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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. DLHC010959202025**

\+ W.P.(C) 18202/2025

MOHAMMAD NAWAB KHAN THRO HIS WIFE FAREEEDA BEGUM .....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. Gibran Naushad, SSC with Mr. Suraj Shekhar Singh, Mr. Hasan Haider and Mr. Anish 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, in exercise of its writ jurisdiction under Articles 226 and 227 of the Constitution of India, ought to examine the Petitioner's challenge to the Order-in-Original dated 15.04.2024, when the said order is amenable to challenge before the statutory

appellate authorities under the Customs Act, 1962 [‘the Act’].

2. Through the present Petition, the Petitioner seeks, *inter alia*, quashing of the Order-in-Original dated 15.04.2024 whereby the gold bar weighing 117 grams, which had been detained by the Customs Authorities, was absolutely confiscated. The Petitioner also seeks release of the said gold bar and waiver of the detention/warehouse charges.

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 arrived in India carrying a gold bar weighing 117 grams. The said gold bar was detained by the Customs Authorities *vide* Detention Receipt No. 3635 dated 28.01.2024.

5. The Respondent asserts that, during the course of proceedings, a statement of the Petitioner was recorded under Section 108 of the Customs Act, 1962. The Respondent relies upon the said statement to contend that the Petitioner admitted that the gold bar had not been declared before the Customs Authorities and further stated that he did not require a Show Cause Notice or a personal hearing.

6. The Respondent further asserts that an oral Show Cause Notice was issued to the Petitioner under the proviso to Section 124 of the Customs Act, 1962. The chart placed on record by the Respondent records the date of the alleged oral Show Cause Notice as 27.01.2024. It is further stated that, *vide* a communication dated 02.02.2024, the

Petitioner requested waiver of the Show Cause Notice and personal hearing.

7. The gold bar was thereafter appraised on 02.02.2024. The adjudicating authority ultimately passed the Order-in-Original dated 15.04.2024, whereby the gold bar weighing 117 grams was ordered to be absolutely confiscated.

8. The Petitioner has thereafter approached this Court by way of the present Petition.

CONTENTIONS OF THE PARTIES

9. Contentions of the Petitioner

9.1. Learned counsel for the Petitioner submitted that no valid Show Cause Notice was issued to the Petitioner prior to the confiscation of the gold bar. It is contended that the document relied upon by the Respondent as a statement under Section 108 of the Act cannot be treated as a valid statement recorded in accordance with law. It was further contended that the Petitioner was made to sign documents without being informed of their contents and that the alleged waiver of the Show Cause Notice and personal hearing cannot dispense with the mandatory requirements of Section 124.

9.2. Reliance was placed upon the judgment of this Court in ***Ms. Shubhangi Gupta v. Commissioner of Customs & Ors.***, W.P.(C) 10772/2024, decided on 04.11.2024, to contend that the requirement of a Show Cause Notice under Section 124 cannot be dispensed with merely on the basis of an alleged waiver by the person concerned.

Further reliance was also placed upon various decisions concerning the manner in which statements under Section 108 are required to be recorded and the principles of natural justice applicable to confiscation proceedings.

10. Contentions of the Respondent

10.1. *Per contra*, learned counsel for the Respondent submitted that the Petition is not liable to be entertained in exercise of the extraordinary jurisdiction of this Court, particularly since the adjudication proceedings have culminated in the Order-in-Original dated 15.04.2024. It was submitted that the Act provides a complete statutory mechanism for challenging such an order. It was further submitted that the factual assertions made by the Petitioner regarding the circumstances in which his statement was recorded, the alleged coercion and the alleged non-issuance of an oral Show Cause Notice are matters which can appropriately be examined by the statutory appellate authority.

ANALYSIS & FINDINGS

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

12. At the outset, it is necessary to notice that the present Petition is directed against an Order-in-Original dated 15.04.2024 passed by the competent adjudicating authority under the Act. The grievance of the Petitioner, therefore, is no longer confined to a mere apprehension of coercive action or continued detention of the goods without

commencement or conclusion of adjudication proceedings. The adjudication proceedings have culminated in a reasoned order, whereby the goods in question have been ordered to be confiscated.

13. The Act provides a statutory appellate mechanism against an order passed by the adjudicating authority. Consequently, the Petitioner has an efficacious statutory remedy available to him for assailing the Order-in-Original, including on questions relating to the legality of the confiscation, compliance with the requirements of Section 124, appreciation of the statement allegedly recorded under Section 108 of the Act, and the other factual and legal issues sought to be raised in the present Petition

14. It is well settled that the existence of an alternative statutory remedy does not constitute an absolute bar to the exercise of jurisdiction under Article 226 of the Constitution. The rule requiring exhaustion of an efficacious alternative remedy is a rule of self-imposed restraint and discretion. The Supreme Court in ***Whirlpool Corporation v. Registrar of Trade Marks, Mumbai & Ors.***, (1998) 8 SCC 1, has recognised that the High Court may nevertheless exercise its writ jurisdiction in appropriate cases, including where there is a violation of principles of natural justice, where the order or proceedings are wholly without jurisdiction, or where the vires of a legislation is under challenge.

15. The fact that the Petitioner has characterised his challenge as one involving violation of principles of natural justice does not, by itself, require this Court to entertain the Petition notwithstanding the

availability of a statutory appeal. The Court has to examine the nature of the grievance and the circumstances of the case.

16. In the present case, the Petitioner's challenge to the Order-in-Original involves, *inter alia*, questions as to whether the statement relied upon by the Customs Authorities was voluntarily made; whether it was duly recorded under Section 108 of the Act; whether an oral Show Cause Notice was in fact given; what was communicated to the Petitioner before the confiscation proceedings were concluded; and whether the Petitioner's statement and subsequent communication constituted a conscious relinquishment of the opportunity of personal hearing.

17. These questions cannot be divorced from the factual record of the adjudication proceedings. In particular, the rival contentions regarding the circumstances in which the statement was recorded and the precise nature of the communication made to the Petitioner would require examination of the contemporaneous record. Such an exercise is more appropriately undertaken in the statutory appellate proceedings, where the entire adjudication record would be available for consideration.

18. This Court is, therefore, of the view that the present case does not warrant exercise of the extraordinary writ jurisdiction of this Court at this stage. The mere assertion that the impugned Order-in-Original has been passed in breach of principles of natural justice cannot, in the facts of the present case, be treated as sufficient to bypass the statutory appellate remedy, particularly when the grievance itself raises

disputed questions concerning the factual compliance with the procedure prescribed under the Act.

19. It is clarified that this Court has not examined the merits of the Petitioner's challenge to the Order-in-Original dated 15.04.2024. In particular, this Court has expressed no opinion on the validity or otherwise of the statement allegedly recorded under Section 108 of the Customs Act, 1962, the alleged oral Show Cause Notice, the alleged waiver of Show Cause Notice or personal hearing, the applicability of the judgment in ***Ms. Shubhangi Gupta*** (supra), or the legality of the confiscation of the gold bar.

20. All such contentions are left open to be urged by the Petitioner before the competent statutory appellate authority. The appellate authority shall consider the same independently and in accordance with law, without being influenced by any observation contained in the present judgment.

CONCLUSION

21. In view of the above, the present Petition is disposed of with liberty to the Petitioner to avail the statutory remedy available under the Customs Act, 1962 against the Order-in-Original dated 15.04.2024.

22. If the Petitioner avails the statutory remedy within a period of four weeks from today, the competent appellate authority shall consider the question of limitation in accordance with law, uninfluenced by the time spent by the Petitioner in pursuing the

present proceedings before this Court.

23. Needless to say, if any application seeking condonation of delay is filed, the same shall be considered by the competent authority in accordance with law and on its own merits.

24. The present Petition, along with the pending application(s), if any, stands disposed of in the above terms.

ANIL KSHETARPAL, J.

SHAIL JAIN, J.

SEPTEMBER 02, 2026
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