2026:DHC:7369-DB

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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. DLHC010170562026**
\+ W.P.(C) 5411/2026

MOHD ARIF .....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**

**<u>J U D G M E N T</u>**

**<u>ANIL KSHETARPAL, J.:</u>**

1. The principal issue which arises for consideration in the present Petition is whether this Court ought to examine the legality and validity of an Order-in-Original passed by the competent Customs authority, when the said order is appealable under Section 128 of the Customs Act, 1962 [the 'Act'], particularly when the challenge raises

questions concerning the issuance/waiver of Show Cause Notice, opportunity of personal hearing and the circumstances in which the Petitioner made certain statements and representations before the Customs authorities.

2. Through the present Petition, the Petitioner seeks quashing of the Order-in-Original No. 1638/003806/17.02.2024/WH/2024-25 dated 14.06.2024 [the ['Impugned OIO'], whereby two gold bars weighing 233 grams and valued at Rs.13,07,412/- were ordered to be absolutely confiscated under Sections 111(d), 111(j), 111(l) and 111(m) of the Act. The Petitioner also seeks release of the said gold bars and a direction that no detention/warehouse charges be recovered from him.

**<u>FACTUAL MATRIX</u>**

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 national holding Passport No. 87431589, arrived at Terminal-3 of the Indira Gandhi International Airport, New Delhi on 17.02.2024 by Flight No. XY-329. He arrived from Riyadh and, according to the record, had opted for the Green Channel.

5. Upon interception and examination by the Customs authorities, two gold bars weighing 233 grams were recovered from the Petitioner. The goods were detained *vide* Detention Receipt No. DR/INDEL4/17.02.2024/003806 dated 17.02.2024. The Detention

Receipt describes the goods as two gold bars engraved "*SUISSE*", of purity 998 and weighing 233 grams.

6. On the same date, i.e. 17.02.2024, the Petitioner tendered a statement under Section 108 of the Act. In the said statement, the Petitioner stated, *inter alia*, that he had been intercepted after crossing the Green Channel; that the two gold bars had been recovered from his possession; that the goods belonged to him; and that he admitted his omission and commission. He further stated that he was aware that Customs duty was payable on the import of the goods, that he had intentionally not declared the recovered items and that he was agreeable to the description, quantity and value as assessed by the Department. The statement further records that the Petitioner was ready to pay Customs duty along with fine and penalty, as applicable, and further that the contents thereof were read over and explained to the Petitioner in vernacular, whereafter he signed the same without protest. It further records that the Petitioner did not require a Show Cause Notice or personal hearing and that he had tendered the statement without any duress, pressure or threat.

7. Thereafter, the Petitioner appeared before the Customs authorities on 22.04.2024 and submitted a written request in relation to the detained goods. In the said request, the Petitioner sought release of the detained goods, expressed regret for having opted for the Green Channel, requested a lenient view and stated that his case may be decided on merits. The said document also records that the Petitioner did not want any written Show Cause Notice and personal hearing and that an oral Show Cause Notice had been received.

8. On 22.04.2024, the detained gold was subjected to physical examination by the Jewellery Appraiser in the presence of the Petitioner. The goods were found to comprise two gold bars of purity 998 and weighing 233 grams. Their value was assessed at Rs.13,07,412/-.

9. The Impugned OIO dated 14.06.2024 was thereafter passed by the Joint Commissioner of Customs. The adjudicating authority, after considering the material on record, recorded that the Petitioner had crossed the Green Channel without declaring the gold and had thereby violated Section 77 of the Act. The adjudicating authority further recorded that the Petitioner was an "*ineligible passenger*" for import of gold under the applicable notification since his stay abroad was less than six months.

10. The adjudicating authority further considered the applicable provisions of the Baggage Rules, 2016, the Foreign Trade Policy and Notification No. 50/2017-Customs dated 30.06.2017, as amended. It was concluded that the gold bars were liable to confiscation under Sections 111(d), 111(j), 111(l) and 111(m) of the Act. The adjudicating authority also considered the question of redemption under Section 125 of the Act and declined to offer an option for redemption of the confiscated gold on payment of redemption fine. A penalty of Rs.1,30,000/- was also imposed upon the Petitioner under Section 112 of the Act.

11. The Impugned OIO expressly records that the Petitioner had requested waiver of Show Cause Notice and personal hearing *vide* his

letter dated 22.04.2024 and that, after accepting the said request, the adjudicating authority proceeded to adjudicate the matter.

12. The Petitioner states that the Impugned OIO was never served upon him. According to him, he made enquiries regarding the detained gold and, through his counsel, addressed a letter dated 05.02.2026 to the Customs authorities seeking a copy of the order. In response thereto, the Customs authorities, *vide* communication dated 19.02.2026, supplied a certified copy of the Impugned OIO and informed the Petitioner that the said order had been issued on 21.05.2024 and dispatched to him.

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

## <u>CONTENTIONS OF THE PARTIES</u>

14. <u>Contentions of the Petitioner</u>

14.1. Learned counsel for the Petitioner submitted that the Impugned OIO is liable to be set aside as having been passed in violation of the mandatory requirements of Sections 110 and 124 of the Act and the principles of natural justice. It was contended that no valid Show Cause Notice or effective opportunity of personal hearing was afforded to the Petitioner before the gold was absolutely confiscated and penalty was imposed.

14.2. It was submitted that the Respondent's reliance upon the purported statement dated 17.02.2024 under Section 108 of the Act is misplaced. According to the Petitioner, the document relied upon by the Department cannot be treated as a valid statement under Section 108, having regard to the manner in which it was recorded and the alleged non-compliance with the departmental instructions governing recording of such statements. It was further submitted that the Petitioner was made to sign documents without their contents being properly explained to him and that the alleged statement was neither voluntary nor sufficient to constitute a valid waiver of statutory safeguards.

14.3. It was further submitted that there is no provision under the Act permitting a blanket waiver of the statutory requirement of a Show Cause Notice and personal hearing. Reliance was placed, *inter alia*, on the decision of this Court in ***Shubhangi Gupta v. Commissioner of Customs***, which, according to the Petitioner, has also been affirmed by the Supreme Court. It was argued that the mere recording in the Impugned OIO that the Petitioner had "*requested for waiver*" of Show Cause Notice and personal hearing could not dispense with the mandatory requirements of law.

14.4. It was further submitted that, even where an oral Show Cause Notice is contemplated under the proviso to Section 124 of the Act, the statutory requirements must be strictly complied with. According to the Petitioner, there is no material demonstrating any specific request by him for an oral Show Cause Notice, the acceptance of such request by the Department, or effective communication to him of the grounds and material relied upon for confiscation and imposition of penalty. It was thus contended that the purported oral Show Cause Notice cannot cure the statutory violation.

14.5. On the question of maintainability, it was submitted that the availability of a statutory appeal does not bar exercise of jurisdiction under Article 226 where there is a violation of principles of natural justice or where the challenge raises a pure question of law. Reliance was placed on ***Godrej Sara Lee Ltd. v. Excise and Taxation Officer*** and the settled exceptions to the rule of alternative remedy. It was contended that the present case concerns an alleged violation of mandatory statutory provisions and, therefore, the decision in ***Assistant Commissioner (CT) LTU, Kakinada v. Glaxo Smith Kline Consumer Healthcare Ltd.*** does not warrant dismissal of the Petition.

14.6. Learned counsel also disputed the Respondent's contention that the Petition is barred by delay and laches. It was submitted that the Impugned OIO was never served upon the Petitioner and that the Department has produced only proof of dispatch and not proof of actual receipt. Reliance was placed upon Sections 153(1)(b) and 153(3) of the Act to contend that the statutory requirements for service have not been established. It was therefore submitted that the Petitioner cannot be presumed to have received the Impugned OIO in June 2024.

14.7. It was lastly submitted that the alleged waiver and the purported statement under Section 108 cannot validate an order which, according to the Petitioner, is *void ab initio* for failure to comply with mandatory statutory requirements. Reliance was also placed upon the principle that where the statute prescribes a particular manner of doing an act, the same must be done in that manner alone.

15. Contentions of the Respondent

15.1. *Per contra*, learned counsel for the Respondent submitted that the present Petition is not maintainable, having been filed nearly two years after the Impugned OIO and well beyond the period prescribed for availing the statutory remedy of appeal under Section 128 of the Act, namely, 60 days, with a further period of 30 days being condonable. It was submitted that the order was dispatched to the Petitioner by Speed Post on 21.06.2024 and, in terms of Section 153(3) of the Act, is deemed to have been received by him in the ordinary course of transit.

15.2. It was further submitted that the Petitioner's assertion that he became aware of the Impugned OIO only in February 2026 is incorrect. The Respondent relied upon the Petitioner's letter dated 05.02.2026 to contend that the Petitioner was already aware that an adjudication order had been passed, and submitted that the said letter was merely an attempt to overcome the statutory limitation and explain the delay.

15.3. On merits, it was submitted that the Petitioner voluntarily tendered his statement on 17.02.2024, wherein he admitted recovery of the gold, acknowledged his omission in declaring the same and expressly stated that he did not require a Show Cause Notice or personal hearing. It was submitted that the said statement was made without duress or pressure and was never retracted.

15.4. Further reliance was placed upon the Petitioner's subsequent written request dated 22.04.2024, wherein he again admitted his mistake in opting for the Green Channel, sought a lenient view and expressly recorded that he did not want a written Show Cause Notice or personal hearing and that an oral Show Cause Notice had been received. It is, therefore, submitted that the requirements of Sections 110 and 124 of the Act stood duly complied with.

15.5. It was also submitted that the allegations of coercion, alteration or forced signatures are bald and unsupported by any contemporaneous material. Reliance was placed upon ***Surjeet Singh Chhabra v. Union of India*** (1997) 89 ELT 646 (SC), to contend that a voluntary statement made under Section 108 of the Act constitutes an admission and can be relied upon, particularly when the same has not been retracted.

15.6. It was accordingly submitted that the Impugned OIO was passed after due consideration of the material on record and that the Petitioner, having failed to avail the statutory appellate remedy within the prescribed period, cannot invoke the extraordinary jurisdiction of this Court. Reliance was placed upon ***Assistant Commissioner (CT), LTU, Kakinada v. Glaxo Smith Kline Consumer Healthcare Ltd.***[1], to contend that the availability of an alternative remedy and the expiry of the statutory period of limitation constitute sufficient grounds for declining interference under Article 226 of the Constitution.

## ANALYSIS & FINDINGS

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

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[1] (2020) 36 G.S.T.L. 305

17. At the outset, it is necessary to delineate the scope of the controversy. The Petitioner does not dispute that two gold bars weighing 233 grams were recovered from his possession upon his arrival at the Indira Gandhi International Airport on 17.02.2024. He also does not dispute that the gold was thereafter subjected to examination and valued at Rs.13,07,412/-. The Impugned OIO has been passed by the competent adjudicating authority under the Act, ordering absolute confiscation of the gold under Sections 111(d), 111(j), 111(l) and 111(m) and imposing a penalty of Rs.1,30,000/- under Section 112 of the Act.

18. The principal objection raised by the Petitioner is procedural. His case is that the statutory requirement of notice under Section 124 was not complied with and that no personal hearing was afforded to him. The Respondent, on the other hand, contended that the Petitioner had expressly waived written Show Cause Notice and personal hearing and had also recorded receipt of an oral Show Cause Notice.

19. Before examining this contention, however, a more fundamental question arises, namely, whether this Court ought to exercise its extraordinary jurisdiction under Article 226 of the Constitution at all, particularly when the Impugned OIO is appealable under Section 128 of the Act and the Petition has been instituted nearly two years after the order was passed.

20. 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. The rule is one of self-imposed

restraint. Ordinarily, where the legislature has created a hierarchy of remedies and has entrusted a specialised appellate authority with the examination of orders passed under the statute, the High Court would not ordinarily bypass such mechanism.

21. The Supreme Court in ***Glaxo Smith Kline*** (supra) examined the interplay between the extraordinary jurisdiction of the High Court and a statutory appellate remedy which had become barred by limitation. The Court recognised that the jurisdiction under Article 226 is undoubtedly wide, but held that such jurisdiction ought not to be exercised in a manner which defeats the statutory scheme, particularly the legislative prescription concerning limitation.

22. Significantly, the Supreme Court observed that a writ petition may, in an appropriate case, be entertained where an order is challenged before expiry of the statutory appellate period on grounds such as want or excess of jurisdiction or flagrant disregard of law and procedure or violation of principles of natural justice. However, the Court cautioned that once the maximum statutory period for availing the appellate remedy has expired, the High Court cannot, as a matter of course, entertain a writ petition so as to circumvent the statutory scheme.

23. In the present case, the Petitioner seeks to bring his case within the exception of violation of principles of natural justice. The question, therefore, is whether the record discloses such a patent violation as would justify this Court in overlooking both the statutory appellate remedy and the substantial delay in approaching this Court.

24. In our view, the answer must be in the negative.

25. The record placed before this Court does not present a case where the Petitioner was wholly unaware of the proceedings concerning the seized gold. On the contrary, the material placed on record shows his participation at more than one stage.

26. The statement dated 17.02.2024 records, *inter alia*, the recovery of the two gold bars, the Petitioner's ownership thereof, his admission regarding non-declaration and his willingness to pay the applicable Customs duty, fine and penalty. More importantly for the present controversy, the document records that the Petitioner did not require a Show Cause Notice or personal hearing and that the statement had been tendered without duress, pressure or threat.

27. The significance of this document does not arise merely from the description given to it by the Customs authorities as a statement under Section 108 of the Act. Even leaving aside, for the present, the legal debate regarding the precise evidentiary character of the document, the fact remains that the document placed on record bears the Petitioner's signatures and contains the aforesaid assertions and did not, contemporaneously or thereafter for a substantial period, communicate to the Customs authorities that the contents thereof were incorrect or that his signatures had been obtained by coercion.

28. There is, thereafter, a further and independent document dated 22.04.2024 which assumes considerable significance. The Petitioner himself approached the Customs authorities in relation to the detained gold. In that communication, he expressed regret for having opted for

the Green Channel, sought release of the goods, requested a lenient view and stated that he did not require a written Show Cause Notice or personal hearing. The document further records that an oral Show Cause Notice had been received.

29. Thus, this is not a case where the Department, for the first time in its counter affidavit, has sought to introduce an entirely new case that an oral Show Cause Notice had been issued. There is a contemporaneous document dated 22.04.2024, emanating from the Petitioner himself, which records receipt of an oral Show Cause Notice.

30. This aspect materially distinguishes the present case from ***Shubhangi Gupta*** (supra). In that case, this Court was dealing with a situation where the Revenue had not pleaded that an oral Show Cause Notice had actually been issued. The Court specifically noted that the Revenue's case was that no Show Cause Notice was required because the petitioner had waived it, and held that there was no provision under the Act for such waiver.

31. In the present case, by contrast, the Respondent's case is not founded merely upon a purported waiver. The record also contains the Petitioner's own written acknowledgment that an oral Show Cause Notice had been received. Consequently, the question whether the statutory requirements were complied with cannot be answered merely by mechanically applying the ratio of ***Shubhangi Gupta*** (supra).

32. This Court is, however, not required to finally pronounce upon each of the disputed factual assertions concerning the manner in which

the statement dated 17.02.2024 was recorded, whether the Petitioner fully understood each part thereof, or whether there was any coercion or pressure in obtaining his signatures. Such disputed questions, particularly in proceedings seeking examination of the legality of an adjudication order, are ordinarily matters which can appropriately be considered by the statutory appellate authority.

33. The Petitioner's allegation that he was compelled to sign pre-typed documents or blank papers is also unsupported by any contemporaneous complaint or retraction. More importantly, the subsequent letter dated 22.04.2024, admittedly submitted by the Petitioner himself, does not record any allegation of coercion, threat or compulsion. Instead, it reiterates the Petitioner's request for release of the goods and records his desire that the matter be dealt with on merits.

34. This subsequent conduct assumes importance when the Petitioner, nearly two years later, seeks to contend that the entire process was vitiated at inception by coercion and denial of opportunity. Such a disputed factual controversy is not one which, in the circumstances of the present case, warrants exercise of extraordinary writ jurisdiction.

35. This Court may also deal with the contention concerning the service of the Impugned OIO. The Respondent has placed on record the dispatch particulars showing that the Impugned OIO was dispatched by Speed Post on 21.06.2024 at the Petitioner's address. Section 153(3) of the Act expressly provides for a deeming fiction in

respect of an order or communication sent by registered post or speed post, subject to the addressee proving the contrary.

36. The Petitioner's contention is that there was no acknowledgement due evidencing actual receipt. This contention, in our view, cannot by itself justify ignoring the statutory deeming provision contained in Section 153(3). Whether the statutory requirements of service stood satisfied is itself a matter capable of examination in the statutory appellate proceedings. For the purposes of determining whether this Court should entertain a writ petition almost two years after the order, the dispatch particulars placed on record are certainly relevant.

37. Even accepting the Petitioner's assertion that he came to know of the Impugned OIO only in February 2026, the record does not disclose any contemporaneous step taken by him between April 2024 and February 2026 either to ascertain the status of the adjudication proceedings or to seek release of the detained goods.

38. The present case, therefore, cannot be equated with a case where the petitioner was entirely unaware of the initiation of proceedings or where an adjudication order came to be passed behind his back without his participation at any stage.

39. There is yet another important consideration. The challenge raised by the Petitioner is not directed against an order passed by an authority wholly lacking jurisdiction. The Customs authorities undoubtedly possessed jurisdiction to examine the import of gold, determine whether the statutory requirements had been complied with,

adjudicate the question of confiscation and impose penalty in accordance with law.

40. The Petitioner's grievance essentially concerns the manner in which that jurisdiction was exercised. He disputes the legal consequences flowing from the statement dated 17.02.2024, the communication dated 22.04.2024, the alleged oral Show Cause Notice and the absence of a separate personal hearing. These are matters which can be examined by the appellate authority within the statutory framework.

41. The distinction between absence of jurisdiction and an alleged erroneous exercise of jurisdiction is material in the present context. The extraordinary jurisdiction of this Court cannot ordinarily be invoked merely to bypass the appellate mechanism where the grievance concerns the correctness or procedural regularity of an order passed by an authority having jurisdiction over the subject matter.

42. The Petitioner's reliance upon the principle that when a statute prescribes a particular manner of doing an act, it must be done in that manner, cannot alter this position. There can be no quarrel with the said principle. However, the question whether the statutory procedure was in fact complied with in the present case requires examination of the documents and surrounding circumstances. The existence of a disputed question as to compliance does not, by itself, justify bypassing the statutory appellate remedy, particularly after such substantial delay.

43. The plea of violation of natural justice, therefore, cannot be

accepted as an automatic exception to the rule of alternative remedy. The Court must examine the substance of the complaint and the circumstances in which the challenge is brought. In the present case, the contemporaneous record demonstrates participation by the Petitioner and contains an express statement regarding the oral Show Cause Notice and waiver of a written Show Cause Notice and personal hearing.

44. This Court also finds considerable force in the Respondent's contention concerning delay. The Impugned OIO was passed on 14.06.2024. The Department's record shows dispatch on 21.06.2024. The present Petition has been instituted only in 2026. Even accepting, for the purposes of argument, the Petitioner's assertion that he obtained a copy of the order only on 19.02.2026, there remains the question whether the extraordinary jurisdiction of this Court should be invoked when the statutory remedy was available and the Petitioner's own conduct during the relevant period does not demonstrate any contemporaneous challenge to the proceedings.

45. The decision in ***Glaxo Smith Kline*** (supra) reinforces the principle that the High Court should not permit the writ jurisdiction to become a means of circumventing the statutory period prescribed for pursuing the appellate remedy. The Supreme Court has specifically cautioned that the width of Article 226 cannot be employed in a manner which renders the statutory scheme concerning remedies and limitation otiose.

46. In the facts of the present case, therefore, this Court is of the

view that the Petitioner ought to have availed of the statutory remedy under Section 128 of the Act. This Court sees no exceptional circumstance warranting interference under Article 226 at this stage.

## CONCLUSION

47. The present Petition is, accordingly, dismissed on the ground that the Petitioner has an efficacious statutory remedy under Section 128 of the Act and has approached this Court after substantial delay, without making out any exceptional circumstance warranting exercise of writ jurisdiction.

48. It is clarified that this Court has not examined the merits of the Petitioner's challenge to the absolute confiscation of the gold bars or the imposition of penalty. Likewise, this Court has not expressed any final opinion on the evidentiary value of the statement dated 17.02.2024 or the precise legal effect of the Petitioner's communication dated 22.04.2024. These issues, if raised before the competent appellate forum, shall be considered in accordance with law.

**ANIL KSHETARPAL, J.**

**SHAIL JAIN, J.**

**SEPTEMBER 02, 2026**
*sp/pal*