



\$~63

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

Date of decision: 2nd September, 2025

+ **W.P.(C) 13423/2025**

MOHAMMAD AFSAR KHAN

.....Petitioner

Through: Ms. Richa Kumari and Mr. Pawan,
Adv. (M:8766321884)

versus

COMMISSIONER OF CUSTOMS

.....Respondent

Through: Mr. Akshay Amritanshu, SSC with
Ms. Drishti Saraf, Adv.

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE ANISH DAYAL

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.
2. The present petition has been filed by the Petitioner-Mohammad Afsar Khan under Article 226 of the Constitution of India, *inter alia*, seeking release of the gold bar weighing 100 grams detained by the Respondent-Commissioner of Customs *vide* Detention Receipt dated 24th June 2024 (hereinafter, '*detention receipt*').
3. The case of the Petitioner is that he is an Indian national and had travelled from Saudi Arabia to Delhi on 24th June, 2024 *via* flight no. XY-329. He had purchased a gold bar of 100 grams in Saudi Arabia and was carrying the same to India. Upon arrival at the Indira Gandhi International Airport, New Delhi, the Petitioner was approaching the red channel to declare the said gold bar. However, the same was seized by the Customs Department and a detention receipt for the same was issued.



4. According to the Petitioner, he was willing to pay Customs Duty on the said gold bar, however, the same was detained. Moreover, the case of the Petitioner is that no show cause notice has been issued to the Petitioner till date.

5. The Petitioner had earlier filed the writ petition being **W.P.(C) 4834/2025 titled 'Mohammad Afsar Khan v. Commissioner of Customs'** in which the following order was passed by this Court:

“4. According to the Petitioner, he was willing to pay Customs Duty on the said gold bar however, the same was detained. Moreover, the case of the Petitioner is that no show cause notice has been issued till date.

5. Notice was issued in this matter on 17th April, 2025 and instructions were to be sought by the Id. Counsel for the Customs Department.

6. Upon instructions, Id. Counsel for the Customs Department submits that given the fact that the Petitioner is willing to pay the Customs Duty, he can appear before the concerned adjudicating authority and an order would be passed accordingly.

7. Accordingly, let the Petitioner appear before the officer Ms. Poonam Guggal, AIR Customs Superintendent Warehouse Section, Delhi Airport (Customs) on 03rd June, 2025 at 12 P.M.

8. The adjudicating authority shall hear the Petitioner and pass an order in accordance with law after taking the facts into consideration that the Petitioner is willing to pay the Customs Duty.

9. The adjudicating authority shall also bear in mind that the detention of the Petitioner's gold bar



is of June, 2024 and the six months period for issuing Show Cause Notice has already lapsed.

10. This Court, while deciding the issue pertaining to non-issuance of the Show Cause Notice within the prescribed period under the Customs Act, 1962, has held that once the goods are detained, it is mandatory to issue a Show Cause Notice and afford a personal hearing to the Petitioner. The time prescribed under Section 110 of Act, is a period of six months. However, subject to complying with the requirements therein, a further extension for a period of six months can be taken by the Customs Department for issuing the show cause notice. In this case, the one year period itself has elapsed, yet no show cause notice has been issued. This shall be borne in mind by the adjudicating authority while deciding the Petitioner's case."

6. As can be seen from the above order, a personal hearing was to be granted to the Petitioner and then the Order-in-Original was to be passed.

7. The Order-in-Original has now been passed directing the confiscation of the gold bar of the Petitioner. The said Order-in-Original is dated 28th July, 2025. The operative portion of said Order-in-Original reads as under:

"ORDER

i. I deny the 'Free Allowance', if any, admissible to the Pax Mohammad Afsar Khan for not declaring the detained goods to the Proper Officer at Red Channel, as well as to the Customs Officer at Green Channel, who intercepted him and recovered the detained goods from him.

ii. I declare the passenger, Mohammad Afsar Khan, an "ineligible Passenger" for the purpose of the



Notification No. 50/2017-Cus dated 30.06.2017 (as amended) read with Baggage Rules, 2016 (as amended).

iii. I order absolute confiscation of the above said detained goods, i.e. "One gold bar engraved "SUISSE 100 g FINE Gold 999.9" having purity 999, weighing 100 grams, valued at 6,48,605/-" recovered from the Pax Mohammad Afsar Khan and detained vide DR No. DR/INDEL4/24.06.2024/004689 dated 24.06.2024, under Section 111(d), 111(j), 111(l) & 111(m) of the Customs Act, 1962;

iv. I also impose a penalty of Rs. 20,000/- (Rs. Twenty Thousand Only) on the Pax, Mr. Mohammad Afsar Khan under Section 112(a) & 112(b) of the Customs Act, 1962."

8. Ld. Counsel for the Petitioner submits that the above Order-in-Original does not take into consideration the directions given *vide* order dated 29th May, 2025 passed by this Court.

9. Heard ld. Counsel for the Petitioner and the Respondent.

10. In the earlier order dated 29th May, 2025, this Court has not gone into the merits of the matter and merely directed that as the six months period to issue the show cause notice had lapsed, a personal hearing had to be given to the Petitioner. Accordingly, a personal hearing was afforded to the Petitioner and the Order-in-Original has now come to be passed.

11. Considering the nature of the gold item and the fact that the Order-in-Original is an appealable order, this Court is not inclined to entertain the present writ petition.



12. The Petitioner is, however, free to challenge the Order-in-Original by way of an appeal. If the said appeal is filed by 20th September, 2025, the same shall not be dismissed as being barred by limitation and shall be adjudicated on merits. Moreover, if the said appeal is filed by 20th September, 2025, the same shall be adjudicated by 30th November, 2025.

13. The petition is disposed of in the above terms. Pending applications, if any, are also disposed of.

PRATHIBA M. SINGH
JUDGE

ANISH DAYAL
JUDGE

SEPTEMBER 2, 2025/dk/ck