

Javed Alam vs Commissioner Of Customs on 9 April, 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:

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W.P.(C) 4538/2025

JAVED ALAM

Through: Ms. Richa Kumari, Mr. & Mr. Pawan, Advs.

versus

COMMISSIONER OF CUSTOMSRespondent

Through: Mr. Aditya Singla, SSC with Mr. Ritwik Saha & Mr. Siddharth Saxena Advs.

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE RAJNEESH KUMAR GUPTA

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.

2. The present petition has been filed by the Petitioner- Javed Alam under Article 226 of the Constitution of India, inter alia, seeking release of the goods seized by the Respondent- Commissioner of Customs vide Detention Receipt No. 26696 dated 20th September, 2024. (New Detention Receipt Nos.- 43647 dated 21st October, 2024 and 36205 dated 6th November, 2024 respectively.) The Petitioner also seeks to challenge the Order-in-Original bearing no. 2166/26696/20.09.2024/WII/2024-25 dated 15th January, 2025.

3. The Petitioner is an Indian citizen who was travelling from Dubai. According to the Petitioner, there was a wedding in the family for which he purchased various gift items in Dubai and he passed through the Red Channel at the IGI Airport, New Delhi when he arrived on the intervening night of 19th / 20th September, 2024. The list of the goods seized by the Respondent are as follows (hereinafter, 'goods'):

□23 pieces of branded mufflers.

□13 pieces of Pashmina/ Shahtoosh Shawls □44 pieces of branded clothes □2 Johnnie Walker Blue label bottles

4. According to the Petitioner, despite him having gone to the Red Channel, he was made to wait for more than six hours and instead of asking him to pay the duty, the goods of the Petitioner were detained. The Petitioner also claims that a statement under Section 108 of the Customs Act, 1962 was recorded forcefully by the Customs Department.

5. The first and second appraisal of the goods has been done. The Order- in-Original dated 15th January 2025 has been passed by which the free allowances are rejected and absolute confiscation of all the goods has been directed. Further, a penalty of Rs.1,60,000/- is imposed upon the Petitioner.

6. The case of the Petitioner is that no Show Cause Notice (hereinafter, 'SCN') was served upon the Petitioner and no personal hearing was granted.

7. Ld. Senior Standing Counsel for the Respondent submits that the Order-in-Original records that the Petitioner was passing through the Green Channel.

8. The Court has perused the Order-in-Original dated 15th January 2025. Paragraph 3 of the Order-in-Original records that no SCN was issued and no personal hearing was granted to the Petitioner. It appears that a standard format waiver was signed by the Petitioner.

9. In view of the declared law by this Court in Amit Kumar v. The Commissioner of Customs, (2025: DHC: 751-DB) and the judgments which followed the same, such standard form waivers of SCN or personal hearings have no validity in the eyes of law. The relevant portion of the said judgment reads as under:

"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.

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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."

10. In view of the above, the impugned Order-in-Original dated 15th January, 2025 is set aside.
11. The Petitioner shall be afforded a hearing before the concerned official.
12. Let the Petitioner file written submissions along with all the necessary documents, if any, which he wishes to rely upon before the Adjudicating Authority.
13. The matter shall be heard by the concerned official and since the Petitioner is willing to pay the customs duty, the customs duty shall be determined and the order shall be passed by the Adjudicating Authority in accordance with law within a period of two months after the hearing.
14. Let a notice of hearing be given to the Petitioner on the following mobile number and email address as also to the Id. Counsel for the Petitioner:

☐Mr. Javed Alam (Mob No. 8057179999) ☐Ms. Richa Kumar, Adv. (Mob. No. 9766321884, email address:

yadavricha493@gmail.com)

15. Petition is disposed of in these terms. All pending applications, if any, are also disposed of.

PRATHIBA M. SINGH JUDGE RAJNEESH KUMAR GUPTA JUDGE APRIL 9, 2025 Rahul/ck