2026:DHC:7441-DB

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% ***Judgment reserved on: 31.08.2026***
Judgment pronounced on: 03.09.2026
Judgment uploaded on: 03.09.2026

CNR No. DLHC010021412026

\+ W.P.(C) 1037/2026
NAHID ZAKIYA THROUGH SPA MOHAMMAD UZAIR .....Petitioner
Through: Ms. Richa Kumari, Mr. Pawan and Mr. Nagendra Yadav, Advs.

versus

COMMISSIONER OF CUSTOMS .....Respondent
Through: Mr. Aakarsh Srivastava, SSC along with Mr. Ashish Bansal and Mr. Ankit Kumar, 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 the Petitioner, after approaching this Court more than two and a half years after the detention of one yellow metal chain appearing to be gold, is entitled to a writ directing its unconditional return on the assertion that no notice under Section 124 of the Customs Act, 1962 [hereinafter referred to as 'the Act'] was issued within the period contemplated under Section 110(2) thereof.

2. Through the present Petition, the Petitioner seeks setting aside

of the action of the Customs authorities in detaining one yellow metal chain weighing 58 grams *vide* Detention Receipt No. DR/INDEL4/28-06-2023/002115 dated 28.06.2023 and a consequential direction for return of the aforesaid article. The Petitioner has also prayed for waiver of warehouse and handling 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 at Terminal-3, Indira Gandhi International Airport, New Delhi, from the United Arab Emirates on 28.06.2023. According to the contemporaneous record placed before this Court, after the Petitioner had crossed the Green Channel, she was intercepted by the Customs authorities. During the course of examination, one yellow metal chain appearing to be gold and weighing 58 grams was recovered from her possession.

5. The aforesaid article was detained *vide* Detention Receipt No. DR/INDEL4/28-06-2023/002115 dated 28.06.2023. The reason recorded in the Detention Receipt is "*Green Channel Violation*". The article has been described therein as "*ONE YELLOW METAL CHAIN MADE TO BE GOLD*", weighing 58 grams. Significantly, the value of the article was recorded as being "*TO BE APPRAISED*".

6. The Petitioner also tendered a statement on 28.06.2023 under Section 108 of the Act, wherein then Petitioner stated that she was intercepted by the Customs Officer after crossing the Green Channel

and that, during the course of examination, the aforesaid article was recovered from her possession. It was further stated that the article belonged to the Petitioner and that she was aware that Customs duty was payable on the imported goods. It was also stated that the Petitioner had intentionally not declared the recovered article.

7. It was further recorded in the said statement that the Petitioner agreed with the description, quantity and value to be assessed by the Department and was ready to pay Customs duty along with fine and penalty, as applicable. The statement also records that the Petitioner did not require a Show Cause Notice or personal hearing in the matter. The statement further records that it was tendered as true and correct, was understood by the Petitioner in the vernacular and was made without any duress, pressure or threat.

8. It is significant to note that the present Writ Petition is completely silent regarding the aforesaid contemporaneous statement recorded under Section 108 of the Act. The Petition, on the contrary, proceeds substantially on the assertion that the Petitioner was never afforded an opportunity to place her version before the Customs authorities and that no opportunity whatsoever was granted to her in the matter.

9. The Respondent has contested the Petition and, at the outset, has raised objections with regard to suppression of the material contemporaneous record as well as delay and laches.

CONTENTIONS OF THE PARTIES

10. Contentions on behalf of the Petitioner

10.1 It was submitted that the article in question constitutes the Petitioner's used personal jewellery and, therefore, is liable to be treated as a *bona fide* personal effect. It was further contended that the Respondent failed to issue a Show Cause Notice within the period prescribed under Section 110(2) of the Act and, consequently, the detained/seized article is liable to be returned to the Petitioner.

10.2 Reliance was placed upon the judgment of the Supreme Court in ***Union of India & Ors. v. Jatin Ahuja***, Civil Appeal No.3489/2024 and connected matters, decided on 11.09.2025, in support of the submission that where the statutory requirement with regard to issuance of notice is not complied with within the prescribed period, the concerned goods are liable to be returned.

10.3 Further reliance was also placed upon the decision of this Court in ***Saba Simran v. Union of India & Ors.*** in support of the contention that genuine personal jewellery may constitute personal effects and may not be liable to be treated in the same manner as goods imported for commercial purposes.

10.4 It was lastly contended that continued retention of the article without completion of the proceedings violates the Petitioner's rights, including the constitutional protection under Article 300A of the Constitution of India. The Petitioner also seeks waiver of the warehouse and handling charges allegedly accruing on account of the continued retention of the article.

11. Contentions on behalf of the Respondent

11.1 *Per contra*, it was submitted that the present Writ Petition is liable to be dismissed on account of material non-disclosure, delay and laches. It was submitted that the Petitioner's entire case has been presented without disclosing her own statement tendered under Section 108 of the Act on 28.06.2023. According to the Respondent, the Petitioner therein admitted that she had crossed the Green Channel, that the article recovered belonged to her, that she was aware of the liability to Customs duty and that she had intentionally not declared the article.

11.2 It was submitted that the Petitioner agreed to the description, quantity and value to be assessed by the Department and expressed her willingness to pay the applicable duty, fine and penalty. Reliance was placed upon the portion of the statement wherein the Petitioner recorded that she did not require a written Show Cause Notice or personal hearing. It was submitted that there is no contemporaneous retraction of the aforesaid statement. The allegation that the Petitioner was merely wearing an old personal chain and that the action of the Customs authorities was wholly arbitrary is, therefore, disputed.

11.3 It was further submitted that the Petition was instituted after approximately 938 days. The Petitioner has neither produced any contemporaneous representation nor any acknowledgment to substantiate the allegation that she repeatedly approached the Department and was asked merely to wait.

11.4 It was submitted that the questions sought to be determined by the Petitioner, including whether the article was genuinely an old and used personal effect, its composition and value, and the applicability of the relevant baggage provisions, involve disputed questions of fact which cannot appropriately be conclusively adjudicated in the exercise of writ jurisdiction on the basis of the Petitioner's unilateral assertions.

11.5 It was further submitted that the judgment in ***Jatin Ahuja*** *(supra)* cannot be applied mechanically without examining the complete factual and procedural record of the present case. Similarly, according to the Respondent, the decision in ***Saba Simran*** *(supra)* turned upon its own factual matrix and does not entitle the Petitioner to obtain a declaration in writ proceedings that the article in question was necessarily a *bona fide* used personal effect.

11.6 It was, however, submitted that the Respondent is ready and willing to complete the necessary proceedings expeditiously in accordance with law, subject to the Petitioner's cooperation.

ANALYSIS & FINDINGS

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

13. At the outset, it is necessary to observe that the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India is discretionary and equitable in nature. A person invoking such jurisdiction is expected to approach the Court with reasonable

promptitude and to place before the Court the complete and material factual record necessary for an appropriate adjudication of the controversy.

14. In the present case, the incident occurred on 28.06.2023. The present Writ Petition was instituted on 21.01.2026, i.e., approximately 938 days thereafter.

15. The Petitioner has sought to explain the delay by asserting that the cause of action continued on account of the alleged failure of the Customs authorities to issue the requisite Show Cause Notice and that she had approached the Department but was asked to wait for further communication.

16. However, the aforesaid assertion is conspicuously devoid of particulars. The Petition does not disclose the date or dates on which the Petitioner allegedly approached the Customs authorities. No name or designation of any officer has been furnished. More importantly, no contemporaneous representation, letter, email, acknowledgment or other documentary material has been placed before this Court in support of the assertion that the Petitioner was continuously pursuing the matter with the Department.

17. The Respondent has specifically disputed the aforesaid allegation and has stated that the Petitioner did not participate in the process of appraisement and completion of the procedure contemplated under the contemporaneous record.

18. In these circumstances, a bald assertion that the Petitioner was

repeatedly approaching the Department cannot, by itself, satisfactorily explain the prolonged inaction extending over more than two and a half years.

19. Equally significant is the fact that the Writ Petition does not disclose the complete contemporaneous record. As already noticed, on the very date of the incident, i.e., 28.06.2023, the Petitioner tendered a statement under Section 108 of the Act.

20. In the said statement, the Petitioner admitted, *inter alia*, that she had crossed the Green Channel and that the article in question was recovered thereafter. She also recorded that she was aware of the Customs liability and had intentionally not declared the recovered article. The Petitioner further agreed to the description, quantity and value to be assessed by the Department and expressed her willingness to pay the applicable duty, fine and penalty.

21. The statement also contains the Petitioner's assertion that she did not require a Show Cause Notice or personal hearing. The statement, as recorded, further declares that it was tendered voluntarily and without duress, pressure or threat.

22. Significantly, the Petitioner has not pleaded that the aforesaid statement was retracted contemporaneously. No representation or complaint has been placed on record to show that the Petitioner, at any point immediately thereafter, disputed its voluntariness or correctness.

23. This Court is conscious that the legal consequences flowing from the statutory requirements contained in Sections 110 and 124 of

the Act have to be determined in accordance with the statutory scheme and cannot be dispensed with merely by making a general observation with regard to a statement tendered by a passenger.

24. At the same time, the Court cannot decide the present Writ Petition by ignoring the Petitioner's own contemporaneous statement and proceeding solely on the basis of the subsequent narrative set out in the writ petition. The complete factual and procedural record has necessarily to be taken into consideration.

25. The Petitioner's principal assertion is that the article was her "used personal jewellery" and was, therefore, a *bona fide* personal effect. However, this assertion itself raises questions which cannot be conclusively answered merely on the basis of the Petitioner's description of the article.

26. The contemporaneous Detention Receipt describes the article as one yellow metal chain appearing to be gold, weighing 58 grams. The value of the article was specifically recorded as being "*to be appraised*". Thus, the contemporaneous record itself demonstrates that the nature and value of the article were yet to be finally determined through the appropriate process.

27. The Respondent disputes the Petitioner's claim that the article has been conclusively established to be an old and used personal effect. The Respondent has also raised questions regarding the Petitioner's eligibility and compliance with the applicable baggage and Customs requirements.

28. Whether the article was genuinely an old personal effect, whether it was liable to be treated in a particular manner under the applicable baggage regime, its composition, purity and value, and the consequences flowing from the Petitioner's conduct at the time of arrival are all matters requiring examination on the basis of the relevant record.

29. It is well settled that this Court, in the exercise of its jurisdiction under Article 226 of the Constitution of India, does not ordinarily undertake a detailed adjudication of seriously disputed questions of fact, particularly where the statutory framework provides for examination and determination of such issues by the competent authorities.

30. The Petitioner seeks a positive declaration that the article was her *bona fide* used personal jewellery and, on that basis, an unconditional direction for its return. Such a declaration cannot be granted merely on the basis of a unilateral assertion, particularly when the Respondent disputes the factual foundation of that assertion and the contemporaneous record itself shows that appraisement was yet to be completed.

31. This Court may now deal with the reliance placed by the Petitioner upon the judgment of the Supreme Court in ***Jatin Ahuja*** *(supra)*. There can be no dispute with the proposition that the statutory safeguards contained in the Act are required to be complied with and that the consequences flowing from non-compliance with the requirements of Section 110(2) have to be determined in accordance

with the law laid down by the Supreme Court.

32. However, a precedent has to be applied having regard to the factual and statutory context of the case before the Court. The present matter cannot be decided by accepting only the Petitioner's assertion that no procedure whatsoever was undertaken while completely ignoring the material contemporaneous record.

33. The present case involves a Detention Receipt recording a Green Channel violation and a contemporaneous statement tendered by the Petitioner under Section 108 of the Act. In that statement, the Petitioner made material admissions with regard to the circumstances in which the article was recovered, her failure to declare it and her willingness to subject the article to the assessment contemplated by the Department.

34. The statement also contains the Petitioner's assertion that she did not require a written Show Cause Notice or personal hearing. The Respondent has further pleaded its case with reference to the proviso to Section 124 of the Act and the procedure allegedly adopted contemporaneously.

35. This Court does not consider it necessary, in the facts of the present case, to return any final or abstract finding on the larger question as to the precise legal effect of every part of the aforesaid statement for all purposes under Sections 110 and 124 of the Act. Suffice it to observe that the Petitioner's entitlement to an unconditional writ of release cannot be determined by suppressing or omitting this material contemporaneous record and by inviting the

Court to proceed only upon the subsequent version set out in the Writ Petition.

36. The decision in ***Jatin Ahuja*** *(supra)*, therefore, does not assist the Petitioner in obtaining, as a matter of course, the unconditional relief sought in the present proceedings without examination of the complete factual and procedural record.

37. Similarly, reliance upon the decision of this Court in ***Saba Simran*** *(supra)* does not advance the Petitioner's case to the extent contended. Whether an article constitutes genuine personal jewellery or a *bona fide* used personal effect necessarily depends upon the facts and circumstances of the particular case.

38. In the present case, apart from the dispute raised by the Respondent with regard to the factual nature and status of the article, the contemporaneous record also contains the Petitioner's admission regarding crossing the Green Channel and intentionally not declaring the article. Thus, without the relevant factual issues being examined in accordance with law, this Court cannot grant a conclusive declaration in favour of the Petitioner that the article was necessarily entitled to unconditional duty-free clearance as a bona fide personal effect.

39. The Petitioner's reliance upon Article 300A of the Constitution of India is also of no assistance at this stage. The rights of a person in respect of property are undoubtedly protected in accordance with law. Equally, where the competent statutory authorities have initiated action under the Customs law, the Court cannot, in the absence of a clear and undisputed factual foundation, direct unconditional release

merely by bypassing the statutory process necessary for determining the relevant issues.

40. At this stage, the prayer for waiver of warehouse and handling charges cannot be adjudicated. Hence, this issue is left open for decision by the adjudicating authority.

41. Having regard to the aforesaid discussion, this Court is of the considered opinion that the Petitioner has failed to make out a case for exercise of the extraordinary jurisdiction of this Court for directing unconditional return of the article or for setting aside the detention action in the manner prayed for.

42. The Petition suffers from an unexplained and substantial delay. Further, the complete contemporaneous record, particularly the Petitioner's statement under Section 108 of the Act, was not disclosed in the Writ Petition. The Petition also raises disputed questions of fact which cannot appropriately be conclusively adjudicated in these proceedings on the basis of the Petitioner's unilateral assertions.

43. At the same time, the Respondent has stated before this Court that it is ready and willing to complete the requisite proceedings expeditiously in accordance with law.

44. Accordingly, while declining the relief of unconditional release sought by the Petitioner, it is considered appropriate to leave the parties to the statutory process.

45. The competent authority shall, therefore, take necessary steps for completion of the appraisement and such further proceedings as

may be required in accordance with law, expeditiously and preferably within a period of three months from the date on which the Petitioner, through her authorised representative or otherwise in accordance with law, extends the requisite cooperation and makes herself available for completion of the proceedings.

46. It is clarified that the Petitioner shall cooperate with the competent authority and shall furnish such documents or information as may lawfully be required for completion of the proceedings.

CONCLUSION

47. The present Writ Petition is accordingly dismissed.

48. It is clarified that this Court has not expressed any opinion on the ultimate merits of the question whether the article is liable to confiscation, whether any duty, fine or penalty is payable, or on any other issue which falls for determination by the competent authority in accordance with the Act.

ANIL KSHETARPAL, J.

SHAIL JAIN, J.

SEPTEMBER 03, 2026
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