

(2025) 03 DEL CK 1078

In the Delhi High Court

Case No : Writ Petition (C) No. 3347 Of 2025

Sai Kiran Goud Tirupathi

APPELLANT

Vs

Commissioner Of Customs

RESPONDENT

Date of Decision : 18-03-2025

Acts Referred:

Constitution of India, 1950 — Article 226

Customs Act, 1962 — Section 111(d), 111(i), 111(j), 111(m), 112(a), 112(b), 124

Citation : (2025) 03 DEL CK 1078

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

Bench : Division Bench

Advocate : Ravi Rathore and Ms. Richa Kumari, Harpreet Singh, Suhani Mathur, Jai Ahuja

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- Mr. Sai Kiran Goud Tirupathi under Article 226 of the Constitution of India inter alia seeking setting aside of the seizure of the gold Kada seized vide detention receipt no. 3959 (New detention receipt no. 52926) dated 12th March 2024.
3. It is the case of the Petitioner that he is an Indian citizen, who was travelling from Mali to India and had landed at Indira Gandhi International Airport, New Delhi on 12th March, 2024. He was wearing a gold Kada weighing 50 grams, which was seized by the Customs Department upon arrival. Appraisal of the same was done and the Kada was valued at Rs.2,85,079/- as it had 986 average purity.
4. According to the Petitioner, no show cause notice was issued to him and more than one year has elapsed since the detention. Hence, the Petitioner has filed this petition seeking setting aside of the detention order and release of Kada.

5. Ld. Counsel for the Petitioner further submits that the said gold kada was a personal effect of the Petitioner as his name `SAI' was engraved on the same.

6. On the other hand, Mr. Harpreet Singh, Id. Counsel for the Customs Department submits that the Petitioner has waived of the show cause notice and personal hearing. The Order-in-Original has already been passed on 30th January, 2025 directing absolute confiscation of the gold kada. Paragraph 8 of the Order-in-original is relevant in respect to the said waiver and the same is extracted herein below:

"8. I have carefully gone through the facts of the case and considered the submissions/admissions made by the Passenger in his statement dated 12.03.2024 and also in his request letter dated 12.03.2024. The Pax has requested for waiver of Show Cause Notice and personal hearing in his said statement and also in his said request letter and after accepting his request, I proceed to adjudicate the case."

7. Ld. Counsel for the Petitioner further submits that the Petitioner never received the Order-in-Original dated 30th January, 2025. Moreover, there is no communication of the Order-in-Original as well to the Petitioner.

8. The Court has heard the matter.

9. The paragraph 8 of the Order-in-Original would show that clearly there was waiver of show cause notice and no personal hearing was also granted to the Petitioner. As per the operative portion of the order, there is complete confiscation of one elongated gold piece bent in kada shape. The operative portion of the order reads as under:

"23. In view of the foregoing, I pass the following order:

ORDER

i) I deny the Free Allowance if any, admissible to the Pax Mr. Saikiran Goud Tirupathi 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 item from her.

ii) an "ineligible Passenger" for the purpose of the Notification No. 50/2017-Customs dated 30.06.2017 (as amended) read with Baggage Rules, 2016 (as amended).

iii) I order absolute confiscation of One elongated gold piece bent in kada shape average purity 986 with gross and net weight 50 grams having Assessable value Rs.2,85,079/- recovered from the Pax Mr. Saikiran Goud Tirupathi and detained vide DR No. DR/INDEL4/12.03.2024/003959 dated 12.03.2024 under section 111(d), 111(i), 111(j) and 111(m) of the Customs Act, 1962;

iv) I also impose a penalty of Rs.45,000/- (Rupees Forty Five Thousand Only) on the Pax Mr. Saikiran Goud Tirupathi under section 112(a) and 112(b) of the

Customs Act, 1962.”

10. This Court is of the opinion that following the decision in Mr. Makhinder Chopra v. Commissioner of Customs 2025: DHC:1162-DB decided on 19th February 2025, waiver of show cause notice and waiver of personal hearing in standard format is contrary to law. Relevant portion of the said judgment is extracted below:

“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. It appears to the Court that even in the present case it is a standard form waiver. Under these circumstances, the order in original cannot be sustained and the same is accordingly quashed. The gold Kada be released, however, subject to payment of storage charges.

12. Let the Petitioner approach the Customs Department for release of said Kada.

13. The same shall be released within four weeks after verifying the identity of the Petitioner, subject to deposit of storage charges.

14. The petition is disposed of in the said terms.