



\$~53

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

Date of decision: 13th January, 2025

+ **W.P.(C) 198/2025**

QAMAR JAHANPetitioner

Through: Mr. Ashish Panday, Adv.
(M: 9599437665)

versus

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

Through: Mr. Jagdish Chandra, CGSC-UOI
with Mr. Shubham Kumar Mishra,
Adv. for R-1/UOI (M: 8512841934)
Mr. Shubham Tyagi, SSC-CBIC with
Mr. Sunil Kumar, Deputy
Commissioner, Mr. Sunil Kumar,
ACS, Mr. Mratyunjay Singh
Chauhan, ASC
Mr. Harpreet Singh, Sr. Standing
Counsel along with Ms. Suhani
Mathur and Mr. Shivang Chawla,
Adv. for Customs Department (M:
9811253531)

**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 petition has been filed under Article 226 and 227 of the Constitution of India, *inter alia*, challenging the Order-in-Original dated



6th February, 2024, and Order-in-Appeal dated 23rd September, 2024, passed by the Joint Commissioner of Customs and the Commissioner of Customs (Appeals), respectively.

3. *Vide* impugned Order-in-Original the adjudicating authority, *inter alia*, ordered confiscation of two gold kadas and one gold chain of the Petitioner. Further, the Petitioner was also directed to pay a redemption fine of Rs. 75,000/- and a personal penalty of Rs. 1,10,000/- in terms of the Customs Act, 1962. The Petitioner appealed the said Order-in-Original and on 24th September, 2024, the Commissioner of Customs (Appeals) dismissed the said appeal filed by the Petitioner.

4. On the last date of hearing *i.e.*, 9th January, 2025, after considering the facts of the case, the Court had directed a competent Customs official, who is familiar with the relevant circulars issued in respect of seizure of personal effects and jewellery by the Customs Department, be present in Court on the next date of hearing.

5. The Customs officials are present today in Court.

6. Independent of the facts in the present case, the Court has queried the Customs officials as to what are the applicable Rules and Circulars in respect of confiscation or seizure by the Customs Department of jewellery which are worn by travellers/tourists who may be coming from abroad to India.

7. The Court has been informed by the Customs Officials that as per the Baggage Rules, 2016, (hereinafter "*Baggage Rules*") that came into force on 1st April, 2016 and was passed under Section 79 of the Customs Act, 1962, the term "personal effects" would not include jewellery. In this regard, reliance is placed on Rule 2(vi) and Rule 5 of the Baggage Rules, which are reproduced hereinbelow:-



“2(vi) “Personal effects” means things required for satisfying daily necessities but does not include jewellery.

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

8. It can be seen from the said rules that any jewellery of twenty grams with a value cap of Rs. 50,000/- in case of a man and forty grams with a value cap of Rs. 1,00,000/- in case of a woman, only can be cleared free of duty upon return to India, subject to the condition that the concerned passenger is residing abroad for more than one year.

9. The Court has also been shown the Guide for Travellers, prepared by the Central Board of Indirect Taxes & Customs (hereinafter “CBIC”), wherein in respect of jewellery, it is stated as under:-

“Question 6. Who can bring Jewellery as baggage, free of duty?

Ans. An Indian passenger who has been residing abroad for over one year is allowed to bring jewellery, free of duty in his bonafide baggage upto 20 grams with a value cap of Rs. 50,000/- (in case of a gentleman passenger) or up to 40 grams with a value cap of Rs. 1,00,000/- (in the case of a lady passenger).”

10. The Indian Customs Declaration Form (hereinafter “Declaration Form”) issued by the CBIC as part of the Guide for Travellers has also been perused by the Court, which would show that gold and gold jewellery is



being treated as prohibited articles where the same is beyond the prescribed limits under Rule 5 of Baggage Rules, including gold bullion.

11. On a query from the Court, Mr. Shubham Tyagi, Id. Counsel for the Customs Department, as also Mr. Harpreet Singh, Id. Counsel, who regularly appears for the Customs and is present in Court, have informed the Court, that if any traveller is coming from abroad and is carrying jewellery which is more than the value as prescribed in Rule 5 of the Baggage Rules, the same would have to be declared by the said traveller. Further, where the declaration has been made the applicable duty would not have to be paid and an undertaking would have to be given, *inter alia*, stating that the said traveller intends to carry the declared jewellery back.

12. A perusal of the Baggage Rules or the Declaration Form does not show that this position, quadeclaration of the jewellery, is duly clarified to travellers/tourists visiting India.

13. It is seen by this Court in a number of writ petitions, that even small quantities of jewellery is sometimes seized by the Customs Department if the passenger is walking through the green channel - which is for passengers not having any dutiable or prohibited goods. Moreover, the Court is of the view that the Baggage Rules may also require a re-look, considering the market rate of gold at present, where forty grams of gold would be costing much more the value cap of Rs. 1,00,000/- prescribed under Rule 5 of Baggage Rules. With the maximum limit of Rs.1,00,000/-, the gold that could be purchased may only be around 15 grams.

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.



20. Issue notice to the Respondents. Mr. Shubham Tyagi, Id. Counsel for Union of India and Mr. Harpreet Singh, Id. Counsel for the Customs Department, accept notice.
21. Let a reply to this petition be filed within four weeks. Rejoinder, thereto, be filed within four weeks.
22. 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. Shubham Tyagi, Id. Counsel, also communicate this order to the OSD (Legal), CBIC for necessary information and compliance.
23. List before the Joint Registrar on 18th February, 2025.
24. List before the Court on 27th March, 2025.
25. This shall be treated as a part-heard matter.

PRATHIBA M. SINGH, J.

DHARMESH SHARMA, J.

JANUARY 13, 2025/sp/ms