

(2025) 07 DEL CK 0845
In the Delhi High Court
Case No : Writ Petition (C) No. 9269 Of 2025

Mubina

APPELLANT

Vs

Commissioner Of Customs

RESPONDENT

Date of Decision : 08-07-2025

Acts Referred:

Constitution of India, 1950 — Article 226
Customs Act, 1962 — Section 110, 111(d), 111(i), 111(), 111(m), 112(a), 112(b),
124, 125
Baggage Rules 1998 — Rule 7
Baggage Rules, 2016 — Rule 2(vi), 3, 4, 6

Citation : (2025) 07 DEL CK 0845

Hon'ble Judges : Prathiba M. Singh, J;Rajneesh Kumar Gupta, J

Bench : Division Bench

Advocate : Dr. Ashutosh, Fatima, Akshay Amritanshu, Drishti Saraf, Sarthak Srivastava

Final Decision : Disposed Of

Judgement

Prathiba M. Singh, J

1. This 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 two gold bangles weighing 117 grams (hereinafter, 'detained jewellery'), seized by the Customs Department vide Detention Receipt dated 20th September, 2023.
3. The case of the Petitioner is that she was travelling from Jeddah to India on 20th September, 2023 after completing her pilgrimage/Umrah at Mecca. Upon her arrival at the Indira Gandhi International Airport, New Delhi, after she crossed the Green Channel, a search was conducted on her person as also her baggage and the jewellery which she was wearing, were seized by the Customs Department.

4. Thereafter, the detained jewellery was appraised in the presence of the advocate of the Petitioner and the total value of the bangles was appraised at Rs. 6,94,715.58/-.

5. It is the case of the Petitioner that no show cause notice had been issued with respect to the detained jewellery and no opportunity for personal hearing was granted to the Petitioner.

6. Thereafter, an Order in Original dated 18th January, 2024 was passed, directing absolute confiscation of the detained jewellery of the Petitioner in the following terms:

"I. I deny the 'Free Allowance' if any, admissible to the Pax Mubina for not declaring the detained goods to the Proper Officer at Red Channel as well to the Customs Officer at Green Channel who intercepted her and recovered the detained goods from her;

II. I hold the passenger, Mubina an "ineligible Passenger" for the purpose of the Notification No. 50/2017-Cus dated 30.06.2017 (as amended) read with Baggage Rules, 2016 (as amended);

III. I order absolute confiscation of the above said "Two gold bangles having purity 999, total weighing 117.00 valued at Rs. 6,94,715.58/- " recovered from the Pax Mubina and detained vide DR No. DR/INDEL4/20.09.2023/002669 Dated 20.09.2023 under section 111(d), 111(i), 111() and 111(m) of the Customs Act, 1962;

IV. I also impose a penalty of Rs.70,000/- (Rupees Seventy Thousand Only) on the Pax Mubina under Section 112(a) and 112(a) of the Customs Act, 1962."

7. The Petitioner then challenged the Order-in-Original in appeal and the following Order-in-Appeal dated 26th May, 2025 was passed:

Order

6.0 In light of discussions and findings as above, I allow the appeal partially against OIO No. 1158/002669/20.09.2023/WH/2023-24 dated 18-01-2024 passed by the Assistant Commissioner of Customs, T-3, IGI Airport, New Delhi and impugned goods i.e. "Two gold bangles having purity 999, total weight 117 grams, valued at Rs.6,94,715.58" is allowed to be released to the appellant/ authorized person on payment of redemption fine of Rs.70,000/- (Rupees Seventy Thousand only) under Section 125 of the Customs Act, 1962 along with applicable Customs Duty. The penalty of Rs.70,000/- (Rupees Seventy Thousand only) imposed on the appellant under Section 112(a) & 112(b) of the Customs Act, 1962 is upheld. The Appeal is disposed off with such modifications and consequential relief as above.

8. Ld. Counsel for the Petitioner submits that the detained jewellery is the personal effects of the Petitioner and the same could not have been seized or detained by the Customs Department. He relies on the decision in Manan Karan

Sharma v. Commissioner of Customs in W.P.(C) 6707/2025 which was passed under similar circumstances and thus, seeks for release of the detained jewellery of the Petitioner.

9. Mr. Akshay Amritanshu, Id. Counsel for the Respondent, on the other hand, submits that the Petitioner herself had filed the appeal against the Order in Original dated 18th January, 2024 and the consequent Order-in-Appeal dated 26th May, 2025 is quite reasonable in nature, as it has imposed only Rs. 70,000/- as penalty and Rs. 70,000/- as redemption fine along with the applicable customs duty. Thus, the same shall not be set aside.

10. The Court has heard the parties and has considered the matter. The Petitioner was on a religious pilgrimage to Mecca and was on her way back when the detained jewellery was seized. It is normal practice and part of our culture, at least in our country, that women wear basic jewellery such as bangles as part of their personal effects. The same could not have been detained by the Customs Department only on the basis that the same were of 24 carat gold, unless any other special circumstances exist for such detention.

11. It is noted that no show cause notice has been issued in this case as the Customs Department is relying on the standard pre-printed waiver that was obtained from the Petitioner. The validity of such pre-printed waiver of SCN and personal hearing has been considered by this Court in various matters, including in Amit Kumar v. The Commissioner of Customs, 2025:DHC:751-DB and Mr Makhinder Chopra vs Commissioner of Customs New Delhi, 2025:DHC:1162-DB. The operative portion of the judgement in Amit Kumar (supra) is 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.

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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”

12. Further, this Court in Makhinder Chopra (supra) 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 replying on the decision in Amit Kumar (supra) held as under:

“23. As mentioned above, the Customs Department has relied upon the undertaking in a standard form dated 17th June, 2024 signed by the Petitioner, wherein the Petitioner has waived of issuance of the show cause notice and personal hearing. It is admitted position that no show cause notice has been issued to the Petitioner on the basis of the said undertaking.

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.

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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."

13. Thus, the law is well settled, that the Customs Department cannot rely on pre-printed waiver of show cause notice as the same would be contrary to the requirements of Section 124 of the Act. In light of the above discussion, it is clear that the continued detention or seizure of goods by the Customs Department would be untenable in law, where the show cause notice or the personal hearing have been waived via a pre-printed waiver.

14. Once the goods are detained, it is mandatory to issue a Show Cause Notice and afford a personal hearing to the Petitioner. The time prescribed under Section 110 of Act, is a period of six months. However, subject to complying with the requirements therein, a further extension for a period of six months can be taken by the Customs Department for issuing the show cause notice. In this case, the one year period itself has elapsed, yet no show cause notice has been issued. Accordingly, the detention is impermissible.

15. Further, in so far as personal effects are concerned, in terms of Rule 2(vi) read with Rule 3 of the Baggage Rules, 2016 (hereinafter, the "the 2016 Rules") the Petitioner would be permitted clearance of articles, free of duty in their bona fide baggage, including used personal effects. The relevant provisions of the

Rules are extracted hereunder:

"2(vi) "Personal effects" means things required for satisfying daily necessities but does not include jewellery.

* * * *

3. Passenger arriving from countries other than Nepal, Bhutan or Myanmar:- An Indian resident or a foreigner residing in India or a tourist of Indian origin, not being an infant arriving from any country other than Nepal, Bhutan or Myanmar, shall be allowed clearance free of duty articles in his bona fide baggage, that is to say, -

(a) used personal effects and travel souvenirs; and

(b) articles other than those mentioned in Annexure-I, up to the value of fifty thousand rupees if these are carried on the person or in the accompanied baggage of the passenger:

Provided that a tourist of foreign origin, not being an infant, shall be allowed clearance free of duty articles in his bona fide baggage, that is to say, (a) used personal effects and travel souvenirs; and (b) articles other than those mentioned in Annexure- I, up to the value of fifteen thousand rupees if these are carried on the person or in the accompanied baggage of the passenger:

Provided further that where the passenger is an infant, only used personal effects shall be allowed duty free. Explanation.- The free allowance of a passenger under this rule shall not be allowed to pool with the free allowance of any other passenger.

* * * *

5. Jewellery.- A passenger residing abroad for more than one year, or return to India, shall be allowed clearance free of duty in his bona fide baggage of jewellery upto a weight, of twenty grams with a value cap of fifty thousands rupees if brought by a gentleman passenger, or forty grams with a value cap of one lakh rupees if brought by a lady passenger.

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ANNEXURE-I

(See Rules 3, 4 and 6)

1. Fire arms.

2. Cartridges of fire arms exceeding 50.

3. Cigarettes exceeding 100 sticks or cigars exceeding 25 or tobacco exceeding 125 gms.

4. Alcoholic liquor or wines in excess of two litres.

5. Gold or silver in any form other than ornaments.

6. Flat Panel (Liquid Crystal Display/Light-Emitting Diode/Plasma) television.”

16. The issue whether gold jewellery worn by a passenger would fall within the ambit of personal effects under the Rules, has now been settled by various decisions of the Supreme Court as also this Court. The Supreme Court in the Directorate of Revenue Intelligence and Ors. v. Pushpa Lekhumal Tolani, [(2017) 16 SCC 93], while considering the relevant provisions of the Customs Act, 1962 (hereinafter, the ‘Act’) read with the Baggage Rules, 1998, that were in force during the relevant period, held that it is not permissible to completely exclude jewellery from the ambit of ‘personal effects’. The relevant paragraphs of the said order read as under:

“13. Insofar as the question of violation of the provisions of the Act is concerned, we are of the opinion that the respondent herein did not violate the provisions of Section 77 of the Act since the necessary declaration was made by the respondent while passing through the green channel. Such declarations are deemed to be implicit and devised with a view to facilitate expeditious and smooth clearance of the passenger. Further, as per the International Convention on the Simplification and Harmonisation of Customs Procedures (Kyoto 18-5-1973), a passenger going through the green channel is itself a declaration that he has no dutiable or prohibited articles. Further, a harmonious reading of Rule 7 of the Baggage Rules, 1998 read with Appendix E (2) (quoted above), the respondent was not carrying any dutiable goods because the goods were the bona fide jewellery of the respondent for her personal use and was intended to be taken out of India. Also, with regard to the proximity of purchase of jewellery, all the jewellery was not purchased a few days before the departure of the respondent from UK, a large number of items had been in use for a long period. It did not make any difference whether the jewellery is new or used. There is also no relevance of the argument that since all the jewellery is to be taken out of India, it was, therefore, deliberately brought to India for taking it to Singapore. Foreign tourists are allowed to bring into India jewellery even of substantial value provided it is meant to be taken out of India with them and it is a prerequisite at the time of making endorsements on the passport. Therefore, bringing jewellery into India for taking it out with the passenger is permissible and is not liable to any import duty.

* * * *

15. [...] Also, from the present facts and circumstances of the case, it cannot be inferred that the jewellery was meant for import into India on the basis of return ticket which was found to be in the possession of the respondent. Moreover, we cannot ignore the contention of the respondent that her parents at the relevant time were in Indonesia and she had plans of proceeding to Indonesia. Some of the jewellery items purchased by the respondent were for her personal use and some were intended to be left with her parents in Indonesia. The High Court has

rightly held that when she brought jewellery of a huge amount into the country, the respondent did not seem to have the intention to smuggle the jewellery into India and to sell it off. Even on the examination of the jewellery for costing purposes, it has come out to be of Rs 25 lakhs and not Rs 1.27 crores as per DRI. The High Court was right in holding that it is not the intention of the Board to verify the newness of every product which a traveller brings with him as his personal effect. It is quite reasonable that a traveller may make purchases of his personal effects before embarking on a tour to India. It could be of any personal effect including jewellery. Therefore, its newness is of no consequence. The expression "new goods" in their original packing has to be understood in a pragmatic way."

17. In *Saba Simran v. Union of India & Ors.*, 2024:DHC:9155-DB, the Division Bench of this Court was seized with the issue of deciding the validity of the seizure of gold jewellery by the Customs Department from an Indian tourist. The relevant paragraphs of the said judgement are as under:

"15. The expression 'jewellery' as it appears in Rule 2(vi) would thus have to be construed as inclusive of articles newly acquired as opposed to used personal articles of jewellery which may have been borne on the person while exiting the country or carried in its baggage. Thus, personal jewellery which is not found to have been acquired on an overseas trip and was always a used personal effect of the passenger would not be subject to the monetary prescriptions incorporated in Rules 3 and 4 of the 2016 Rules.

16. This clearly appeals to reason bearing in mind the understanding of the respondents themselves and which was explained and highlighted in the clarificatory Circular referred to above. That Circular had come to be issued at a time when the Appendices to the 1998 Rules had employed the phrase "used personal effects, excluding jewellery". The clarification is thus liable to be appreciated in the aforesaid light and the statutory position as enunciated by the respondents themselves requiring the customs officers to bear a distinction between "personal jewellery" and the word "jewellery" when used on its own and as it appears in the Appendices. This position, in our considered opinion, would continue to endure and remain unimpacted by the provisions contained in the 2016 Rules."

18. The above mentioned decision of the Division Bench of this Court was challenged before the Supreme Court in SLP(C) No. 011281 / 2025 titled *Union of India & Ors. v. Saba Simran*. The Supreme Court, while dismissing the said challenge, held as under:

"1. Delay condoned.

2. Having heard the learned counsel appearing for the petitioners and having gone through the materials on record, we see no reason to interfere with the impugned order passed by the High Court. 3. The Special Leave Petition is, accordingly, dismissed. 4. Pending application(s), if any, stands disposed of."

19. This Court in Mr Makhinder Chopra vs. Commissioner Of Customs New Delhi, 2025:DHC:1162-DB, had the occasion to consider the relevant provisions of the Rules, as also the decisions of the Supreme Court and this Court. After analysing the same, this Court held as under:

"17. A conspectus of the above decisions and provisions would lead to the conclusion that jewellery that is bona fide in personal use by the tourist would not be excluded from the ambit of personal effects as defined under the Baggage Rules. Further, the Department is required to make a distinction between 'jewellery' and 'personal jewellery' while considering seizure of items for being in violation of the Baggage Rules."

20. Thus, it is now settled that the used jewellery worn by the passenger would fall within the ambit of personal effects in terms of the Rules, which would be exempt from detention by the Customs Department. In view of the above and considering the facts of the case, it is clear that the detained jewellery are the personal effects of the Petitioner. Accordingly, the detained jewellery would be liable to be released.

21. Under such circumstances, the detention of the Petitioner's jewellery is not tenable. Accordingly, the said detention is set aside. The detained jewellery shall be released to the Petitioner within a period of two weeks. The Petitioner shall appear before the Customs Department on 21st July, 2025, and may collect the detained jewellery through an Authorised Representative, in which case, the detained jewellery shall be released after receiving a proper email from the Petitioner or some form of communication that the Petitioner has no objection to the same being released to the concerned Authorised Representative. The Petitioner shall pay the warehousing charges.

22. If any amount has been paid by the Petitioner for filing of the appeal by way of pre-deposit, the adjustment of the said amount shall be given qua the warehousing charges and only the remaining amount shall be paid by the Petitioner in the form of warehousing charges. The Order-in-Appeal and the Order-in-Original are thus set aside.

23. Accordingly, the present writ petition is disposed of in above terms. All the pending applications, if any, are also disposed of.