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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% ***Judgment reserved on: 19.08.2026***
Judgment pronounced on: 02.09.2026
Judgment uploaded on: 02.09.2026

\# **CNR No. DLHC010913852025**

\+ W.P.(C) 17561/2025

FAHIM AHMAD .....Petitioner
Through: Dr. Ashutosh, Ms. Fatima, Mr. Rohit Swarup, Mr. Dalip Singh, Mr. Avinash Kumar Singh, Mr. Pravej Hasan, Mr. Abhijeet Sagar, Mr. S.Vijaykanth, Advs.

versus

COMMISSIONER OF CUSTOMS .....Respondent
Through: Ms. Anushree Narain, SSC with Mr. Apurv Yadav and Mr. Naman Choula, Advs.

CORAM:
HON'BLE MR. JUSTICE ANIL KSHETARPAL
HON'BLE MS. JUSTICE SHAIL JAIN

<u>J U D G M E N T</u>

<u>ANIL KSHETARPAL, J.:</u>

1. The principal issue which arises for consideration in the present Petition is whether the absolute confiscation of the gold bar belonging to the Petitioner, and the consequential penalty imposed upon him, can be sustained in the absence of a written Show Cause Notice under Section 124 of the Customs Act, 1962 [‘the Act’], where the Respondent relies upon the Petitioner’s alleged statement under

Section 108 of the said Act and the subsequent communication dated 07.06.2024 to contend that the requirement of a Show Cause Notice and personal hearing was waived and that an oral Show Cause Notice had been issued.

2. Through the present Petition, the Petitioner seeks quashing of the Order-in-Appeal dated 27.08.2025 passed by the Commissioner of Customs (Appeals), whereby the appeal preferred by the Petitioner against the Order-in-Original dated 20.08.2024 was dismissed. The Petitioner further seeks release of the gold bar weighing 116 grams, which was detained/seized by the Customs authorities on 02.06.2024, as also waiver of the detention/warehouse charges, if any.

FACTUAL MATRIX

3. In order to appreciate the controversy involved in the present Petition, the relevant facts, in brief, are required to be noticed.

4. The Petitioner, an Indian national, arrived at the Indira Gandhi International Airport, New Delhi, from Bahrain on 02.06.2024. Upon interception by the Customs authorities after he had crossed the Green Channel, one gold bar, engraved with the marking "*NAIF*", weighing 116 grams and stated to be of 999 purity, was recovered from him. The said gold bar was detained by the Customs authorities *vide* Detention Receipt No. 4546 dated 02.06.2024. The Detention Receipt records, *inter alia*, that the gold bar was repacked in a cut plastic bottle, sealed with Customs tape and pliers in the presence of the passenger, and that the goods had been detained at the request of the passenger and sealed in his presence over his signature.

5. On the same date, i.e. 02.06.2024, the Customs authorities recorded a statement purportedly under Section 108 of the Act. In the said statement, the Petitioner is stated to have initially disowned the gold bar by stating that the same did not belong to him. The Respondent relies upon the said statement to contend that the Petitioner was acting as a carrier of the gold and that the statement was voluntarily tendered by him. The Respondent further relies upon the statement for its contention that the Petitioner did not require issuance of a Show Cause Notice or grant of a personal hearing.

6. The gold bar was thereafter appraised on 07.06.2024. The Respondent states that the appraisement was carried out in the presence of the Petitioner and that the gold bar was found to bear foreign markings and to be of 999 purity. The Respondent further relies upon a letter dated 07.06.2024 stated to have been submitted through the Petitioner's Authorised Representative, whereby ownership of the gold bar was claimed and it was again stated that the Petitioner did not desire issuance of a Show Cause Notice or grant of a personal hearing.

7. According to the Respondent, an oral Show Cause Notice was issued to the Petitioner on 02.06.2024 in terms of the first proviso to Section 124 of the Act. The Respondent, therefore, contends that the statutory requirement preceding confiscation stood duly complied with.

8. The adjudicating authority thereafter passed the Order-in-Original dated 20.08.2024, whereby the gold bar weighing 116 grams

was absolutely confiscated and a penalty of Rs.1,15,000/- was imposed upon the Petitioner under Sections 112 and 114 of the Act.

9. The Petitioner initially approached this Court by way of W.P.(C) 6696/2025 challenging the said Order-in-Original, principally on the ground that no Show Cause Notice had been issued to him. On 21.05.2025, this Court, taking note of the rival submissions, permitted the Petitioner to avail the statutory appellate remedy under Section 128 of the Act. The Petitioner was permitted to file the appeal on or before 10.07.2025 and it was directed that the appeal be considered on merits without being dismissed on limitation. The Commissioner (Appeals) was also directed to afford a personal hearing to the Petitioner and pass an order within the stipulated period.

10. Pursuant thereto, the Petitioner preferred an appeal against the Order-in-Original. The Commissioner of Customs (Appeals), *vide* Order-in-Appeal dated 27.08.2025, dismissed the appeal and upheld the action taken by the adjudicating authority.

11. The Petitioner thereafter filed the present Petition challenging the Order-in-Appeal.

CONTENTIONS OF THE PARTIES

12. Contentions on behalf of the Petitioner

12.1. Learned counsel for the Petitioner submitted that admittedly no written Show Cause Notice was issued to the Petitioner before the Order-in-Original dated 20.08.2024 came to be passed. It was submitted that the requirement contained in Section 124 of the Act is mandatory and cannot be dispensed with merely on the basis of a purported statement attributed to the Petitioner.

12.2. It was submitted that the document dated 02.06.2024 relied upon by the Respondent as a statement under Section 108 of the Act is not, in law, a valid statement recorded under the said provision. It was submitted that the Petitioner was not issued any summons under Section 108 and that the document relied upon by the Department merely contains the recital, "*I also don't need any SCN or PH in the matter*". According to learned counsel, the same cannot constitute either a valid waiver of the statutory requirement of a Show Cause Notice or a request for an oral Show Cause Notice within the meaning of the first proviso to Section 124 of the Act.

12.3. It was further submitted that the Petitioner has specifically alleged that documents had been prepared beforehand and that he was made to sign them without the contents thereof being properly explained to him. It was contended that the allegation of coercion and the circumstances in which the document was signed cannot be brushed aside merely on the ground that there was no contemporaneous retraction.

12.4. It was further submitted that even assuming that the document dated 02.06.2024 is treated as a statement under Section 108 of the Act, it cannot amount to a valid request for an oral Show Cause Notice. According to him, the first proviso to Section 124 specifically contemplates that the notice may be oral *at the request of the person concerned*, and consequently a specific request for an oral notice must precede the acceptance thereof by the Department.

12.5. Reliance has also been placed upon the judgment of the Supreme Court in ***Union of India & Ors. v. Jatin Ahuja***, Civil Appeal No.3489/2024, decided on 11.09.2025, to contend that the statutory scheme relating to Sections 110 and 124 of the Act has to be strictly complied with. The Supreme Court, while considering the consequence of non-issuance of a notice under Section 124 within the period contemplated by Section 110(2), reiterated the mandatory nature of the statutory consequence flowing from Section 110(2).

12.6. It was further submitted that there can be no waiver of the statutory requirement of a Show Cause Notice and placed reliance upon the judgment of this Court in ***Shubhangi Gupta v. Commissioner of Customs***. It was also contended that the Baggage Rules, being subordinate legislation, cannot override the mandatory safeguards contained in the parent statute.

12.7. It is lastly submitted that the availability of an alternative remedy is not an absolute bar to the exercise of jurisdiction under Article 226 of the Constitution, particularly where there is an alleged violation of principles of natural justice and the action is alleged to be without jurisdiction. Reliance in this regard has been placed upon the judgment of the Supreme Court in ***M/s Godrej Sara Lee Ltd. v. The Excise and Taxation Officer-cum-Assessing Authority & Ors.***, Civil Appeal No.5393/2010, decided on 01.02.2023.

13. <u>Contentions on behalf of the Respondent</u>

13.1. *Per contra*, learned counsel for the Respondent submitted that the present Petition ought not to be entertained in view of the efficacious statutory remedy available to the Petitioner under the Act. It was submitted that, against the Order-in-Appeal dated 27.08.2025, the Petitioner has a remedy of revision before the Central Government under Section 129DD of the Act, the Impugned Order being one relating to goods imported as baggage. It was, therefore, contended that the Petitioner cannot bypass the statutory remedy and invoke the writ jurisdiction of this Court merely because the decision of the Commissioner (Appeals) has gone against him.

13.2. It was submitted that the Petitioner was intercepted after he had crossed the Green Channel and the gold bar was recovered from his possession. It was contended that there was no voluntary declaration of the gold before the Customs authorities and that the circumstances in which the gold was recovered constituted a Green Channel violation. It was further submitted that the Petitioner, in his statement dated 02.06.2024 recorded under Section 108 of the Act, expressly stated that he did not require issuance of a Show Cause Notice or a personal hearing. It was submitted that the said statement was voluntary and was never retracted by the Petitioner before any competent authority.

13.3. It was further submitted that, at the stage of appraisement on 07.06.2024, the Petitioner, through his Authorised Representative, again communicated that he did not require issuance of a Show Cause Notice or personal hearing. According to the Respondent, the Petitioner therefore consciously elected to dispense with the written

Show Cause Notice and personal hearing.

13.4. It was submitted that the Respondent's case is not merely founded upon a purported waiver of the Show Cause Notice. It is also the case of the Department that an oral Show Cause Notice was issued in terms of the first proviso to Section 124 of the Act. The Respondent has accordingly shown the date of the oral Show Cause Notice as 02.06.2024 in the chart placed before the Court.

13.5. It was further submitted that the Petitioner had initially disowned the gold bar in his statement dated 02.06.2024, which, according to the Respondent, indicated that he was acting as a carrier and not as the owner of the gold. It was contended that no document evidencing licit possession or acquisition of the gold had been produced by the Petitioner. Learned counsel further submitted that the Order-in-Original as well as the Order-in-Appeal have returned concurrent findings against the Petitioner.

13.6. It was submitted that the questions sought to be raised by the Petitioner, including the circumstances in which the statement dated 02.06.2024 was recorded, whether the Petitioner had voluntarily sought waiver of the written Show Cause Notice and personal hearing, whether an oral Show Cause Notice was in fact issued, and whether the documents relied upon by the Respondent were voluntarily executed, involve disputed questions of fact which ought not to be examined in exercise of the writ jurisdiction under Article 226 of the Constitution.

13.7. During the course of hearing, learned counsel for the

Respondent has also stated that, without prejudice to the stand taken in the Impugned Orders, the Department is ready and willing to afford the Petitioner an opportunity of personal hearing and to adjudicate the matter in accordance with law within a time-bound period.

ANALYSIS & FINDINGS

14. This Court has carefully considered the submissions advanced on behalf of the parties and perused the material on record.

15. At the outset, it is necessary to notice that the present Petition arises after the Petitioner has already availed the statutory appellate remedy against the Order-in-Original dated 20.08.2024. The Commissioner (Appeals) has considered the appeal and passed the Order-in-Appeal dated 27.08.2025, which is the order impugned in the present proceedings.

16. The Customs Act itself provides a further statutory remedy in respect of an order of the Commissioner (Appeals) relating to goods imported or exported as baggage. Section 129A(1) of the Act excludes from the jurisdiction of the Appellate Tribunal an appeal against an order of the Commissioner (Appeals) where such order relates, inter alia, to goods imported or exported as baggage. Section 129DD, correspondingly, provides for revision by the Central Government against an order of the nature referred to in the first proviso to Section 129A(1). The Department of Revenue also identifies revision applications under Section 129DD in matters concerning goods imported or exported as baggage.

17. Thus, the contention of the Respondent that a statutory remedy is available to the Petitioner is well founded. However, the mere existence of an alternative remedy does not, by itself, completely denude this Court of its jurisdiction under Article 226 of the Constitution. The Court may, in an appropriate case, exercise its writ jurisdiction notwithstanding the availability of an alternative remedy, particularly where the proceedings are alleged to have been conducted in breach of principles of natural justice or without jurisdiction.

18. The question, therefore, is whether the present case is one in which this Court ought to exercise its extraordinary jurisdiction notwithstanding the statutory remedy available to the Petitioner.

19. The principal grievance of the Petitioner is that no Show Cause Notice under Section 124 of the Act was issued before the gold bar was confiscated and penalty was imposed. The Respondent, however, does not accept that the statutory requirement was altogether dispensed with. The specific stand of the Respondent is that the Petitioner had stated on 02.06.2024 that he did not require a Show Cause Notice or personal hearing; that the Petitioner reiterated the same position through his Authorised Representative on 07.06.2024; and, importantly, that an oral Show Cause Notice was issued on 02.06.2024 in terms of the first proviso to Section 124 of the Act.

20. The controversy thus cannot be resolved merely by noticing that no written Show Cause Notice was issued. The first proviso to Section 124 itself contemplates, at the request of the person concerned, an oral notice in lieu of a written notice. Consequently, the precise question

arising in the present case would require examination of the documents and circumstances surrounding the alleged statement dated 02.06.2024, the alleged request concerning the Show Cause Notice and personal hearing, the alleged oral notice, and the subsequent communication dated 07.06.2024.

21. The Petitioner disputes the very nature and character of the document dated 02.06.2024. According to him, the document is not a valid statement under Section 108 of the Act and was prepared and signed in circumstances which did not permit the Petitioner to understand its contents. The Petitioner has also alleged coercion and has disputed the voluntariness of the document. The Respondent, on the other hand, asserts that the statement was voluntarily tendered and was never retracted.

22. Similarly, the Petitioner disputes that the recital that he did not require a Show Cause Notice amounted to a request for an oral Show Cause Notice under the first proviso to Section 124. The Respondent takes a contrary position and additionally asserts that an oral Show Cause Notice was actually issued on 02.06.2024.

23. These competing assertions assume significance because the relief sought by the Petitioner would require this Court, in exercise of its writ jurisdiction, to examine the factual circumstances in which the documents were executed and to determine the effect thereof. In particular, it would require an examination of whether the Petitioner voluntarily made the statement attributed to him, whether the alleged request was in fact made, what was communicated to him orally by

the Customs authorities, and whether the subsequent communication dated 07.06.2024 constituted a conscious and informed relinquishment of the procedural safeguards claimed by him.

24. This Court is of the view that these disputed questions ought not to be conclusively adjudicated in the present proceedings under Article 226 of the Constitution, particularly when the statute provides a specific revisionary remedy against the Order-in-Appeal.

25. The reliance placed by the Petitioner upon ***Godrej Sara*** (supra) does not advance his case to the extent contended. The said decision recognises that the rule concerning availability of an alternative remedy is a rule of discretion and not one which completely bars exercise of writ jurisdiction. However, the question whether such discretion should be exercised depends upon the facts and circumstances of each case. The present case is distinguishable from a case where the relevant facts are admitted and the controversy is confined to a pure question of law.

26. In the present case, there is a direct dispute as to what transpired between the Petitioner and the Customs authorities on 02.06.2024 and thereafter on 07.06.2024. The Respondent has placed reliance upon contemporaneous documents, while the Petitioner disputes their character, voluntariness and legal effect. These matters can appropriately be considered in the statutory proceedings, where the entire record can be examined and the parties can place their respective versions before the competent authority.

27. This Court is also conscious of the judgment of the Supreme

Court in ***Jatin Ahuja*** (supra). The said decision arose from proceedings concerning the statutory consequences flowing from Section 110(2) of the Act in the absence of a notice under Section 124 within the prescribed period. The Supreme Court disposed of the batch of appeals on 11.09.2025.

28. The question whether the principles emerging from the said decision are attracted to the facts of the present case, and, if so, their precise application to the alleged oral Show Cause Notice and the documents relied upon by the Respondent, can also be raised before the statutory revisional authority. We, therefore, do not consider it appropriate to express any final opinion on the merits of the Petitioner's challenge to the confiscation or on the validity or otherwise of the alleged oral Show Cause Notice.

29. There is another circumstance which persuades this Court not to undertake an adjudication of these disputed issues in the present proceedings. The Respondent, during the course of hearing, has fairly stated that the Department is willing to afford the Petitioner an opportunity of personal hearing and to reconsider the matter in accordance with law within a time-bound period. This statement is taken on record.

30. The aforesaid statement, however, cannot be understood as permitting the Respondent to sustain the confiscation merely on the basis of the alleged waiver or to dispense with any statutory requirement which is otherwise applicable. The competent authority, while undertaking the proceedings pursuant to the liberty granted by

this Court, shall consider all the contentions available to the Petitioner in accordance with law, including the contention regarding Section 124 of the Act, the alleged absence of a Show Cause Notice, the alleged oral Show Cause Notice, the legal effect of the statement dated 02.06.2024 and the communication dated 07.06.2024, as also the effect, if any, of the judgment in Jatin Ahuja (supra).

31. It is clarified that this Court has not expressed any opinion on the merits of the allegations of Green Channel violation, the ownership of the gold bar, the Petitioner's initial statement regarding the gold, the validity or evidentiary value of the statement dated 02.06.2024, or the justification for absolute confiscation and imposition of penalty. All such issues are left open.

32. The present Petition has been filed after the Petitioner has already availed the appellate remedy under Section 128 of the Act and after the Commissioner (Appeals) has passed the Order-in-Appeal dated 27.08.2025. The further statutory remedy available under Section 129DD is therefore the appropriate forum for examination of the disputed factual and legal issues arising from the impugned Order-in-Appeal. The statutory scheme specifically recognises revision before the Central Government in matters concerning goods imported or exported as baggage.

33. Consequently, without expressing any opinion on the merits of the Petitioner's challenge, this Court is not inclined to entertain the present Petition under Article 226 of the Constitution.

CONCLUSION

34. The present Petition is, accordingly, dismissed, with liberty to the Petitioner to avail the statutory remedy of revision under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal dated 27.08.2025, in accordance with law.

35. If the Petitioner avails the aforesaid remedy within a period of four (04) weeks from today, the Revisional Authority shall consider the same in accordance with law and shall not reject the same merely on the ground that the Petitioner had approached this Court by way of the present Petition.

36. It is clarified that the dismissal of the present Petition shall not be construed as an expression of opinion by this Court on any of the rival contentions of the parties. All questions, including the Petitioner's contention regarding non-issuance of a Show Cause Notice under Section 124 of the Act, the alleged oral Show Cause Notice, the validity and voluntariness of the statement dated 02.06.2024, the communication dated 07.06.2024, and the legality of the confiscation and penalty, are left open to be considered by the competent authority in accordance with law.

ANIL KSHETARPAL, J.

SHAIL JAIN, J.

SEPTEMBER 02, 2026
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