act, 1962 in respect of the above mentioned item recovered from my possession. I further state that I was intercepted by the Customs officer after I had crossed the green channel and after my personal and baggage examination the above said items, was recovered from me; that the recovered item belong to me; that I intentionally without payment of duty tried to clear from the Green Channel; that I intentionally did not declare the recovered items to the Customs officials. On being asked, I admit my omission and commission on my part I will be agreeing with the description and quantity assessed by the department. I have tendered my statement true and correct and understood the same in vernacular. I have tendered the above statement without any duress, pressure or threat.

Dated: 19.04.2024

I, Srinath Srinivasan, S/o Sainath Todla Sathya Narayan, R/o H.no 5E, B-1 Chennai Builders,9th St Shivanandan Colony, Korattur, Chennai, Tamil Nadu having Passport Number- Z4809282 issued in Singapore, do hereby solemnly and declared that I am working as Senior Finance Manager at Microsoft Operations Pvt. Limited, located at 438B Alexandra Road #04-09/12 Block B, Alexandra Technopark, Singapore - 119968 and also have the Employment Pass of Singapore having Id No. K4273765, also an Income



Tax payer of Singapore (enclosed). It is further requested to the Joint Commissioner of Customs to re-export the gold which was detained by the Customs. The Facts mentioned above are true for my best belief.”

10. Apart from the above, Mr. Tyagi submits that the invoice showing purchase of the chain was not given to the Department prior to filing of the writ petition.

11. Ld. counsel for the Petitioner submits that at the time of appraisal, the invoice was submitted.

12. The Court has considered the matter on both the aspects. The issues that arise are no longer *res integra*. Beginning with the judgments in *Directorate of Revenue Intelligence v. Pushpa Lekhumal Tolani*, (2017) 16 SCC 93 passed by the Supreme Court as also *Nathan Narayansamy v. Commissioner of Customs*, [W.P.(C) 6855/2023, decided on 15th September, 2023], *Farida Aliyeva v. Commissioner of Customs*, [W.P.(C) 16113/2024, decided on 10th December, 2024], *Mohammad Zaid Salim v. The Commissioner of Customs (Airport & General)*, [W.P.(C) 2595/2019, decided on 4th September, 2023], the Court has clearly held that the personal jewellery, which is owned by the passenger, would not be liable to be confiscated and detained. The observation in *Pushpa Lekhumal Tolani (supra)* read as in *Nathan Narayansamy (supra)* Swami, the Court has categorically held that Rule 5 of the Baggage Rules would not apply to foreigners and that personal effects or personal jewellery would be exempted. The relevant portion of the judgements is cited below. Moreover, signing of undertaking as is relied upon above has also not been accepted by the Court in *Amit Kumar v. The Commissioner of Customs*, [W.P.(C) 15973/2024,



decided on 6th February, 2025] wherein the Court has observed as under:

“12. The Court has considered the matter. The main plank of the Respondent’s submission is on the basis of the Standard Printed Form which is titled **Green Channel Violation (Request for Release of Detained Goods)** which has been extracted hereinabove.

13. A perusal of the above would show that in Printed Form, the following has been included:-

“It is humbly requested that said detained goods may please be **RELEASED**. I regret my mistake of opting for Green Channel and further request you to please take a lenient view in the matter. I undertake that my case may be decided on merit and as such I do not want any written Show Cause Notice and Personal Hearing in the matter. An oral SCN has been received.”

14. When a request for release of goods is being made by the person whose goods have been detained, the said person cannot be expected to read a printed form, where –

- waiver of Show Cause Notice has been agreed to,
- waiver of personal hearing has been agreed to and
- it has also been recorded that an oral SCN has been received.

Such signing of the standard form would not be in compliance with the principles of natural justice, inasmuch as, the waiver under Section 124 of the Act would have to be a conscious waiver and an informed waiver.

15. A perusal of Section 124 of the Act would show that even after an oral show cause notice is given, the authority has the discretion to issue supplementary notice under circumstances which may be prescribed. For ready reference, Section 124 of the Act is set out



below:-

“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.]”

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.*

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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.*

20. *The detained goods are directed to be released to the Petitioner. The storage charges of the detained goods shall however be borne by the Petitioner.”*

13. Following the above judgments, clearly, firstly the detention itself was contrary to law and thereafter, non-issuance of the show cause notice also renders the continued detention unlawful. The goods shall, now, be released to the Petitioner within two weeks. In the facts of this case, the Petitioner



shall only bear 50% of the warehouse charges.

14. Accordingly, the petition is disposed of in the above terms.

PRATHIBA M. SINGH, J.

DHARMESH SHARMA, J.

FEBRUARY 20, 2025/dk/ks