

# Nathan Narayansamy vs Commissioner Of Customs on 15 September, 2023

**Author: Yashwant Varma**

**Bench: Yashwant Varma, Dharmesh Sharma**

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\* IN THE HIGH COURT OF DELHI AT NEW DELHI  
+ W.P.(C) 6855/2023  
NATHAN NARAYANSAMY

Through:  
versus

COMMISSIONER OF CUSTOMS ..... Respondent  
Through: Mr. Atul Tripathi, Sr. Standalone  
Counsel along with Mr. V.K. Attri, Adv.

CORAM:  
HON'BLE MR. JUSTICE YASHWANT VARMA  
HON'BLE MR. JUSTICE DHARMESH SHARMA

ORDER

% 15.09.2023

1. The instant writ petition has been preferred seeking the following reliefs:-

"A) Seizure-proceedings (Copy not supplied) in customs case Bearing No. C.N.VIII(AP)10/P7I/3830-A/ARRIVAL/2022 dtd. 08.12.2022 may kindly be quashed/set aside; B) The petitioner be allowed to reexport his seized personal gold jewellery, (1 Gold Chain and 1 Kada) Weighing 463 grams, back to his country, under sec 80 of the Customs Act,1962; C) Seized personal gold jewellery of the petitioner may kindly be returned/released to the petitioner U/S. 110-A of the Customs Act,1962 during pendency of the present writ petition; D) The respondent be directed to supply copy of all the documents"

2. The petitioner who holds a Malaysian passport issued on 02 May 2021 is stated to have arrived at the IGI Airport, New Delhi on 08 December 2022 from a flight which originated in Singapore. He is stated to have been detained for questioning after he had crossed the Green Channel and was moving towards the exit gate. His personal baggage items were thereafter searched. According to the respondent, This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 20/09/2023 at 20:54:01 on a personal search of the petitioner, they recovered a yellow metallic chain and a yellow metallic

kada collectively weighing 463 grams. The aforesaid jewellery items were thereafter appraised and valued at Rs.21,45,079/-. The respondent asserts that the aforesaid goods are liable to be confiscated.

3. We find that the issue would have to be considered and answered in light of the Baggage Rules 2016 [„Baggage Rules ]. Those Rules which were framed in terms of Section 79 of the Customs Act, 1962 make the following provisions for arriving passengers:-

"3. Passenger arriving from countries other than Nepal, Bhutan or Myanmar:-An Indian resident or a foreigner residing in India or a tourist of Indian origin, not being an infant arriving from any country other than Nepal, Bhutan or Myanmar, shall be allowed clearance free of duty articles in his bona fide baggage, that is to say, -

(a) used personal effects and travel souvenirs; and

(b) articles other than those mentioned in Annexure-I, up to the value of fifty thousand rupees if these are carried on the person or in the accompanied baggage of the passenger:

Provided that a tourist of foreign origin, not being an infant, shall be allowed clearance free of duty articles in his bona fide baggage, that is to say,

(a) used personal effects and travel souvenirs; and

(b) articles other than those mentioned in Annexure- I, up to the value of fifteen thousand rupees if these are carried on the person or in the accompanied baggage of the passenger:

Provided further that where the passenger is an infant, only used personal effects shall be allowed duty free. Explanation.- The free allowance of a passenger under this rule shall not be allowed to pool with the free allowance of any other passenger.

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5. Jewellery.- A passenger residing abroad for more than one year, on return to India, shall be allowed clearance free of duty in his bona fide baggage of jewellery up to a weight, of twenty grams with a value cap of fifty thousand rupees if brought by a gentleman passenger, or forty grams with a value cap of one lakh rupees if brought by a lady passenger.

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xxx xxx xxx ANNEXURE-I (See Rules 3, 4 and 6)

1. Fire arms.
2. Cartridges of fire arms exceeding 50.
3. Cigarettes exceeding 100 sticks or cigars exceeding 25 or tobacco exceeding 125 gms.
4. Alcoholic liquor or wines in excess of two litres.
5. Gold or silver in any form other than ornaments.
6. Flat Panel (Liquid Crystal Display/Light-Emitting Diode/ Plasma) television."

4. Undisputedly, and since the petitioner held a foreign passport, it would be the Proviso to Rule 3 alone which would apply. In terms of the said Proviso, a tourist of foreign origin is permitted clearance of duty free articles in his bona fide baggage, and the articles and the limits/restrictions of those articles which are not allowed duty free are mentioned in Annexure-I. As we read Entry 5 in Annexure-I, it speaks of gold or silver in any form other than ornaments. The chain and the kada which were found on the person of the petitioner would undoubtedly fall in the category of jewellery and ornaments. Clause 5 of Annexure-I would therefore not sustain the seizure of the articles in question.

5. While learned counsel for the respondent had also drawn our attention to Rule 5 of the Baggage Rules, we note that the same pertains to a passenger who is returning to India after having resided abroad for more than one year. That would clearly not apply to the petitioner here who is undisputedly a foreign national. Rule 5 in any case appears to be relating to an "eligible passenger" and which pertain to an Indian national upon his return to the country after having lived abroad for the period prescribed.

6. In view of the aforesaid, the writ petition is allowed. We proceed to quash the seizure proceedings as emanating from the notice This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 20/09/2023 at 20:54:01 dated 08 December 2022. The respondent is directed to return the seized articles to the petitioner forthwith.

YASHWANT VARMA, J.

DHARMESH SHARMA, J.

SEPTEMBER 15, 2023/RW This is a digitally signed order.

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