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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 19th February, 2025

\+ **W.P.(C) 2030/2025**

MOHAMED SHAMIUDDEEN .....Petitioner
Through: Md. Athar & Mr. S. Vijay Kant, Advs.

versus

COMMISSIONER OF CUSTOMS & ORS. .....Respondents
Through: Mr. Gibran Naushad, Sr. Standing Counsel with Mr. Harsh Singhal, Adv.

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE DHARMESH SHARMA

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.

2. The present writ petition has been filed by the Petitioner-Mohamed Shamiuddeen under Articles 226 & 227 of the Constitution of India read with Section 151 of the Code of Civil Procedure, 1908 seeking unconditional release of the wrist watch detained vide Detention Receipt No.05869 dated 17th October, 2023 (Old DR No.2876 dated 16th October, 2023).

3. The brief facts are that the Petitioner is an Indian passport holder, but is a permanent resident of Hong Kong. The Hong Kong permanent identity card has been attached with the petition. The Petitioner had arrived in India at IGI, Airport, New Delhi from Hong Kong on 16th October, 2023. The Petitioner was intercepted by the Customs Department at the airport and after a search of his possessions, the Petitioner's Rolex wrist watch was seized.

4. It is the case of the Petitioner that at the time of detention on 16th October, 2023, a form for appraisal and assessment was signed by the Petitioner. Thereafter, an undertaking has also been recorded on 17th October

2023, wherein in standard format, show cause notice and personal hearing has been waived by the Petitioner. Subsequently on 20th February, 2024, an email is stated to have been written by the Department to the Petitioner seeking a document of proof of Hong Kong residency. The Petitioner is stated to have replied to the said email on 2nd February, 2025 giving the necessary documents.

5. Mr. Naushad, ld. SSC for the Department submits that the above details have not been disclosed in the petition. He submits that the Department did not receive any response to the email dated 20th February, 2024. In addition, the ld. SSC has handed over the appraisement report as per which the watch has been valued at ₹30,29,400/-. It is also submitted that the Department is in the process of passing the final order in this matter.

6. It is noted that this is another case where the Department is relying upon the standard form undertaking signed by the Petitioner waiving the show cause notice and personal hearing. Clearly, the Department had the email address and the mobile number of the Petitioner. Thus, after not receiving a reply to the email dated 20th February, 2024, the Department could have issued a proper show cause notice within the time prescribed as per law. None of this was done. No hearing was also granted.

7. Under such circumstances, this Court has already held in ***Amit Kumar v. The Commissioner of Customs, 2025:DHC:751-DB*** that oral waiver of show cause notice and personal hearing in a standard form would not be in accordance with law. The observations in the said judgement are set out below:

> *"12. The Court has considered the matter. The main plank of the Respondent's submission is on the basis of*

*the Standard Printed Form which is titled **<u>Green Channel Violation (Request for Release of Detained Goods)</u>** which has been extracted hereinabove.*

13. A perusal of the above would show that in Printed Form, the following has been included:-

*"It is humbly requested that said detained goods may please be **RELEASED**. I regret my mistake of opting for Green Channel and further request you to please take a lenient view in the matter. I undertake that my case may be decided on merit and as such <u>I do not want any written Show Cause Notice and Personal Hearing in the matter. An oral SCN has been received</u>."*

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 –

- *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 wavier and an informed wavier.

15. A perusal of Section 124 of the Act would show that even after an oral show cause notice is given, the authority has the discretion to issue supplementary notice under circumstances which may be prescribed. For ready reference, Section 124 of the Act is set out below:-

> ***"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:

<u>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</u>.

[<u>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</u>.]"

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.

> *17. The three-pronged waiver which the form contains is not even decipherable or comprehensible to the common man. Apart from agreeing as per the said form that the oral SCN has been served, the person affected has also waived a right for personal hearing. Such a form in fact shocks the conscience of the Court, that too in cases of the present nature where travellers/tourists are made to run from pillar to post for seeking release of detained goods.*
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> *[...]*
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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."*

8. Though the Petitioner ought to have disclosed the fact that he had submitted the documents in response to email dated 20th February, 2024, in a belated manner, however, the fact that show cause notice was not issued in this case cannot be ignored by the Court.

9. Following the decision in ***Amit Kumar (supra)*** the detention of the subject goods is itself liable to be set aside due to non-issuance of show cause notice, and the goods are accordingly directed to be released to the Petitioner within a period of two weeks.

10. The Petitioner shall visit the concerned warehouse personally to obtain the release of the goods. Whatever charges for storage would be payable, shall

be paid by the Petitioner.

11. The documents handed over by Mr. Naushad, ld. SCC are taken on record.

12. The petition is allowed in the above terms and the same is disposed of. All pending applications, if any, are also disposed of.

PRATHIBA M. SINGH
JUDGE

DHARMESH SHARMA
JUDGE

FEBRUARY 19, 2025
Rahul/ms