

Kartik Sahdev vs Commissioner Of Customs 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) 3193/2025

KARTIK SAHDEV

Through: Mr. Ashish Panday, Adv.
versus

COMMISSIONER OF CUSTOMS

.....Respondent

Through: Mr. Shubham Tyagi, SSC with Ms. N
Ojha, Adv. (M:9650049869)

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE RAJNEESH KUMAR GUPTA

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.

2. This is a petition filed by the Petitioner under Article 226 of the Constitution of India inter alia challenging the Order-in-Original dated 16th January, 2024 (hereinafter, 'OIO') and the Order in Appeal dated 1st January, 2025 (hereinafter, 'OIA').

3. A brief background of the present case is that the Petitioner and his wife were intercepted at Terminal-3, IGI Airport, New Delhi upon arrival on 14th October, 2023 from Bangkok. The couple is stated to have been wearing two gold kadas and two gold chains, all of which were detained vide Detention Receipt No. DR/INDEL4/14.10.2023/002858.

4. According to the Petitioner, after the detention of the said items, no show cause notice was issued on the ground that he had waived his right to show cause notice by signing a pre-printed standard proforma. Thereafter, the impugned Order- in-Original was passed on 16th January, 2024 as per which, the Petitioner was given the option of redeeming the goods on payment of fine of Rs. 1,20,000/- and was imposed a penalty of Rs.97,000/-. It also states that the total appraised value of the goods which was seized was Rs.9,67,266/-.

5. The Respondent, thereafter is stated to have preferred an appeal against the impugned OIO inter alia on the ground that the option to redeem the goods can be allowed only when the Petitioner has made a truthful declaration at the Red Channel. However, the Commissioner (Appeals) vide the OIA dated 1st January, 2025 has upheld the impugned OIO dated 16th January, 2024 after rejecting said contention. Thus, this petition has been filed seeking implementation of the Order.

6. Today, learned Counsel for the Petitioner submits that there is no appeal as yet that has been filed challenging the impugned OIA. The Petitioner, in the meanwhile, went to get the goods released but the same has not been released on the ground that the appeal is likely to be filed by the Customs Department.

7. Heard. Prima facie, there are two illegalities in this matter. Firstly, the waiver of show cause notice by a pre-printed standard proforma and affording of no hearing which would be violative of principles of natural justice in terms of the judgment passed by this Court in Amit Kumar v. The Commissioner of Customs (2025:DHC:751-DB). The operative portion of the said judgment reads as under:

"14. When a request for release of goods is being made by the person whose goods have been detained, the said person cannot be expected to read a printed form, where

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• waiver of Show Cause Notice has been agreed to, • waiver of personal hearing has been agreed to and • it has also been recorded that an oral SCN has been received.

Such signing of the standard form would not be in compliance with the principles of natural justice, inasmuch as, the waiver under Section 124 of the Act would have to be a conscious waiver and an informed waiver.

16. A perusal of Section 124 of the Act along with the alleged waiver which is relied upon would show that the oral SCN cannot be deemed to have been served in this manner as is being alleged by the Department. If an oral SCN waiver has to be agreed to by the person concerned, the same ought to be in the form of a proper declaration, consciously signed by the person concerned. Even then, an opportunity of hearing ought to be afforded, inasmuch as, the person concerned cannot be condemned unheard in these matters. Printed waivers of this nature would fundamentally violate rights of persons who are affected. Natural justice is not merely lip-service. It has to be given effect and complied with in letter and spirit.

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"

8. Secondly, the personal jewellery is part of bonafide baggage of the travellers and is exempt from duty under rule 5 of Baggage Rules, 2016 in terms of the various decisions passed by this Court including:

□Nathan Narayanswamy v. Commissioner of Customs, [Delhi High Court, W.P.(C) 6855/2023 dated 15th September, 2023] □Rahul Vattamparambil Remesh v. Union Of India & Ors. (2025:DHC:1444-DB).

Therefore, this court is of the opinion that the said goods ought not to have been detained.

9. Once the goods are detained, it is mandatory to issue a show cause notice and afford a hearing to the Petitioner. The time prescribed under Section 110 of The Customs Act, 1962, is a period of six months and subject to complying with the formalities, a further extension for a period of six months can be taken by the Department for issuing the show cause notice. In this case, the one year period itself has elapsed, thus no show cause notice can be issued. The detention is therefore impermissible.

10. On the last date, ld. Counsel for the Respondent wanted to seek instructions in the matter. He submits that the Customs Department intends to file a review before the Revisional Authority.

11. In the opinion of this Court, this is a case where the Petitioner has already been given the option of redeeming the goods on payment of fine and penalty. The facts of this case show that the goods are two gold kadas and two gold chains. Considering the fact that the Petitioner had fully participated in the proceedings of show cause notice, the Petitioner may pay the redemption fine and penalty in terms of the order in original and the goods shall be released to him within four weeks. Storage charges are waived in this case.

12. The petition is disposed of in these terms. All pending applications, if any, are also disposed of.

PRATHIBA M. SINGH JUDGE RAJNEESH KUMAR GUPTA JUDGE MARCH 27, 2025 dj/tp