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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. DLHC010194422026

\+ W.P.(C) 6066/2026

MOHAMMAD JUNAID .....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: Sh. Atul Tripathi, SSC-CBIC Mr. Akshay Sagar and Mr. Shubham Mishra, Advs.

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

JUDGMENT

ANIL KSHETARPAL, J.:

1. The principal issue which arises for consideration in the present Petition is whether this Court ought to interfere with an Order-in-Appeal dated 21.01.2026 passed by the Commissioner of Customs (Appeals), whereby the order of the Adjudicating Authority permitting re-export of the gold bar on payment of redemption fine, penalty and

applicable customs duty has been set aside and the gold bar has been ordered to be absolutely confiscated, particularly when the petitioner has an efficacious statutory remedy available under Section 129DD of the Customs Act, 1962 [the 'Act'].

2. Through the present petition, the Petitioner seeks quashing of the Order-in-Appeal dated 21.01.2026 and consequential restoration of the Order-in-Original dated 28.05.2025. The principal grievance of the Petitioner is that the gold bar seized from him was confiscated without issuance of a valid show cause notice under Section 124 of the Act and, consequently, the proceedings culminating in the Order-in-Original as well as the subsequent Order-in-Appeal are vitiated for violation of the statutory requirement and principles of natural justice.

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 Doha, Qatar on 01.07.2024 by Flight No. AI-972. Upon his arrival, he crossed the Green Channel and was thereafter intercepted by the Customs authorities and a gold bar weighing 117 grams was recovered from his possession.

5. A Detention Receipt bearing No. 4745 dated 01.07.2024 was issued in respect of the said article. The article was described therein as one gold bar engraved with the marking "*TT044200*", having purity of 998 and weighing 117 grams. The detention receipt records that the

article was repacked in a cut plastic bottle, sealed with Customs tape and the plier marked "*IGI WH Customs*", in the presence of the petitioner. The receipt further records that the goods were detained for the purposes of appraisement.

6. On the same date, i.e. 01.07.2024, a statement of the Petitioner was recorded under Section 108 of the Act. In the said statement, the Petitioner stated, *inter alia*, that he had been intercepted by the Customs authorities after crossing the Green Channel and that the aforesaid gold bar had been recovered from him. It was stated that the gold belonged to him and that he had not declared the same. It was further stated that he was aware that Customs duty was leviable on import of the goods and that he had intentionally not declared the recovered article. It was also stated that he agreed with the description, quantity and value to be assessed by the Department and was willing to pay the applicable customs duty, fine and penalty.

7. The said statement further records the following:

> *"I also do not need any Show Cause Notice or personal hearing in the matter."*

The statement records that it was read over and explained to the Petitioner in the vernacular and that he had tendered the same without any duress, pressure or threat.

8. The Respondent has placed on record a chart containing the relevant procedural particulars of the present case. According to the said chart, an oral show cause notice under the proviso to Section 124 of the Act was given to the Petitioner on 01.07.2024 and personal

hearing was granted to him on 21.05.2025. The Respondent further states that the Petitioner's authorised representative participated in the adjudication proceedings.

9. Thereafter, the Adjudicating Authority passed the Order-in-Original dated 28.05.2025. The said order denied the Petitioner the benefit of free allowance and dealt with the confiscation of the gold bar. The Petitioner was granted the option of re-export of the gold upon payment of the applicable customs duty, redemption fine and penalty.

10. The Petitioner thereafter approached this Court by filing W.P.(C) 14957/2025. In the meantime, an appeal against the Order-in-Original dated 28.05.2025 had been preferred before the Commissioner of Customs (Appeals). On 25.09.2025, this Court disposed of the said writ petition and directed the departmental appellate proceedings to be decided within the stipulated period. The existence of the said proceedings before the Commissioner (Appeals) is also reflected in the record of this Court.

11. Pursuant thereto, the Commissioner of Customs (Appeals) passed the impugned Order-in-Appeal dated 21.01.2026. By the said order, the appeal preferred by the Department was allowed and the gold bar weighing 117 grams was ordered to be absolutely confiscated.

12. Aggrieved by the aforesaid Order-in-Appeal, the Petitioner has instituted the present Writ Petition on 27.04.2026.

CONTENTIONS OF THE PARTIES

13. Contentions of the Petitioner

13.1. Learned counsel for the Petitioner submitted that the impugned Order-in-Appeal is liable to be set aside as the mandatory requirement of Section 124 of the Act was not complied with before confiscation of the gold bar. It was contended that no written show cause notice was ever served upon the Petitioner. It was submitted that the document dated 01.07.2024, described by the Respondent as a voluntary statement under Section 108 of the Act, cannot be treated as a show cause notice under Section 124 of the Act.

13.2. It was further submitted that the statement dated 01.07.2024 merely contains an alleged waiver of the requirement of a show cause notice and personal hearing. According to the Petitioner, such waiver cannot substitute the statutory requirement contained in Section 124 of the Act. Reliance was placed upon the judgment of this Court in ***Ms. Shubhangi Gupta v. Commissioner of Customs & Ors.***, W.P.(C) 10772/2024, decided on 04.11.2024. In the said case, this Court held that there is no provision under the Act permitting waiver of the notice contemplated by Section 124.

13.3. It was submitted that the Petitioner never made any request for an oral show cause notice in the manner contemplated by the first proviso to Section 124 of the Act. It was contended that the first proviso permits the notice under Section 124(a), as well as the representation under Section 124(b), to be oral only *at the request of the person concerned*. Consequently, according to the Petitioner, the mere recording of a statement that the Petitioner did not require a show cause notice cannot amount to compliance with the said statutory provision.

13.4. Learned counsel further challenges the manner in which the statement dated 01.07.2024 was recorded. It was submitted that the statement was not handwritten by the Petitioner and that the Petitioner was made to sign documents already prepared by the Customs authorities. It was further alleged that the contents thereof were not properly explained to him and that the petitioner was subjected to coercion. Reliance was also placed upon certain departmental instructions concerning recording of statements under Section 108 of the Act.

13.5. It was further submitted that the statutory requirement contained in Section 110(2) of the Act cannot be defeated by merely describing the statement dated 01.07.2024 as a waiver of show cause notice. According to learned counsel, unless a valid notice under Section 124 was issued within the period prescribed by law, the consequences flowing from Section 110(2) would follow.

13.6. It was also submitted that the subsequent personal hearing cannot cure the initial defect in the proceedings, since the right to notice under Section 124 is a statutory safeguard preceding confiscation. Reliance was placed upon the judgment of the Supreme Court in ***Union of India v. Jatin Ahuja***, decided on 11.09.2025, to contend that the statutory scheme relating to seizure and issuance of notice under Sections 110(2) and 124 of the Act has to be strictly complied with.

14. Contentions of the Respondent

14.1. *Per contra*, learned counsel for the Respondent opposed the present Petition primarily on the ground of maintainability. It was submitted that the impugned order is an order passed in appeal under the Act and the Petitioner has an efficacious statutory remedy of filing a revision application before the Central Government under Section 129DD of the Act.

14.2. It was submitted that the Petitioner cannot bypass the statutory remedy and invoke the extraordinary jurisdiction of this Court, particularly when the impugned Order-in-Appeal is a reasoned and speaking order passed after granting an opportunity of hearing to the Petitioner.

14.3. On merits, it was submitted that the Petitioner, in his voluntary statement recorded under Section 108 of the Act on 01.07.2024, admitted that he had crossed the Green Channel, that the gold belonged to him, that he was aware of the customs duty leviable on import of gold and that he had intentionally failed to declare the gold bar. The Petitioner also expressly stated that he did not require a show cause notice or personal hearing.

14.4. It was further submitted that, contrary to the Petitioner's assertion, the Department has specifically recorded that an '*oral show cause notice was given on 01.07.2024*' and that personal hearing was subsequently granted to the Petitioner on 21.05.2025. The

Respondent's chart specifically records 01.07.2024 as the date of the oral show cause notice and 21.05.2025 as the date of personal hearing.

14.5. It was submitted that the authorised representative of the Petitioner also participated in the adjudication proceedings and sought release/re-export of the gold upon payment of the applicable duty, fine and penalty. It was therefore contended that the allegation that the Petitioner was denied an opportunity of hearing is untenable.

14.6. It was further submitted that the Petitioner had earlier approached this Court in W.P.(C) 14957/2025 and, by order dated 25.09.2025, the Petitioner was relegated to the departmental appellate proceedings. The said appellate proceedings culminated in the impugned Order-in-Appeal dated 21.01.2026. It was therefore submitted that the Petitioner ought to pursue the statutory remedy available against the said appellate order.

14.7. Reliance was placed upon the judgment of the Supreme Court in ***Radha Krishan Industries v. State of Himachal Pradesh***, (2021) 6 SCC 771, to contend that although the existence of an alternative remedy does not absolutely bar exercise of writ jurisdiction, ordinarily a writ petition ought not to be entertained where an efficacious statutory remedy is available. Further reliance was placed upon ***Rikhab Chand Jain v. Union of India***, Civil Appeal No. 6719/2012, to contend that where an equally efficacious statutory remedy is available, the Petitioner should ordinarily pursue that remedy instead of invoking the extraordinary jurisdiction of the High Court.

ANALYSIS & FINDINGS

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

16. At the outset, it is necessary to notice the nature of the order under challenge. The present Petition is not directed against the detention of the gold bar on 01.07.2024 simpliciter. The proceedings thereafter culminated in an Order-in-Original dated 28.05.2025, whereby the gold bar was ordered to be dealt with in terms of the provisions of the Act, with an option of re-export upon payment of the applicable customs duty, redemption fine and penalty. The said order was thereafter subjected to appellate proceedings and the Commissioner of Customs (Appeals), by the impugned Order-in-Appeal dated 21.01.2026, allowed the Department's appeal and ordered absolute confiscation of the gold bar.

17. The impugned order is, therefore, an order passed by the Commissioner of Customs (Appeals) in relation to goods imported as baggage. The Customs Act, 1962 provides a specific statutory remedy against such an order by way of revision before the Central Government under Section 129DD of the Act.

18. The principal question which consequently arises is whether, in the facts and circumstances of the present case, this Court ought to exercise its discretionary jurisdiction under Article 226 of the Constitution notwithstanding the availability of the aforesaid statutory remedy.

19. The law governing exercise of writ jurisdiction in the presence of an efficacious alternative statutory remedy is well settled. In ***Radha***

Krishan Industries (supra), the Supreme Court reiterated that the power under Article 226 of the Constitution is discretionary and that, ordinarily, a writ petition ought not to be entertained where an efficacious alternative remedy is available. The rule is one of policy, convenience and discretion and does not constitute an absolute bar to the exercise of writ jurisdiction. The recognised exceptions include cases involving enforcement of fundamental rights, violation of principles of natural justice, proceedings wholly without jurisdiction and challenge to the vires of legislation.

20. Learned counsel for the Petitioner seeks to bring the present case within the exception relating to violation of principles of natural justice. The principal contention is that no valid show cause notice under Section 124 of the Act was ever issued before the confiscation proceedings were undertaken. The Petitioner further disputes the reliance placed by the Respondent upon the statement dated 01.07.2024 and contends that the statement merely records an impermissible waiver of the statutory requirement of notice and personal hearing.

21. There is, however, a material distinction between the factual position in the present case and that which obtained in ***Ms. Shubhangi Gupta*** (supra). In the said case, the Revenue had not asserted in its counter-affidavit that an oral show cause notice under Section 124 of the Act had actually been issued. On the contrary, the Revenue's position was that no such notice was required as the petitioner had waived the same. This Court, therefore, found that in the absence of a notice, whether written or oral, the requirement contained in Section

124(a) had not been satisfied. The Court also observed that there was no provision under the Act permitting waiver of the statutory notice.

22. The factual position in the present case is not identical. The Respondent does not rest its defence solely upon the statement dated 01.07.2024 or upon the alleged waiver recorded therein. The Respondent has specifically asserted that an oral show cause notice was given on 01.07.2024 and that a personal hearing was subsequently granted to the Petitioner on 21.05.2025. The chart placed on record by the Respondent specifically records 01.07.2024 as the date of the oral show cause notice and 21.05.2025 as the date of personal hearing. The Respondent has further relied upon the participation of the Petitioner's authorised representative in the adjudication proceedings.

23. The Petitioner disputes the aforesaid assertion and contends that no oral show cause notice, in the manner contemplated by the first proviso to Section 124 of the Act, was ever given. The Petitioner also disputes the circumstances in which the statement dated 01.07.2024 came to be recorded and alleges that the document was prepared in advance and was made to be signed by him without its contents being properly explained to him.

24. The Respondent, on the other hand, relies upon the statement dated 01.07.2024 as a voluntary statement recorded under Section 108 of the Act and points out that the statement records that its contents were read over and explained to the Petitioner in the vernacular and that it was tendered without duress, pressure or threat.

25. These rival assertions are accompanied by corresponding rival

submissions concerning the effect of the statement dated 01.07.2024, the alleged waiver of show cause notice and personal hearing, the alleged request for an oral show cause notice and the subsequent proceedings stated to have taken place on 21.05.2025. This Court does not consider it appropriate, in exercise of writ jurisdiction, to undertake an evidentiary examination of these matters when the impugned order is itself amenable to a statutory revisional remedy.

26. At the same time, it is necessary to clarify that this Court is not holding that a mere waiver of the show cause notice contained in the statement dated 01.07.2024 would, by itself, dispense with the statutory requirement under Section 124 of the Act. The decision in ***Shubhangi Gupta*** (supra) makes the position clear that the statutory requirement of notice cannot be treated as having been satisfied merely on the basis of an alleged waiver.

27. The Respondent's case in the present proceedings, however, is that an oral show cause notice was given on 01.07.2024. Whether such notice was in fact given; whether it was given pursuant to a request contemplated by the first proviso to Section 124; whether the contents of the proposed action were adequately communicated; and whether the other requirements of Section 124 stood satisfied are matters which can be examined by the competent statutory authority on the basis of the complete record. The subsequent grant of personal hearing on 21.05.2025 is also a matter forming part of the procedural record.

28. There is yet another aspect which cannot be lost sight of. The Petitioner relies upon Section 110(2) of the Act and contends that the

requirement of notice under Section 124 was not complied with within the statutory period. The detention of the gold bar took place on **01.07.2024**, and, according to the Respondent's chart, the oral show cause notice was also given on **01.07.2024**. The legal effect of these dates, including whether the oral show cause notice satisfies the requirements of Section 124 and the consequences, if any, flowing from Section 110(2), are matters which have not been finally adjudicated by this Court.

29. The judgment of the Supreme Court in ***Jatin Ahuja*** (supra) underscores the importance of the statutory scheme contained in Section 110(2) and the consequence contemplated where the requisite notice is not issued within the prescribed period. The Supreme Court has also explained that the time period contemplated under Section 110(2) and the substantive requirements relating to issuance of a show cause notice under Section 124 operate in distinct fields.

30. The aforesaid decision, therefore, does not warrant this Court determining, in the present writ proceedings, the disputed question as to whether the requirements of Sections 110(2) and 124 were duly complied with in the facts of the present case. Those questions remain open.

31. This Court is also conscious of the Petitioner's submission that a subsequent personal hearing cannot cure the alleged failure to issue a valid show cause notice. That proposition, in the abstract, is not being rejected. However, the present case is not one where the Respondent admits that no notice was given. The Respondent

specifically asserts that an oral show cause notice was given on 01.07.2024 and that the Petitioner was subsequently granted a personal hearing on 21.05.2025. The legal sufficiency of the alleged oral show cause notice, as well as the significance of the subsequent personal hearing, are matters which the Petitioner can agitate before the Revisional Authority.

32. There is an additional circumstance which weighs with us. The Petitioner had earlier approached this Court in W.P.(C) 14957/2025 in relation to the proceedings arising from the Order-in-Original dated 28.05.2025. By order dated 25.09.2025, the said proceedings were permitted to be dealt with in the departmental appellate forum and the Department's appeal was thereafter adjudicated by the Commissioner of Customs (Appeals). The impugned Order-in-Appeal dated 21.01.2026 is thus the result of the statutory appellate proceedings.

33. The present Petition consequently seeks, in substance, adjudication by this Court of questions arising out of the statutory adjudication proceedings which have culminated in an order against which the Act provides a further statutory remedy.

34. In these circumstances, this Court is of the view that the availability of the remedy under Section 129DD of the Act assumes considerable significance. The Petitioner can urge before the Revisional Authority all permissible grounds raised in the present Petition, including:

i. the alleged non-issuance of a written show cause notice;

ii. the effect of the statement dated 01.07.2024 and the alleged waiver recorded therein;

iii. the question whether an oral show cause notice was in fact given on 01.07.2024;

iv. whether the alleged oral show cause notice satisfied the requirements of the first proviso to Section 124 of the Act;

v. the effect of Section 110(2) of the Act and the dates relevant thereto;

vi. the Petitioner's allegations concerning the manner in which the statement dated 01.07.2024 was recorded;

vii. the effect, if any, of the participation of the authorised representative in the adjudication proceedings;

viii. the significance and legal effect of the personal hearing stated to have been granted on 21.05.2025; and

ix. the legality and propriety of the order of absolute confiscation passed by the Commissioner of Customs (Appeals).

35. The rule of alternative remedy is undoubtedly not an absolute bar to the exercise of jurisdiction under Article 226. However, in the facts of the present case, we are unable to find any circumstance which would justify bypassing the statutory remedy. The present case does not involve a challenge to the vires of any statutory provision, nor is the impugned Order-in-Appeal shown to have been passed by an authority wholly lacking jurisdiction.

36. The contention founded upon violation of principles of natural justice also does not, in the facts presently before us, warrant exercise of writ jurisdiction in disregard of the statutory remedy. The Respondent asserts that an oral show cause notice was given on 01.07.2024, that personal hearing was subsequently granted on 21.05.2025, and that the Petitioner's authorised representative participated in the adjudication proceedings. The impugned Order-in-Appeal was thereafter passed by the Commissioner of Customs (Appeals). Whether these proceedings constitute sufficient compliance with the statutory requirements is a matter which can be examined by the competent Revisional Authority.

37. This Court, therefore, refrains from expressing any final opinion on the merits of the Petitioner's contentions concerning the validity of the alleged oral show cause notice, the statement dated 01.07.2024, the alleged waiver of show cause notice or personal hearing, the applicability of Section 110(2), compliance with Section 124, or the legality of the absolute confiscation of the gold bar.

CONCLUSION

38. For the foregoing reasons, we are not inclined to exercise our discretionary jurisdiction under Article 226 of the Constitution of India in the present case.

39. The present Petition is, accordingly, dismissed on the ground of availability of an efficacious statutory remedy under Section 129DD of the Customs Act, 1962, leaving all questions on merits open for consideration by the competent Revisional Authority.

40. It is clarified that nothing contained in this judgment shall be construed as an expression of opinion on the validity or otherwise of the alleged oral show cause notice dated 01.07.2024, the statement dated 01.07.2024 recorded under Section 108 of the Act, the alleged waiver of show cause notice or personal hearing, compliance with Sections 110(2) and 124 of the Act, or the legality and propriety of the absolute confiscation of the gold bar. All such questions 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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