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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. DLHC010001052026**

\+ W.P.(C) 152/2026

AWESH KARMI FUNDREIMAYUM .....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. Vishal Chadha, Senior Standing Counsel with Mr. Chandan Kumar, Adv.

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 the continued detention of the gold bars seized from the Petitioner on account of alleged violation of the Green Channel procedure can be permitted in the absence of a written show cause notice, when the Respondent-Department asserts that an oral show cause notice was given to the Petitioner on the date of seizure

itself and that the Petitioner had also stated that he did not require a show cause notice or personal hearing.

2. Through the present Petition, the Petitioner seeks a direction to the Respondent to release eight gold bars, collectively weighing 290 grams, detained/seized vide Detention Receipt No. DR/INDEL4/27-02-2024/003893 dated 27.02.2024. The Petitioner also seeks a direction that no detention or warehouse charges be recovered from him at the time of release of the said gold.

<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 citizen, arrived at the Indira Gandhi International Airport, New Delhi on 27.02.2024. He had travelled from Jeddah to Bahrain and thereafter to Delhi. Upon his arrival, he was intercepted by the Customs authorities after he had crossed the Green Channel.

5. A Detention Receipt bearing No. DR/INDEL4/27-02-2024/003893 dated 27.02.2024 was issued, which receipt records that one cut plastic bottle containing eight yellow metal bars weighing 290 grams, wrapped with Customs tape and sealed with Customs "*BAIGI*", had been detained/seized. The reason for detention/seizure was recorded as "*Green Channel Violation*".

6. The contemporaneous record further shows that the eight bars comprised one yellow metal bar bearing the marking "*SUISSE 10*

TOLA FINE GOLD 999.9”, two yellow metal bars bearing the marking “*SUISSE 5 TOLA FINE GOLD 999.9*” and five yellow metal bars bearing the marking “*SUISSE 1 TOLA FINE GOLD 999.9*”, collectively weighing approximately 290 grams.

7. On 27.02.2024, a statement was recorded from the Petitioner before the Air Customs Superintendent under Section 108 of the Customs Act, 1962 [the ‘Act’]. In the said statement, the Petitioner is recorded as having stated that he had been intercepted by the Customs officer after crossing the Green Channel and that the aforesaid articles had been recovered from him during DFMD examination. The statement further records that the recovered articles belonged to the Petitioner and that he admitted his omission and commission. It also records that the Petitioner was not aware that Customs duty was payable on the value exceeding the baggage allowance and that he had intentionally not declared the recovered articles.

8. The said statement further records that the Petitioner would agree with the description, quantity and value as assessed by the Department and that he did not require any show cause notice or personal hearing. The statement concludes with a recording that the Petitioner had understood the contents thereof in the vernacular and that the statement had been tendered without duress, pressure or threat.

9. The Department’s chart placed on record before this Court records 27.02.2024 as the date of the oral show cause notice under the proviso to Section 124 of the Act. The same chart records that the

Petitioner did not appear before the Department for appraisement of the detained goods. It further records that no Order-in-Original has been passed in the matter as yet.

10. The present Petition came to be instituted on 07.01.2026.

CONTENTIONS OF THE PARTIES

11. Contentions of the Petitioner

11.1. Learned counsel for the Petitioner submitted that the continued detention of the gold bars is contrary to Sections 110(2) and 124 of the Act. It was submitted that the gold was detained/seized on 27.02.2024 and that no written show cause notice was issued to the Petitioner within the statutory period of six months or within the further period of six months contemplated under Section 110(2) of the Act. It was submitted that the Petitioner cannot be deprived of the statutory protection under Section 124 merely on the basis of the statement relied upon by the Department, wherein the Petitioner is stated to have waived the requirement of a show cause notice and personal hearing.

11.2. It was contended that the proviso to Section 124 permits the notice contemplated under clause (a) and the representation contemplated under clause (b) to be oral only at the request of the person concerned. According to the Petitioner, the statement relied upon by the Department does not record any request made by him for an oral show cause notice. It was further submitted that the Department's reliance upon an alleged oral show cause notice is an attempt to overcome the statutory requirement contained in Section

110(2). It was contended that an oral show cause notice cannot be treated as a mere formality and must communicate to the person concerned the grounds on which confiscation or penalty is proposed.

11.3. Reliance was placed upon the judgments of this Court in ***Ms. Shubhangi Gupta v. Commissioner of Customs & Ors.*** to contend that a waiver of show cause notice and personal hearing, particularly when contained in a standard-form document, cannot substitute compliance with Section 124 of the Act. Further reliance was also 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, to contend that upon expiry of the statutory period contemplated under Section 110(2), in the absence of the requisite notice under Section 124(a), the seized goods are required to be returned.

11.4. Learned counsel also disputes the validity and evidentiary value of the statement recorded under Section 108 of the Act. It was submitted that the document was not voluntarily tendered by the Petitioner and that the Petitioner was made to sign documents which had already been prepared. It was further submitted that the Petitioner has alleged that he was compelled to sign blank papers. It was lastly submitted that the Petitioner had, in fact, declared the gold before the Customs authorities and that the allegations of Green Channel violation are disputed. It was further submitted that the CCTV footage of the relevant period would demonstrate the circumstances in which the Petitioner was intercepted and the documents were signed.

12. Contentions of the Respondent

12.1. *Per contra*, learned counsel for the Respondent submitted that the present Petition is misconceived and that the Petitioner was intercepted only after crossing the Green Channel, whereafter the gold bars were recovered from his possession. It was submitted that the Petitioner made categorical admissions in his statement under Section 108 of the Act regarding the non-declaration of the gold. It was contended that the said statement was voluntarily tendered and has never been retracted by the Petitioner before the Customs authorities.

12.2. It was submitted that the Detention Receipt was issued in the presence of the Petitioner and that the original Detention Receipt was handed over to him for compliance with the further procedure. It was further submitted that the Petitioner was afforded an opportunity to approach the Department for appraisement and further proceedings, but he did not appear before the Department for appraisement of the detained goods.

12.3. It was next submitted that an oral show cause notice was given to the Petitioner on 27.02.2024 under the proviso to Section 124 of the Act. It was submitted that the Petitioner had also expressly stated that he did not require a show cause notice or personal hearing, and therefore, the Petitioner cannot now rely upon the absence of a written show cause notice when the statutory scheme expressly permits an oral show cause notice at the request of the person concerned.

12.4. It was further submitted that the judgments relied upon by the Petitioner concerning pre-printed waivers are distinguishable since, according to the Respondent, the present case involves a specific oral show cause notice having been given to the Petitioner on the date of detention itself. It was also submitted that no Order-in-Original has yet been passed and that the Department is ready and willing to afford the Petitioner an opportunity of personal hearing and thereafter 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. At the outset, it is necessary to notice the statutory scheme. Section 110(2) of the Act provides that where goods are seized under Section 110(1) and no notice in respect thereof is given under clause (a) of Section 124 within six months of the seizure, the goods shall be returned to the person from whose possession they were seized. The first proviso permits the Principal Commissioner of Customs or Commissioner of Customs, for reasons to be recorded in writing, to extend the period by a further period not exceeding six months, subject to the person concerned being informed before expiry of the original period.

15. Section 124, on the other hand, deals with issuance of show cause notice before confiscation of goods or imposition of penalty. Clause (a) ordinarily contemplates a notice in writing informing the person concerned of the grounds on which confiscation or penalty is proposed. The first proviso, however, expressly provides that the notice referred to in clause (a), as well as the representation referred to

in clause (b), may, at the request of the person concerned, be oral.

16. The Supreme Court, in ***Jatin Ahuja*** (supra), has authoritatively explained the effect of Section 110(2). It has held that the time prescribed under Section 110(2) is mandatory and that, in the absence of the requisite notice within the prescribed period, the statutory consequence is return of the seized goods. The Supreme Court has further clarified that the period prescribed in Section 110(2) concerns the notice contemplated by clause (a) of Section 124 and that Sections 110 and 124 operate in distinct fields.

17. There can, therefore, be no quarrel with the proposition that the Department cannot retain seized goods indefinitely by simply postponing the initiation of adjudication proceedings. Equally, there can be no dispute that the statutory period prescribed under Section 110(2) has to be respected.

18. However, the controversy in the present case cannot be decided merely on the basis that no written show cause notice has been issued.

19. The Respondent's case, as specifically set out before this Court, is that an oral show cause notice was issued on 27.02.2024 under the first proviso to Section 124. The Department has relied upon the proceedings conducted with the Petitioner on the very date of seizure and, in particular, upon the statement recorded under Section 108, which records not only the alleged Green Channel violation and non-declaration but also the Petitioner's statement that he did not require a show cause notice or personal hearing.

20. The Petitioner, on the other hand, disputes the voluntary nature and legal character of the document relied upon by the Department. He alleges that he was made to sign pre-prepared documents and blank papers and that the contents were not properly explained to him. He also disputes that there was any valid oral show cause notice.

21. Thus, the present case is materially different from a case where the Department itself admits that no show cause notice, whether written or oral, was ever given. In ***Shubhangi Gupta*** (supra), the Revenue had conceded that no written show cause notice had been issued and, significantly, the Court found that there was no averment in the counter affidavit that an oral show cause notice had been issued. The Court accordingly held that, in the absence of such notice, the requirements of Section 124(a) had not been satisfied.

22. In the present case, however, the Department has specifically pleaded and asserted that an oral show cause notice was issued on 27.02.2024. Whether the proceedings conducted on that date constitute a valid oral show cause notice within the meaning of the first proviso to Section 124, and whether the Petitioner's statement was voluntarily made, are questions which arise from the factual circumstances of the case.

23. At this stage, this Court is not inclined to adjudicate upon the Petitioner's allegations of coercion or the evidentiary value of the statement recorded under Section 108. The Petitioner has not yet faced an adjudication order. The question whether the statement was voluntarily made, whether the alleged admissions can be relied upon,

whether there was a violation of Section 77 of the Act, whether the goods are liable to confiscation and whether any penalty is imposable are matters which fall for consideration in the statutory adjudication proceedings.

24. This Court is equally not persuaded to accept the Petitioner's contention that the mere fact that the document recording his statement was not handwritten by him renders the same, at this stage, a nullity. The evidentiary value and voluntariness of a statement recorded under Section 108 are matters which can be examined by the adjudicating authority on the basis of the material available on record and the explanation furnished by the Petitioner.

25. More importantly, the Petitioner's challenge presently proceeds upon the assumption that there was no show cause notice whatsoever. That factual premise is specifically disputed by the Respondent. The Department has placed on record its assertion that an oral show cause notice was issued on 27.02.2024 and that the Petitioner thereafter did not participate in the proceedings, including the appraisement of the goods.

26. The chronology is also relevant. The goods were detained on 27.02.2024. The Petitioner did not approach the Department for appraisement of the detained goods, as asserted by the Respondent. No Order-in-Original has yet been passed. The Department, before this Court, has expressly stated that it is ready and willing to afford the Petitioner an opportunity of personal hearing and thereafter complete the adjudication proceedings in a time-bound manner.

27. 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 undertake, in the present proceedings, a fact-finding exercise concerning the circumstances in which the statement was recorded, the precise nature of the oral proceedings allegedly conducted on 27.02.2024, the alleged non-declaration of the gold and the Petitioner's allegations of coercion.

28. It is clarified that the aforesaid conclusion does not amount to an acceptance of the Respondent’s submission that a person can waive the statutory requirement of a show cause notice merely by making a statement to that effect. Section 124 itself contemplates an oral notice only in the circumstances specified in its first proviso. Likewise, the ratio of ***Jatin Ahuja*** (supra) regarding the mandatory consequence flowing from Section 110(2) remains binding.

29. The limited question before this Court is whether, in the factual circumstances of the present case, the writ court should order unconditional release of the goods without permitting the adjudicating authority to examine the competing factual assertions and complete the statutory proceedings. In our view, the answer must be in the negative.

30. The Petitioner has an opportunity to appear before the adjudicating authority, place on record his version regarding the alleged declaration of the gold, challenge the circumstances in which the Section 108 statement was recorded, raise his objections regarding the alleged oral show cause notice and seek consideration of all

material relied upon by the Department. The adjudicating authority shall consider the same independently and in accordance with law.

31. It is also material that the Department has not yet passed an Order-in-Original. Therefore, the Petitioner's challenge to the evidentiary value of the alleged admission and to the ultimate liability of the goods to confiscation is premature.

32. This Court is, consequently, of the view that no ground is made out for issuance of a writ directing unconditional release of the gold bars at this stage.

33. At the same time, the fact that the goods have remained in the custody of the Department since 27.02.2024 cannot be overlooked. The object of Section 110(2), as explained by the Supreme Court in ***Jatin Ahuja*** (supra), is to ensure that seized goods are not retained indefinitely without commencement and completion of the statutory process.

34. The Respondent has itself stated before this Court that it is ready and willing to complete the adjudication proceedings. The said statement must, therefore, be given effect to.

CONCLUSION

35. For the reasons recorded above, the present Petition is dismissed. However, the dismissal shall be subject to the following directions:

i. The Petitioner shall appear before the concerned adjudicating authority on 24.09.2026 at 02:30 p.m., for completion of the pending proceedings, including appraisement of the seized goods.

ii. The Respondent shall afford the Petitioner a reasonable opportunity of personal hearing and shall permit him to place on record his objections, including his objections concerning the alleged non-declaration of the gold, the circumstances in which his statement under Section 108 was recorded, and the alleged oral show cause notice.

iii. The adjudicating authority shall consider the Petitioner's submissions and all material relied upon by the Department and shall pass an appropriate Order-in-Original within six (06) weeks from the date on which the Petitioner appears before the adjudicating authority, subject to the Petitioner extending full cooperation.

iv. It is made clear that this Court has expressed no opinion on the merits of the allegations against the Petitioner, the validity or evidentiary value of the statement recorded under Section 108, the alleged oral show cause notice, or the question whether the seized gold is liable to confiscation or whether any penalty is imposable. All such questions are left open for consideration by the adjudicating authority in accordance with law.

v. In the event the Petitioner fails to appear or otherwise does not cooperate with the adjudication proceedings, the Department shall be at liberty to proceed in accordance with law.

36. The question of detention/warehouse charges, as prayed for by the Petitioner, shall also abide by the outcome of the adjudication proceedings and the applicable statutory provisions.

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

ANIL KSHETARPAL, J.

SHAIL JAIN, J.

SEPTEMBER 02, 2026
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