

# Qamar Jahan vs Union Of India, Represented By ... on 27 March, 2025

**Author: Prathiba M. Singh**

**Bench: Prathiba M. Singh**

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\* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 27

+ W.P.(C) 198/2025 & CM APPLs. 8813/2025

QAMAR JAHAN

.....Petitioner

Through: Mr. Ashish Pandey, Adv.

versus

UNION OF INDIA, REPRESENTED BY SECRETARY, MINISTRY  
OF FINANCE & ORS. ....Respondents

Through: Mr. Shubham Tyagi, Sr. Standing  
Counsel, CBIC with Ms. N.Ojha Mr.  
P.Mahajan, Advs.

Mr. Harpreet Singh, Sr. Standing  
Counsel with Ms.Suhani Mathur, Mr.  
Jai Ahuja & Mr. Ashay Saxena Advs

Ms. Mayusha Goyal, Addi  
Commissioner

Mr. Maharishi Singhal,  
Commissioner

Mr. Nitin Raj, Mr. Suni  
Sandeep Lakra & Mr. Rav  
Superintendents.

Mr. Rohit, Mr. Ajay Pra  
Avinash Yadav & Mr. Ume  
Inspectors.

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE RAJNEESH KUMAR GUPTA

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.

2. There are a bunch of more than 30 petitions listed today, raising various issues qua the procedure for detention of goods by the Customs Department belonging to the tourists travelling to India, of both Indian and foreign origin, which are being dealt with by the Court today.

## I. Background

3. The present petition is the lead matter wherein vide order dated 13th January, 2025, this Court had noticed that various travellers, tourists, Indian citizens coming back from foreign countries were being intercepted and various items which they were wearing including jewellery etc., were being detained. The Court had then considered the Baggage Rules, 2016 (hereinafter the "Baggage Rules") and the Indian Customs Declaration Form as also the Guide for Travellers, prepared by the Central Board of Indirect Taxes & Customs (hereinafter "CBIC") and had observed that the Baggage Rules are quite outdated and archaic considering the increase in price of gold in the last several years. The Baggage Rules date back to 2016 i.e., the Rules are more than nine years old and considering the present market realities, the Baggage Rules need a re-look. Accordingly, the Court had then passed the following directions:-

"14. The Id. Counsel for the Customs Department also points out that there are many cases, wherein it is seen that travellers are undertaking frequent travel almost every week or two weeks, with the sole intention to smuggle gold into India.

15. While, there is no doubt that any illegal smuggling of gold deserves to be curbed, at the same time, bona-fidely and genuine tourists/travellers, including people from Indian Origin such as the OCI Cardholders, PIOs etc., could be travelling for social engagements in India or social events such as marriages etc., with gold, which could be of a much higher value than the permissible limits. Such tourists and travellers ought not to be expected to file detailed declarations, which could make the entire process of entering India and exiting from airports extremely unfriendly or onerous.

16. The Customs Officials in such cases would also be vested with too much arbitrary power and discretion, which may result in harassment of genuine passengers.

17. Accordingly, this Court of the view that the Baggage Rules are required to be re-looked by the CBIC and a policy decision ought to be taken by the Government of India on both fronts:-

(i) to ensure that there is no harassment of genuine tourists and travellers, whether Indian or foreigners into India;

(ii) that illegal smuggling of gold is properly curbed.

18. The values of gold that would be permissible under the Baggage Rules would also have to be re-looked by the CBIC as the same appears to be completely not in tune with the current market value of gold.

19. Let this matter be referred to the Chairman, CBIC for reconsideration of the Baggage Rules 2016. Let the re-consideration be undertaken in coordination with any other Departments or Ministries as may be required and the report be filed before this Court regarding the reconsideration and the manner thereof. The report shall be filed by the next date of hearing."

4. It is also noted that, the Court, while considering various petitions, has been conscious of several other issues which would also be required to be reconsidered by the concerned authorities including CBIC and Customs Department.

5. In Anjali Pandey vs. Union of India, 2025:DHC:372-DB the Court had considered the position of personal jewellery under the Baggage Rules in case of foreign nationals and the following directions were passed vide order dated 22nd January, 2025:

"28. Further, considering the large number of cases where the Customs Department has seized or detained jewellery from tourists, either of Indian or foreign origin, and the directions passed by this Court in Qamar Jahan (supra) to the Central Board of Indirect Taxes (hereinafter "CBIC") to reconsider the Baggage Rules, the Court deems fit to pass the following directions for the interim period till the CBIC has reconsidered the Baggage Rules:

i. Detention receipt should contain contact details of the tourist including email address and mobile/ WhatsApp number;

ii. Coloured images of the gold ornaments/ jewellery detained from the tourist should be attached to the detention receipt;

iii. Copy of the said images should be provided to the concerned tourist and the same shall also be retained on record of the Customs Department.

29. The above directions shall be followed henceforth by the Customs Department in all cases where jewellery is seized or detained from tourists of either Indian or foreign origin.

30. Let the said directions be also taken into consideration by the Chairman, CBIC while reconsidering the Baggage Rules pursuant to the directions passed by this Court in Qamar Jahan (surpa).

6. Further, in Amit Kumar vs. Commissioner of Customs, 2025:DHC:751-DB, the Court had considered the validity of a preprinted waiver form, being relied upon by the Customs Department, by which the Petitioner was stated to have waived the show cause notice (hereinafter "SCN") and personal hearing. The said preprinted document was alleged to be an oral SCN by the Customs Department in terms of the proviso to Section 124 of the Customs Act (hereinafter "the Act"). The Court held that the preprinted waiver form cannot be considered to be considered an oral SCN in compliance with Section 124 of the Act. The Court had also passed certain directions to avoid such situations. The relevant extracts of the order dated 6th February, 2025 in Amit Kumar (supra) read as under:

"19. This Court is of the opinion that the printed waiver of SCN and the printed statement made in the request for release of goods cannot be considered or deemed

to be an oral SCN, in compliance with Section 124. The SCN in the present case is accordingly deemed to have not been issued and thus the detention itself would be contrary to law. The order passed in original without issuance of SCN and without hearing the Petitioner, is not sustainable in law. The Order-in-Original dated 29th November, 2024 is accordingly set-aside.

20. The detained goods are directed to be released to the Petitioner. The storage charges of the detained goods shall however be borne by the Petitioner.

21. In order to avoid such situations in future, let this matter be referred to Central Board of Indirect Taxes and Customs (hereinafter 'CBIC') for undertaking a review of the various forms including Detention receipts, Requests for appraisal and connected documents. Let the same be duly changed in accordance with law and in compliance with the principles of Natural Justice. In addition, let a procedure be prescribed for issuance of show cause notices after detention of goods by customs."

7. In Mr Makhinder Chopra vs. Commissioner of Customs, New Delhi, 2025:DHC-1162-DB this Court has discussed various issues arising in several cases where the goods have been detained from a tourist by the Customs Department, including the issue of personal jewellery being part of personal effects under the Baggage Rules and waiver of SCN and personal hearing by way of a preprinted waiver form. The relevant extracts of the order dated 19th February, 2025 in Makhinder Chopra (supra) are as under:

"17. A conspectus of the above decisions and provisions would lead to the conclusion that jewellery that is bona fide in personal use by the tourist would not be excluded from the ambit of personal effects as defined under the Baggage Rules. Further, the Department is required to make a distinction between 'jewellery' and 'personal jewellery' while considering seizure of items for being in violation of the Baggage Rules."

18. At this stage, it would be apposite to refer to the judgement of the Madras High Court in Thanushika vs. The Principal Commissioner of Customs (Chennai), W.P. No. 5005/2024 (decided on 31st January, 2025) wherein the High Court was dealing with a case where the gold jewellery of a Sri Lankan tourist was seized by the Customs Department. The High Court after analysing the various provisions of the Act and the Baggage Rules has held that the said Rules would only apply to baggage and would not extend to any article "carried on the person" as mentioned in Rule 3 of the Baggage Rules. The relevant portion of the said judgement is extracted hereinunder:

"50. From a perusal of above provision, it is clear that the Clause (b) includes the articles other than those mentioned in Annexure-I, upto the value of fifty thousand rupees if these are 'carried on the person' or in the accompanied Baggage of the passenger

51. The Customs Act, 1962, enables the Central Government to make Rules to the extent of the articles carried in the baggage of a passenger and not for the articles, which were carried on the person and hence, the inclusion of the word " carried on the person " is beyond the scope of the provisions of Section 79 of the Customs Act.

52. When the provision of the Rule is beyond the scope of the provisions of the Act, only the provision of the Act will prevail over the Rules. Thus, the word "carried on the person up to Rs.50,000/- " is clearly beyond the scope of the Act and it cannot be given any effect since it is contrary to the provisions of the Statute. Thus, it has to be construed only for the articles, which have not been mentioned in Annexure-1 and carried in the accompanied baggage of a passenger. In such case, the application of Baggage Rules, 2016, would not arise. Thus, the jewelery worn by the passenger will not fall within the provisions of the Baggage Rules, 2016.

53. On the other hand, if anyone worn any unreasonable amount of gold or jeweleries, they shall be brought under search, however, in the present case, it is not so. In India, as per our customs, it is normal to wear 10 nos. of bangles for a marriage function. In such case, it is for the Officers to apply their mind while detaining the gold. If 10 nos. of chains were worn by a person, then it would be suspectable and if anything is hide, then the provisions of Section 101 and 102 of the Customs Act, 1962, would apply since it clearly amounts to secreting the gold in their body under the pretext of worn in the body.

54. Considering the above aspect only, while enacting the provisions of the Customs Act, the Parliament has consciously excluded the jewels worn by the passengers. If there is any intention to put all the passengers into hassle, disrespecting their proprietorial rights, dignity, forgoing the customs, against the fundamental rights, let the Parliament take a decision and amend the provisions of the Act. Till then, the Officers have to apply their minds with regard to detaining the passenger and the gold worn by them as the same would not fall within the purview of the Baggage Rules, 2016.

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56. In the present case, the Rule making body had made the Baggage Rules as if they are having inherent power of its own to make rules beyond the scope of the Statutes, and they have incorporated the word "carried on the person" as referred above.

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58. In the present case, admittedly, the Rule making Authorities made the Rules by traveling beyond the scope of the Act, which would amount to ultra vires. In such case, the Statute would prevails over the Rules. When such being the case, the Statute referred only with regard to the baggage and therefore, the Rule has to be confined

and read only with regard to the baggage and not with regard to the articles "carried on the person"

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62. In the above cases, the Court had held that a Rule Making Authority has to make the Rules within the scope of the parent Act and no Rules shall exceed beyond the scope of the parent Act since it would amount to ultra vires. Thus, in the present case, the Baggage Rule, 2016 will apply only to the baggage and the Rule made to the extent that the article "carried on the person" will not include baggage, which was in excess of powers conferred by the Rule making Authority and would amount to ultra vires. Therefore, the jewelery worn in person will not come under the purview of baggage.

63. Since this Court has held that the provision "as carried on the person" of the Baggage Rules, 2016 is ultra vires, the detention of gold under the Baggage Rules, 2016, in the present case would not apply, unless and otherwise if it is secreted in person, for which, the proceedings shall be initiated under Section 101 of the Customs Act, 1962, however, that is not the present case, except to the extent of false charges framed by the 2nd respondent against the petitioner."

19. Thus, it is now settled law that the Customs Officials are required to consider the facts of each case and apply their mind before detaining the goods of a tourist, either of Indian or foreign origin. The Customs Officials have to be conscious of the fact that personal effects including jewellery of tourists are protected by the law from detention and same cannot be detained in a mechanical manner.

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24. The issuance of a show cause notice before confiscation of goods by the Customs officials is covered under Section 124 of the Act, which reads as under:

"124. Issue of show cause notice before confiscation of goods, etc.-- No order confiscating any goods or imposing any penalty on any person shall be made under this Chapter unless the owner of the goods or such person--

(a) is given a notice in writing with the prior approval of the officer of Customs not below the rank of an Assistant Commissioner of Customs, informing him of the grounds on which it is proposed to confiscate the goods or to impose a penalty;

(b) is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of confiscation or imposition of penalty mentioned therein; and

(c) is given a reasonable opportunity of being heard in the matter:

Provided that the notice referred to in clause (a) and the representation referred to in clause (b) may, at the request of the person concerned be oral.

Provided further that notwithstanding issue of notice under this section, the proper officer may issue a supplementary notice under such circumstances and in such manner as may be prescribed."

25. A perusal of the above Section would show that the principles of natural justice have to be followed by the Customs Department before detention of the goods. The Section provides a three-fold requirement:

- i) a notice in writing informing the grounds of confiscation;
- ii) An opportunity of making a representation in writing against the said grounds of confiscation;
- iii) A reasonable opportunity of personal hearing.

26. In terms of proviso to the said Section, the Customs Authority may issue an oral show cause notice to the tourist in lieu of a written show cause notice at the request of the said tourist. However, in the opinion of the Court the undertaking in a standard form as relied upon by the Customs Department waiving the issuance of show cause notice and personal hearing would not satisfy the requirements of Section 124 of the Act.

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33. At this stage, it is noted that this Court has in Qamar Jahan v. Union of India, Represented by Secretary, Ministry of Finance & Ors. 2025:DHC:174- DB has directed the Central Board of Indirect Taxes and Customs (hereinafter "CBIC") to reconsider the Baggage Rules in respect of the confiscation of goods of tourists.

34. Since, the Court has made clear that the practice of making tourists sign undertaking in a standard form waiving the show cause notice and personal hearing is contrary to the provisions of Section 124 of the Act, hereinafter, the Customs Department is directed to discontinue the said practice. The Customs Department is expected to follow the principles of natural justice in each case where goods are confiscated in terms of Section 124 of the Act."

8. In the opinion of the Court, as the above issues have been arising in various petitions which have been decided by the Court from time to time as also in the batch of petitions listed today, the CBIC and Customs Department were to address the same.

## II. Stand of the Customs Department vis-à-vis Baggage Rules

9. Pursuant to the last order i.e., today, Ms. Mayusha Goyal, Additional Commissioner for Customs at the IGI Airport has appeared along with Mr. Maharishi Singhal, Assistant Commissioner, Mr. Nitin Raj, Mr. Sunil Kumar, Mr. Sandeep Lakra & Mr. Ravinder Singh, Superintendents, Mr. Rohit, Mr. Ajay Pratap, Mr. Avinash Yadav & Mr. Umesh Kumar, Inspectors.

10. The Court has queried Ms. Goyal on the issues highlighted by the Court in its various orders. The ld. Counsels appearing for the Petitioners and the Customs Department have also been heard on some of the aspects.

11. A short affidavit dated 26th March, 2025 has been handed over on behalf of Respondent No. 1 - Union of India and the same is taken on record. The submission on behalf of the Customs Department is that a detailed stakeholder consultation is currently being carried out by the CBIC. As part of the same, inter-ministerial meetings have been held on 7th February, 2025 and 21st February, 2025 with the Ministry of Tourism, Ministry of Culture, Ministry of External Affairs, Directorate General of Foreign Trade and other relevant departments/ministries. Inputs are also stated to have been sought from various Customs formations at major airports as also the Directorate of Revenue Intelligence.

12. Accordingly, the stand of the Customs Department is that insofar as amendment to the Baggage Rules is concerned, the same would be undertaken after obtaining comments and inputs from all the stakeholders and some more time will be required for the same. In the meantime however certain measures are being implemented.

### III. Interim Measures by the Customs Department

13. It is submitted by the ld. Counsels for the Customs Department that taking into consideration various orders which have been passed by this Court, some changes are being effected on the following aspects:-

#### Detention Receipts:

i. In detention receipts, henceforth, the Court is informed that the following particulars shall also be obtained at the time of issuing the detention receipts so that communication with the concerned passenger becomes easy for the Customs Department. The said details are as under:-

a) Details of the passenger.

b) Phone number.

c) Whatsapp number.

d) Email address.



e) Complete residential address.

ii. In addition, the detention receipt would also have the number of items seized and the net weight of the said items. iii. On the detention receipt, the time and date of detaining the goods shall be mentioned.

iv. The names and signatures of the passenger shall be obtained on the detention receipt.

v. The names and signatures of the concerned official from the Customs Department shall also be clearly mentioned with the designation on the detention receipt.

vi. The mechanism is also being put in place to take images of the items which are seized and if the passenger requests for the same, a copy thereof will also be furnished.

Oral SCN, waiver of SCN and personal hearing

14. Insofar as oral SCN and waiver of SCN and personal hearing are concerned, it is submitted that under Section 124 of the Act, oral SCN is permissible. However, it is submitted that the preprinted form for waiver of SCN and personal hearing have been done away with by the Customs Department.

15. Henceforth, the passengers shall be duly informed about the applicable provisions in respect of issuance of an oral SCN and the procedure thereto. In any event, even if notice is waived, notice of personal hearing would be given to the concerned passenger through Whatsapp, email id as also through the authorized signatory. This would ensure that the passenger's right to a personal hearing cannot be waived off, as is clear from a reading of Section 124 of the Act and the decisions passed by this Court. Accordingly, notice of personal hearing would be given to the passenger so that submissions can be made on behalf of the passenger prior to passing of the adjudicating order.

16. In view of the above, let the Department look into the applicable provisions of law and as part of the next status report, place before the Court, the mechanism which the Department wishes to adopt for issuing oral SCN and providing the opportunity of personal hearing in compliance with the law. Communication of orders to the passengers

17. This Court in *Bonanza Enterprises vs. The Assistant Commissioner of Customs & Anr.*, 2024: DHC: 9885-DB, while considering the delay in communicating orders passed by Customs Department to the concerned party, had passed the following directions:

"22. The Customs Department ought to in future follow a system by which in addition to notices by speed post, registered post or courier, notices are also sent on the email address which is provided on the letterhead of the Petitioner or any authorised person. This would avoid substantial delay and matters proceeding ex-parte as has happened in the present case.

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27. In the opinion of this Court, in order to avoid improper service to parties and to avoid ex-parte proceedings, it is incumbent that service of notices, communications and orders ought to be effected even through email and on the common portal, in addition to the traditional methods as per Section 153. Let the present order be communicated to the Chairman, Central Board of Customs and Indirect Taxes by the Ld. Standing Counsel (Customs) so that the mandate of the provision of Section 153(b) and (c) for communication of notices, orders etc., by email as also uploading on the Directorate General of Foreign Trade (DGFT) common portal can henceforth be given effect to."

18. In compliance with the above directions, once the adjudicating order is passed, the same shall be communicated on the email address of the passenger and on Whatsapp number, with a clear note that the passenger is free to challenge the same within 90 days (60 days + 30 days). The email address of the concerned Appellate Forum shall also be provided in the adjudicating order communicated to the passenger.

#### Detention of personal effects qua travellers of foreign origin

19. Insofar as travellers of foreign origin, whether foreign passport holders or foreign residence permit holders, are concerned, in respect of personal effects including jewellery, so long as the same are declared in the 'Red Channel' and the said travellers undertake to re-export the same, the said personal effects shall not be detained.

#### IV. Directions

20. Since the CBIC and Customs Department is now seeking further time to amend the Baggage Rules and to place the same before this Court, a sensitisation initiative shall be carried out by the Customs Department to all Customs officials. The Customs officials shall ensure that old jewellery of even Indian travellers, personal jewellery which is being worn by the travellers during travel or used jewellery is not unnecessarily detained in a routine manner, so as to ensure that no harassment is caused to travellers coming to India.

21. If the Baggage Rules cannot be amended by the next date of hearing, a Standard Operating Procedure (hereinafter "SOP") shall be placed on record by the next date which shall be followed by the Customs Department till the time the Baggage Rules are amended.

22. Let the said SOP cover all the issues which have been highlighted by this Court in the present petition as also any other issue which has a material bearing on the matter under consideration. In addition to the above, let the CBIC, Customs Department and other stakeholders also consider the following:

(i) The manner in which the statements under Section 108 of the Act are recorded in standard form from all passengers;

(ii) The procedures for appraisal and for disposal of the items which are detained, also require to be simplified and re-looked.

23. Let the Respondents file a further affidavit by the next date of hearing in terms of the directions passed today. The draft SOP as directed above be also placed before the Court.

24. In the facts of this case the concerned Revision Authority is directed to take a decision within one month.

25. The order passed in the revision shall be placed before the Court on the next date.

26. Registry is directed to communicate this order to the OSD (Legal), CBIC through email (Osd-legal@gov.in) for necessary information and compliance. Let Mr. Harpreet Singh, ld. Sr. Standing Counsel, also communicate this order to the OSD (Legal), CBIC for necessary information and compliance.

27. List on 19th May, 2025.

28. This matter be treated as a part heard matter.

PRATHIBA M. SINGH JUDGE RAJNEESH KUMAR GUPTA JUDGE MARCH 27, 2025 kk/msh