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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% ***Judgment reserved on: 19.08.2026***
Judgment pronounced on: 02.09.2026
Judgment uploaded on: 02.09.2026

\# **CNR No. DLHC010828952025**
\+ W.P.(C) 16386/2025
IRFAN .....Petitioner
Through: Dr. Ashutosh, Ms. Fatima, Mr. Rohit Swarup, Mr. Dalip Singh, Mr. Avinash Kumar Singh, Mr. Pravej Hasan, Mr. Abhijeet Sagar, Mr. S.Vijaykanth, Advs.

versus

COMMISSIONER OF CUSTOMS .....Respondent
Through: Sh. Atul Tripathi, SSC-CBIC Mr. Akshay Sagar and Mr. Shubham Mishra, Advs.

CORAM:
HON'BLE MR. JUSTICE ANIL KSHETARPAL
HON'BLE MS. JUSTICE SHAIL JAIN

J U D G M E N T

ANIL KSHETARPAL, J.:

1. The principal issue which arises for consideration in the present Petition is whether this Court ought to exercise its extraordinary jurisdiction under Article 226 of the Constitution to examine a challenge to the Order-in-Original dated 07.06.2023, whereby the gold bar weighing 116 grams seized from the Petitioner on 06.12.2020 was confiscated and penalty was imposed, when the Petitioner approached this Court only in 2025 after remaining inactive for several years and the said order is amenable to the statutory appellate remedy under Section 128 of the Customs Act, 1962 [‘Act’].

2. Through the present Petition, the Petitioner seeks, *inter alia*, release of the gold bar weighing 116 grams seized from him on 06.12.2020 and consequential reliefs, while also challenging the adjudication proceedings culminating in the Order-in-Original dated 07.06.2023 on the ground that no show cause notice or effective opportunity of hearing was afforded to him.

FACTUAL MATRIX

3. In order to appreciate the controversy involved in the present Petition, the relevant facts, in brief, are required to be noticed.

4. The Petitioner, an Indian citizen, arrived at the Indira Gandhi International Airport, New Delhi on 06.12.2020 from Riyadh, Saudi Arabia by Flight No. G8-6716. Upon interception by the Customs authorities after he had crossed the Green Channel, one yellow metal bar of "Suisse" brand, weighing 116 grams, was recovered from his possession. The said gold bar was detained *vide* Detention Receipt No. 16583 dated 06.12.2020.

5. On the same date, a statement under Section 108 of the Act was recorded from the Petitioner. In the said statement, the Petitioner is recorded as having stated, *inter alia*, that he had been intercepted after crossing the Green Channel; that the gold bar had been given to him by his friend and did not belong to him; that he had intentionally attempted to clear the same through the Green Channel without payment of customs duty and without declaring it; and that he admitted his omission and commission. The statement further records that the Petitioner did not require any show cause notice and that the

case may be decided on merits. It also records that the statement had been tendered voluntarily, without duress, pressure or threat, and that its contents had been understood by him in vernacular.

6. Subsequently, the Customs authorities initiated proceedings in respect of the detained/seized goods. The Respondent has placed on record communications issued to the concerned passengers as well as a public notice issued by the Office of the Commissioner of Customs (Airport & General), IGI Airport, concerning disposal of detained/seized valuable goods lying in the warehouse and Disposal (Valuable) Godown at Terminal-3, IGI Airport. The said public notice called upon the concerned passengers to approach the Customs authorities within two weeks of its publication, failing which further process for disposal of the goods would be initiated. The Petitioner did not approach the Customs authorities pursuant to the said notice.

7. The adjudication proceedings thereafter culminated in a common Order-in-Original dated 07.06.2023 bearing Issue No. I/1230745/2023, whereby, *inter alia*, the gold bar covered by Detention Receipt No. 16583 dated 06.12.2020 was ordered to be absolutely confiscated under Section 111 of the Act and penalty was imposed under Sections 112(a), 112(b) and 114AA of the Act.

8. It is the Petitioner's case that he was never served with any show cause notice or notice of hearing and that he came to know of the Order-in-Original only upon an enquiry made through his counsel on 26.09.2025. The present Petition was thereafter instituted seeking, *inter alia*, release of the gold bar and a direction that no detention or

warehouse charges be recovered from the Petitioner.

9. The record does not disclose that the Petitioner instituted any proceedings before this Court or any other forum in respect of the seized gold bar between 06.12.2020 and 2025. The Order-in-Original dated 07.06.2023 was also not challenged by the Petitioner before the statutory appellate authority.

CONTENTIONS OF THE PARTIES

10. Contentions of the Petitioner

10.1. Learned counsel for the Petitioner submitted that the detention of the gold bar could not have continued beyond the period prescribed under Section 110(2) of the Act in the absence of a show cause notice under Section 124 of the Act. Reliance has been placed, *inter alia*, upon the judgment of the Supreme Court in ***Union of India & Anr. v. Jatin Ahuja***, Civil Appeal No. 3489/2024, decided on 11.09.2025, as also upon the judgment of this Court in ***Ms. Shubhangi Gupta v. Commissioner of Customs & Ors***. Learned counsel also disputed the genuineness and legal character of the statement dated 06.12.2020 and contended that the same cannot constitute a valid waiver of the statutory requirement of a show cause notice or personal hearing.

10.2. It was further contended that the document relied upon by the Respondent as the Petitioner's statement under Section 108 of the Act was a pre-typed document which was not in the Petitioner's handwriting. It was contended that the Petitioner was made to sign documents without properly explaining their contents and that the

CCTV footage would demonstrate the circumstances in which the document was signed. It was also contended that even if the said document is treated as a statement under Section 108 of the Act, it could not amount to a waiver of the mandatory requirements of Section 124 of the Act. The Petitioner has also questioned the findings in the Order-in-Original concerning the alleged Green Channel violation and his entitlement to import the gold.

11. Contentions of the Respondent

11.1. *Per contra*, learned counsel for the Respondent submitted that the Petitioner had voluntarily tendered his statement on 06.12.2020 and expressly stated that he did not require a show cause notice and that the matter could be decided on merits. It was further submitted that the Petitioner did not respond to the subsequent communications and the public notice issued in respect of the detained/seized goods and did not take any steps for several years. The Order-in-Original was thereafter passed on 07.06.2023. It was submitted that the present Petition, instituted only in 2025, is liable to be dismissed on the ground of delay and laches as well as on account of the availability of the statutory appellate remedy under Section 128 of the Act.

ANALYSIS & FINDINGS

12. This Court has carefully considered the submissions advanced on behalf of the parties and perused the material on record.

13. The present Petition was instituted seeking release of the gold bar detained from the Petitioner on 06.12.2020. The record, however,

discloses that the adjudication proceedings in respect of the said gold bar had already culminated in an Order-in-Original dated 07.06.2023, whereby the gold bar was ordered to be absolutely confiscated and penalty was imposed upon the Petitioner.

14. The grievance raised by the Petitioner is consequently not confined to the continued detention of the goods. The Petitioner also seeks to assail the adjudication culminating in the said Order-in-Original on the ground that no show cause notice under Section 124 of the Act was served upon him, that the statement dated 06.12.2020 could not constitute a valid waiver of the statutory requirement of notice or hearing, and that the findings recorded by the adjudicating authority are otherwise unsustainable.

15. The aforesaid contentions would require examination of the Order-in-Original and the material forming the basis thereof. The parties are at variance with respect to the circumstances in which the statement dated 06.12.2020 was recorded and signed, the legal effect of the statement insofar as it records a purported waiver of show cause notice, the communications allegedly issued to the Petitioner thereafter, and the circumstances in which the adjudication proceedings were conducted. The Petitioner has also questioned the findings recorded by the adjudicating authority concerning the alleged Green Channel violation and the import of the gold.

16. These issues ought not to be examined for the first time in exercise of the writ jurisdiction of this Court, particularly when the Act provides a specific appellate remedy against an order of

adjudication. Section 128 of the Act provides for an appeal to the Commissioner (Appeals) against a decision or order passed by an officer of Customs lower in rank than a Principal Commissioner of Customs or Commissioner of Customs.

17. It is well settled that the existence of an alternative statutory remedy does not operate as an absolute bar upon the jurisdiction of a High Court under Article 226 of the Constitution. At the same time, the rule requiring exhaustion of an efficacious alternative remedy is a well-recognised principle governing the exercise of writ jurisdiction. The present case does not warrant departure from that principle. The Petitioner's allegations regarding non-service of notice and denial of hearing would require examination of the adjudication record, including the statement relied upon by the Respondent and the subsequent communications/public notice. The delay of several years in approaching this Court, despite the Petitioner's admitted knowledge of the seizure of the gold bar, is an additional circumstance which weighs against exercise of the discretionary writ jurisdiction of this Court.

18. The judgments relied upon by the Petitioner, including ***Jatin Ahuja*** (supra) and ***Shubhangi Gupta*** (supra), do not require this Court to examine the concluded adjudication proceedings in the present writ petition, particularly when the Order-in-Original is amenable to statutory appeal.

19. Quite apart from the availability of the statutory remedy, the present Petition suffers from unexplained delay and laches. The

Petitioner was admittedly aware of the seizure of the gold bar on 06.12.2020. The record further shows that a public notice was issued by the Customs authorities calling upon the concerned passengers to approach the Department in respect of detained/seized valuable goods within the stipulated period, failing which further process for disposal would be initiated. The Petitioner did not approach the Department pursuant to the said notice. The adjudication proceedings thereafter culminated in the Order-in-Original dated 07.06.2023, yet the Petitioner did not challenge the said order before the statutory appellate authority or approach this Court until the filing of the present Petition in 2025. No satisfactory explanation for this prolonged inaction has been furnished.

20. In view of the foregoing, this Court is not persuaded to exercise its extraordinary jurisdiction under Article 226 of the Constitution to examine, for the first time, the validity of the Order-in-Original dated 07.06.2023. The Petitioner was aware of the seizure of the gold bar on 06.12.2020, did not take any steps in respect thereof for several years, and did not challenge the Order-in-Original before the statutory appellate authority. The present Petition, instituted only in 2025, consequently suffers from unexplained delay and laches. The availability of a statutory appellate remedy against the Order-in-Original is an additional circumstance which weighs against the exercise of writ jurisdiction in the facts of the present case.

<u>CONCLUSION</u>

21. Accordingly, the present Petition is dismissed. This Court has

not expressed any opinion on the merits of the Petitioner's challenge to the Order-in-Original dated 07.06.2023, including his contentions concerning Sections 110(2) and 124 of the Customs Act, 1962, the alleged waiver of show cause notice or personal hearing, the statement dated 06.12.2020, the alleged Green Channel violation, and the confiscation and penalty imposed by the adjudicating authority.

22. The Petition, along with all pending applications, if any, stands disposed of in the above terms.

ANIL KSHETARPAL, J.

SHAIL JAIN, J.

SEPTEMBER 02, 2026
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