$~
* 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. DLHC010874382025**
\+ W.P.(C) 16945/2025

MOHD KHALID .....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: Mr. Aakarsh Srivastava, Senior Standing Counsel-Customs with Mr. Ashish Bansal, Mr. Anand Pandey, Mr. Ankit Kumar and Mr. Dhananjay Parth, 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 issue which arises for consideration in the present Petition is whether, in the facts and circumstances of the present case, the continued detention of the two gold bars weighing 166 grams warrants interference by this Court in exercise of its jurisdiction under Articles 226 and 227 of the Constitution of India.

2. Through the present Petition, the Petitioner seeks release of two

gold bars, collectively weighing 166 grams, detained by the Respondent at the Indira Gandhi International Airport, New Delhi, *vide* Detention Receipt No. DR/INDEL4/10-12-2024/005561 dated 10.12.2024.

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 is an Indian citizen holding Indian Passport No. Y9692735. The material on record shows that he arrived at Terminal-3 of the Indira Gandhi International Airport, New Delhi, from Saudi Arabia by Flight No. 6E-64 on 10.12.2024. Upon his arrival, two gold bars, collectively weighing 166 grams, were detained by the Customs authorities. The Detention Receipt dated 10.12.2024 records the description of the detained goods as "2 GOLD BARS WEIGHING 166 GRAMS" contained in one transparent plastic box sealed with Customs plier and Customs tape. The reason for detention is recorded as "Green Channel violation".

5. The Detention Receipt further records that the articles had been detained at the request of the passenger and sealed in his presence over his signature. It also contains an instruction to the passenger that the goods were required to be cleared within two months of detention, or within such extended period as may be granted by the competent authority, failing which action for disposal of the goods under the relevant provisions of the Customs Act, 1962 ['the Act'] would be initiated.

6. On the same date, i.e. 10.12.2024, the Petitioner's statement under Section 108 of the Act was recorded. The said statement records that the Petitioner had appeared before the Air Customs Superintendent to tender his "*voluntary statement under Section 108 of the Customs Act, 1962*" in respect of the goods recovered from him. The statement records, *inter alia*, that the Petitioner had been intercepted after crossing the Green Channel and that the gold bars were recovered during DFMD and X-ray examination of his baggage.

7. The statement further records that the recovered gold belonged to the Petitioner's brother, that the Petitioner did not possess licit documents in respect thereof, and that he admitted his "omission and commission". It also records that the Petitioner was aware that Customs duty was payable on import of gold and that he had "intentionally" not declared the recovered items. The statement further records that the Petitioner agreed with the description, quantity and value to be assessed by the Department and was ready to pay Customs duty, fine and penalty as applicable.

8. Significantly, the statement contains the following recital:

> *"I also do not need any Show Cause Notice or personal hearing in the matter."*

The statement concludes with the recital that the Petitioner had tendered the statement as true and correct, had understood it in vernacular and had tendered it without duress, pressure or threat.

9. It is an admitted position that no written show cause notice under Section 124 of the Act has been issued to the Petitioner. It is

also not disputed that no adjudication order has been passed in respect of the detained gold bars.

10. The Respondent, however, submits that the aforesaid statement constituted a voluntary waiver of the show cause notice and personal hearing and that the Petitioner was, in any event, given subsequent opportunity to approach the Department for appraisement and further proceedings. It is also submitted that the Petitioner has never retracted the statement.

CONTENTIONS OF THE PARTIES

11. Contentions on behalf of the Petitioner

11.1. It is submitted that the detention of the gold bars cannot continue indefinitely in the absence of a notice contemplated under Section 124 of the Act within the period prescribed by Section 110(2). Reliance has been placed upon the judgment of the Supreme Court in ***Union of India & Ors. v. Jatin Ahuja***, Civil Appeal No.3489/2024, decided on 11.09.2025.

11.2. It is submitted that the first proviso to Section 124 permits the notice contemplated by clause (a), as also the representation contemplated by clause (b), to be oral only "at the request of the person concerned". According to the Petitioner, the statement dated 10.12.2024 does not record any request on his part for an oral show cause notice. Rather, it merely records that he did not require a show cause notice or personal hearing. It was, therefore, contended that the said recital cannot constitute an oral show cause notice.

11.3. It was further submitted that the opportunity mentioned in the Detention Receipt to approach the Department within two months for clearance of the goods cannot be equated with a notice under Section 124, which is required to inform the owner/person concerned of the grounds on which confiscation of the goods or imposition of penalty is proposed and to afford an opportunity of representation and hearing.

12. <u>Contentions on behalf of the Respondent</u>

12.1. *Per contra*, learned counsel for the Respondent submitted that the Petitioner voluntarily admitted the non-declaration of the gold and expressly waived the requirement of a show cause notice and personal hearing. It was submitted that the statement under Section 108 constitutes substantive evidence and that the petitioner, despite having an opportunity to approach the Department, did not do so. Reliance was also upon the provisions of Sections 77 and 79 of the Act, the Baggage Rules, 2016, the Foreign Trade Policy and Notification No.50/2017-Cus. to contend that the Petitioner was not entitled to import the gold bars in question.

12.2. It was further submitted that the Department is ready and willing to afford the Petitioner an opportunity of personal hearing and to adjudicate the matter in a time-bound manner.

ANALYSIS & FINDINGS

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

14. The undisputed position is that the Petitioner arrived at the

Indira Gandhi International Airport, New Delhi on 10.12.2024 from Saudi Arabia and that two gold bars, collectively weighing 166 grams, were detained by the Customs authorities. The Detention Receipt dated 10.12.2024 records the reason for detention as "Green Channel violation". The Petitioner also admittedly signed the Detention Receipt in token of the detention of the goods.

15. The Petitioner principally relied upon the absence of a written show cause notice under Section 124 of the Act and contended that, upon expiry of the period contemplated under Section 110(2) of the Act, the goods were liable to be released. The Respondent did not dispute that no separate written show cause notice was issued. However, its case is that the Petitioner was dealt with under the statutory scheme applicable to the goods at the time of interception itself and that an oral show cause notice was given. The Respondent further relied upon the statement of the Petitioner recorded on 10.12.2024 under Section 108 of the Act.

16. The statement dated 10.12.2024 records that the Petitioner appeared before the Air Customs Superintendent and tendered his statement in respect of the goods recovered from him. The Petitioner is recorded as having stated that he had been intercepted after crossing the Green Channel and that the two gold bars had been recovered during DFMD and X-ray examination of his baggage. The statement further records his admission regarding non-declaration of the goods, his awareness of the Customs duty payable thereon and his willingness to pay Customs duty, fine and penalty as applicable.

17. More importantly, the statement contains an express recital that the Petitioner "*do[es] not need any Show Cause Notice or personal hearing in the matter*". The Petitioner also stated that he had tendered the statement voluntarily, that it was true and correct, that he had understood the same in vernacular and that it had been tendered without duress, pressure or threat.

18. The Petitioner has, in the present proceedings, disputed the voluntariness and evidentiary value of the aforesaid statement. He has alleged that he was made to sign typed documents and blank papers and that the statement was not voluntarily tendered. He has also sought to rely upon CCTV footage to support his version.

19. In the view of this Court, the aforesaid allegations raise disputed questions of fact which cannot appropriately be adjudicated in exercise of writ jurisdiction. The Court, in the present proceedings, is not required to determine whether the Petitioner had in fact declared the gold bars, whether the statement dated 10.12.2024 was voluntarily tendered, whether the gold belonged to his brother, or whether the Petitioner had the requisite intention to evade Customs duty. These are matters which may appropriately be considered by the competent adjudicating authority upon the Petitioner being afforded an opportunity to place his case before it.

20. The Petitioner's principal reliance is upon the requirement of a show cause notice under Section 124 of the Act. Section 124 provides that no order confiscating goods or imposing penalty shall be made unless the person concerned is given notice informing him of the

grounds on which confiscation or imposition of penalty is proposed, an opportunity to make a representation and a reasonable opportunity of being heard. The first proviso to Section 124 further permits the notice contemplated under clause (a), as well as the representation contemplated under clause (b), to be oral at the request of the person concerned.

21. The Petitioner relies upon the judgment of the Supreme Court in ***Jatin Ahuja*** (supra). There can be no dispute with the proposition laid down therein that the statutory period prescribed under Section 110(2) cannot be circumvented by the Customs authorities and that the statutory consequences flowing from failure to issue the requisite notice within the prescribed period cannot be avoided by resort to a procedure not sanctioned by the Act.

22. However, the question in the present case is not merely whether a written show cause notice was issued. The Respondent has specifically asserted that the proceedings undertaken with the Petitioner included an oral show cause notice and that the Petitioner expressly stated that he did not require a written show cause notice or personal hearing. The Respondent has further stated before this Court that it is ready and willing to afford the Petitioner an opportunity of personal hearing and to adjudicate the matter in a time-bound manner.

23. The distinction between the present case and a case where the Department had neither issued any notice nor undertaken any proceedings with the passenger is therefore material. The present matter cannot be decided merely on the basis that a formal written

show cause notice is not available on record, without examining the nature and effect of the proceedings which admittedly took place on the date of interception.

24. This Court is also conscious of the decision of this Court in ***Shubhangi Gupta v. Commissioner of Customs & Ors.***, W.P.(C.) 10772/2024, decided on 04.11.2024, wherein the Court had rejected the Revenue's contention that a mere waiver of show cause notice could dispense with the requirement of Section 124. In that case, the Revenue had not asserted, in its counter affidavit, that an oral show cause notice had actually been issued calling upon the Petitioner to show cause why the goods should not be confiscated. The Court, therefore, held that the requirements of Section 124(a) had not been satisfied.

25. The factual position before this Court is somewhat different. In the present case, the Respondent has specifically taken the stand that the Petitioner was dealt with through oral proceedings and that he had expressly stated that he did not require a show cause notice or personal hearing. The statement recorded on 10.12.2024 contains the said recital. Further, the Respondent has not sought to rely upon such recital to permanently deny the Petitioner an opportunity of being heard. On the contrary, the Respondent has categorically stated before this Court that the Petitioner may appear before the competent authority and that the matter shall be adjudicated after affording him an opportunity of personal hearing.

26. In these circumstances, this Court is of the view that the

appropriate course would be to permit the statutory adjudication process to be completed rather than to direct release of the goods at this stage solely on the ground that no separate written show cause notice was issued.

27. The statement dated 10.12.2024 also cannot be examined in isolation from the other contemporaneous material. The Detention Receipt records the detention of the two gold bars and specifically informs the passenger that the goods were required to be cleared within two months, failing which action under the relevant provisions of the Act would be initiated. The Petitioner admittedly signed the said receipt. The Respondent further submits that, despite the opportunity available to him, the Petitioner did not approach the Department for appraisement or further proceedings.

28. Whether the aforesaid material ultimately constitutes sufficient compliance with the statutory requirements, and what consequences should follow from the petitioner's statement and the circumstances in which the goods were intercepted, are matters which ought to be examined in the first instance by the competent adjudicating authority. This Court, exercising writ jurisdiction, would not ordinarily undertake such an adjudicatory exercise, particularly when the Department is willing to afford a hearing and pass an appropriate order in accordance with law.

29. This Court also finds merit in the Respondent’s submission that the Petition raises disputed factual questions concerning the manner in which the goods were brought into India, whether they were declared,

the circumstances of their recovery and the voluntariness of the statement attributed to the petitioner. The Petitioner's allegations of coercion and his reliance upon CCTV footage cannot appropriately be determined on affidavits in the present proceedings. The competent adjudicating authority would be the appropriate forum for consideration of the Petitioner's explanation and the material relied upon by both sides.

30. At the same time, the Department cannot be permitted to keep the matter pending indefinitely. Since the Respondent has itself stated before this Court that it is ready and willing to afford the petitioner an opportunity of personal hearing and to adjudicate the matter in a time-bound manner, the said statement is required to be acted upon.

31. Accordingly, while this Court finds no ground to direct release of the detained gold bars at this stage, it is considered appropriate to direct that the Petitioner be afforded a reasonable opportunity of personal hearing before the competent adjudicating authority. The Petitioner shall be at liberty to place on record his explanation, including his contentions regarding declaration of the goods, the circumstances in which the statement dated 10.12.2024 was recorded, and any other material which he seeks to rely upon in support of his case.

32. The competent authority shall thereafter adjudicate the matter expeditiously and in accordance with law, uninfluenced by any observations contained in the present judgment on the merits of the allegations against the Petitioner.

33. It is clarified that this Court has not expressed any opinion on whether the Petitioner had declared the gold bars, whether the gold bars were liable to confiscation, whether the Petitioner was eligible to import the same, or whether the statement dated 10.12.2024 was voluntarily made. All such questions are left open for consideration by the competent authority in accordance with law.

CONCLUSION

34. For the foregoing reasons, this Court finds no ground to exercise the extraordinary writ jurisdiction of this Court for directing release of the detained gold bars at this stage. The Writ Petition is, accordingly, dismissed.

35. However, the Respondent shall afford the Petitioner an opportunity of personal hearing before the competent adjudicating authority and shall thereafter adjudicate the matter in accordance with law, as expeditiously as possible and, in any event, within a period of four (04) weeks from the date on which the Petitioner appears before the competent authority pursuant to notice issued by the Respondent.

36. The Petitioner shall appear before the competent authority on such date as may be communicated to him by the Respondent and shall be at liberty to produce all documents and material on which he seeks to rely.

37. It is clarified that the dismissal of the present Petition shall not be construed as an expression of opinion on the merits of the allegations against the Petitioner or on the question of confiscation,

duty, fine or penalty. The competent authority shall take a decision strictly in accordance with law and on the basis of the material placed before it.

38. The Petition stands disposed of in the above terms.

ANIL KSHETARPAL, J.

SHAIL JAIN, J.

SEPTEMBER 02, 2026
sp/pal