



## प्रधान आयुक्त का कार्यालय, सीमा शुल्क, अहमदाबाद

"सीमाशुल्कभवन", पहलीमंजिल, पुरानेहाईकोर्टकेसामने, नवरंगपुरा, अहमदाबाद - 380 009.

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### PREAMBLE

A	फाइल संख्या/ File No.	: VIII/10-263/SVPIA-D/O&A/HQ/2023-24
B	कारणबताओनोटिससंख्या-तारीख / Show Cause Notice No. and Date	: VIII/10-263/SVPIA-D/O&A/HQ/2023-24 dated: 09.05.2024
C	मूलआदेशसंख्या/ Order-In-Original No.	: <b>138/ADC/VM/O&amp;A/2024-25</b>
D	आदेशतिथि/ Date of Order-In-Original	: <b>28.08.2024</b>
E	जारीकरनेकीतारीख/ Date of Issue	: <b>28.08.2024</b>
F	द्वारापारित/ Passed By	: <b>Vishal Malani,</b> Additional Commissioner, Customs, Ahmedabad.
G	आयातककानामऔरपता / Name and Address of Importer / Passenger	: <b>Shri Vijayan S/o Shri Karuppian (Pseudo name Shri Mahesh Mahesh),</b> 3-11-A, Kottayanthoppu, Mimisal, Post - Avudaiyarkovil Taluk, Mimisal, Chatrapattinam Pudukkottai, Tamilnadu-614621.
(1)	यह प्रति व्यक्ति के उपयोग के लिए निःशुल्क प्रदान किया जाता है जिन्हे यह जारी किया जाता है।	
(2)	कोई भी व्यक्ति इस आदेश से स्वयं को असंतुष्ट पाता है तो वह इस आदेश के विरुद्ध अपील इस आदेश की प्राप्त किया तारीख के ६० दिनों के भीतर आयुक्त कार्यालय, सीमा शुल्क (अपील), ४वि मंजिल, हुडको भवन, ईश्वर भुवन मार्ग, नवरंगपुरा, अहमदाबाद में कर सकता है।	
(3)	अपील के साथ केवल पांच (५.00) रुपये पे न्यायलय शुल्क टिकिट लगा होना चाहिए और इसके साथ होना चाहिए:	
(i)	अपील की एक प्रति और;	
(ii)	इस प्रति या इस आदेश की कोई प्रति के साथकेवल पांच (५.00) रुपये पे न्यायलय शुल्क टिकिट लगा होना चाहिए।	
(4)	इस आदेश के विरुद्ध अपील करने इच्छुक व्यक्ति को ७.५% अधिकतम १० करोड़ शुल्क हम करना होगा जहां शुल्क या ड्यूटी और जुर्माना विवाद में है या जुर्माना जहां इस तरह की दंड विवाद में है और अपील के साथ इस तरह के भुगतान का प्रमाण पेश करने में असफल रहने पर सीमा शुल्क अधिनियम, १९६२ के धारा १२९ के प्रावधानों का अनुपालन नहीं करने के लिए अपील को खारिज कर दिया जायेगा।	

**Brief facts of the case:**

**Shri Vijayan S/o Shri Karuppian** having Aadhar No. 2223 8651 7832 (hereinafter referred to as 'the passenger/ Noticee') residing at 3-11-A, Kottayanthoppu, Mimisal, Post - Avudaiyarkovil Taluk, Mimisal, Chatrapattinam Pudukkottai, Tamilnadu - 614621 arrived from Indigo Flight No. 6E446, which is arriving from Mumbai to SVPI Airport, Ahmedabad (Domestic Airport, Terminal -1) at around 07:30 AM on 19.12.2023. On the basis of specific intelligence that one Passenger namely Shri Mahesh Mahesh (Pseudo name), is suspected to be carrying restricted/ prohibited goods through Domestic Indigo Flight No. 6E446 and therefore a thorough search of all the baggage of the passenger as well as his personal search is required to be carried out. Also, there was a need to guide the passenger from the airplane to ensure that the goods are not handed over to someone else. The passenger would be arriving by Flight No. 6E446 of Indigo Airlines at Terminal-1 of SVPI Airport which will be landing at 07:30 on 19.12.2023.

2. Accordingly, Panchas have been informed and they gave their consent to remain present in entire search proceedings, the AIU officer has reached to the Airplane which has carried the flight No. 6E446 arriving from Mumbai to Ahmedabad. The officers then checked the passport of all the passengers deplaning from the flight. They find a passenger namely Shri Mahesh Mahesh having Seat No. 10E and informed him that they will guide him from the airplane.

3. As there was no Customs Office at Domestic Airport Ahmedabad, the AIU Officers along with the panchas and the passenger Shri Mahesh Mahesh reached the Customs AIU section situated at Arrival Hall of Terminal - 2, SVPI Airport Ahmedabad at around 08:30 AM on 19.12.2023. The AIU Officers in presence of the panchas asked the Passenger, if he wanted to declare any dutiable items to Customs, to which the said Passenger denied having anything dutiable with him. The AIU officers under Panchnama proceedings dated 19.12.2023 in presence of two independent witnesses asked the passenger, if he had anything dutiable to declare to the Customs authorities, to which the said passenger replied in negative. The AIU officers informed the

passenger that they would be conducting his personal search and detailed examination of his baggage. The said passenger was asked by officers whether he wished to be searched before a Gazetted officer or Magistrate for which he agreed to being searched by a Gazetted officer. Before conducting the search, the AIU officers offered their personal search to which he denies and said that it is not necessary, and he has full faith in the officers. Thereafter, the AIU officer proceeded to examine the said passenger personally and the shoulder bag brought by him. The AIU officer asked the said passenger to place the articles he was carrying in his clothes in a Plastic tray. The passenger took out mobile, belt, wallet etc. and took out some heavy paste like substance of yellow colour packed in transparent pouches from the jeans zip covering cloth of his jeans. The AIU officers asked the said passenger about the heavy paste like substance of yellow colour packed in transparent pouches, to which the passenger replied that these pouches contain gold in paste form. Thereafter, examination viz. scanning of Black coloured shoulder bag was done in the X-ray Baggage Scanning Machine, however, nothing objectionable was noticed.

The officers asked the passenger to pass through the Door Frame Metal Detector (DFMD) Machine installed near the green channel in the Arrival Hall of Terminal 2 building, after removing all metallic objects from his body/ clothes. The passenger was asked to pass through the Door Frame Metal Detector placed in the hall in front of Belt No.2 near green channel in the arrival hall of Terminal-2, SVPI Airport, but nothing objectionable is observed. The AIU officers asked the said passenger about the ownership of the said gold paste material, to which the passenger replied that a person namely Rahul who lives in Chennai, asked him to go to Mumbai and collect the Gold Paste carried by International transit passengers (Dubai to Srilanka) at Mumbai International Airport, Sahar, Mumbai. He further stated that he was told to collect gold paste placed in dustbin near Gate No. 2 of transit area. He further stated that he knew that the gold was smuggled in to India by Sri Lankan carriers at Mumbai Airport and his job was to collect the gold and bring it out of Mumbai International Airport and hand it over to the person Rahul in Chennai, in execution of this planning, the

passenger firstly travelled to Mumbai on 16.12.2023 and stayed there for 02 days after that he collected the gold from some area near to exit of Mumbai international Airport and got the ticket of Mumbai to Hyderabad on his name i.e. Vijayan vide which he entered the Mumbai Airport Departure Area, after that he got the instructions to collect a boarding pass (from the dustbin of some particular bathroom of departure area) having "Shri Mahesh Mahesh" name on it of Indigo 6E446 flight from Mumbai to Ahmedabad vide which he travelled to Ahmedabad today i.e. 19.12.2023. He further stated that from Ahmedabad he has to go to Chennai by purchasing new flight ticket from Ahmedabad to Chennai and deliver the gold paste material to Rahul. He further stated that he would get Rs. 5000 from Rahul in favour of supplying this material to him.

4.1 Thereafter, the Customs officers called the Government Approved Valuer and informed him that some yellow coloured pouches have been recovered from one passenger and he has informed that it is gold in paste form and hence, he needed to come to the Airport for testing and valuation of the said material. In reply, the Government Approved Valuer informed the Customs officer that the testing of the said material is only possible at his workshop as gold must be extracted from such paste form by melting it and informed the address of his workshop.

4.2 Thereafter, at around 10.00 AM, two panchas along with the passenger, the AIU officers leave the Airport premises in a Government Vehicle and reach at the premises of the Government Approved Valuer located at 301, Golden Signature, Bh. Ratnam Complex, C.G Road, Ahmedabad-380006. On reaching the above referred premises, the AIU officer introduced the panchas as well as the passenger to one person named Mr. Kartikey Vasantrai Soni, Government Approved Valuer. Here, after weighing the said pouches on his weighing scale, Mr. Kartikey Vasantrai Soni informed that the pouches' gross weight is 774.710 gms. Thereafter, Shri Kartikey Vasantrai Soni, the Government Approved Valuer, lead them to the furnace, inside his workshop. Here, Mr. Kartikey Vasantrai Soni started the process of converting the said paste like substances into solid gold by putting the

yellow-coloured pouches fully into the furnace and upon heating the said semi-solid substances, turned into liquid material. The said substance in liquid state was taken out of furnace, and poured in a bar shaped plate and after cooling for some time, it became yellow coloured solid metal in form of a bar. After completion of the procedure, Government Approved Valuer informed that the gold bar weighing **706.350** Grams having purity 999.0/24kt was derived from the 774.710 Grams of semisolid paste substance consisting of gold paste and chemical mix. After testing and valuation, the Govt. Approved Valuer vide his certificate No. 1003/2023-24 dated 19.12.2023 confirmed that it is gold having purity 999.0/24 Kt. Further, the Govt. Approved Valuer informed that the total Tariff Value of the said gold bar is **Rs.39,24,036/-** (Rupees Thirty-Nine Lakhs Twenty-Four Thousand and Thirty-Six only) and market value is **Rs.45,22,759/-** (Rupees Forty-Five Lakh Twenty-Two Thousand Seven Hundred Fifty-Nine only) which has been calculated as per the Notification No. 91/2023-Customs (N.T.) dated 19.12.2023 (gold) and Notification No. 90/2023-Customs (N.T.) dated 07.12.2023(exchange rate). The outcome of the said testing is summarized in below table.

Sl. No.	Details of Items	PCS	Net Weight in Gram	Purity	Market Value (Rs.)	Tariff Value (Rs.)
1.	Gold Bar	1	706.350	999.0 24Kt.	45,22,759/-	39,24,036/-

5. The said pure gold of 24 kt. having 999.0 purity retrieved from the semisolid paste substance consisting of gold paste and chemical mix pouches from the passenger, weighing 706.350 Grams, has Market Value at Rs.45,22,759/- and tariff value at Rs.39,24,036/-. The said gold recovered from the passenger was attempted to be smuggled inside India with intent to evade payment of Customs duty and was a clear violation of the provisions of the Customs Act, 1962. Thus, having a reasonable belief that the said gold bar (1 piece) having weight 706.350 Grams was attempted to be smuggled by the passenger, was liable for confiscation under the provisions of the Customs Act, 1962 and was placed under seizure vide Panchnama dated 19.12.2023 under a reasonable belief that the subject Gold was attempted to be smuggled into India and was liable for confiscation

under Section 111 of the Customs Act, 1962 (Seizure Report dated 19.12.2023). Further, the gold, recovered from the passenger, was placed under seizure under section 110 of the Customs Act, 1962 vide Panchnama dated 19.12.2023 drawn by the Officer of Customs, AIU, at SVPI Airport, Ahmedabad.

The following travelling documents and identity documents of the passenger were recovered and withdrawn for further investigation.

- (i) Copy of Aadhar Card No. 222386517832.
- (ii) Boarding pass of Indigo Flight No. 6E446 having seat No. 10E and sequence no. 0122 from Mumbai to Ahmedabad dated 19.12.2023.

6. The statement of the passenger was recorded on 19.12.2023 under Section 108 of the Customs Act, 1962, wherein he, inter alia, stated that he arrived from Indigo Flight No. 6E446 having seat No. 10E and sequence no. 0122, at Sardar Vallabhbhai Patel International Airport, Ahmedabad, at Terminal-1 from Mumbai. Furthermore, the passenger accepted that the said Gold Bar (1 Piece) having weight 706.350 Grams which was derived from the semisolid paste substance consisting of gold paste and chemical mix pouches from the passenger having gross weight 774.710 concealed the semisolid paste substance consisting of gold paste and chemical mix pouches from the passenger. Under his statement, the passenger admitted that he is only the carrier, he did not know who purchased gold paste. He only knew that, a person namely Rahul who lives in Chennai, asked me to go to Mumbai and collect the gold paste carried by International Transit passengers (Dubai to Sri Lanka) at Mumbai International Airport, Sahar, Mumbai. He stated that he was told to collect gold paste placed in dustbin near Gate No. 2 of transit area. He stated that he knew that the gold was smuggled in to India by Sri Lankan Carriers at Mumbai Airport but his job was only to collect the gold and bring it out from Mumbai International Airport and hand it over to the person Rahul in Chennai for which he will give him Rs.5,000/- Further, he again confirmed the recovery of gold bar weighing 706.350 Grams, has Market Value at Rs.45,22,759/- and tariff value at Rs. 39,24,036/- from him during the course of Panchnama dated 19.12.2023.

7. Therefore, on the basis of facts narrated above, the said gold Bar (1 Piece) weighing 706.350 grams of 999.0/24 Kt purity valued at Rs.45,22,759/- (market value) and Rs.39,24,036/- (tariff value), derived from 774.710 grams pouches from the passenger, appeared liable for confiscation, was placed under seizure under Panchnama dated 19.12.2023 as said gold totally weighing 706.350 grams seized under Panchnama dated 19.12.2023 was "smuggled goods" as defined under Section 2(39) of Customs Act, 1962. It also appeared that the said passenger has conspired to smuggle the said gold into India. The offence committed has been admitted by the said passenger in his statement recorded on 19.12.2023 under Section 108 of the Customs Act, 1962. He has committed an offence punishable under Section 135 (1) (a) & (b) of the Customs Act, 1962.

8. In view of the above, **Shri Vijayan (Pseudo name Shri Mahesh Mahesh)**, resident of 3-11-A, Kottayanthoppu, Mimisal, Post - Avudaiyarkovil Taluk, Mimisal, Chatrapattinam Pudukkottai, Tamilnadu - 614621, holding Aadhar Card bearing No. 2223 8651 7832, is called upon to show cause in writing to the Additional Commissioner of Customs, Ahmedabad having his office at Custom House, Nr. All India Radio, Income Tax Circle, Navrangpura, Ahmedabad, as to why:

- (i) One Gold Bar, weighing **706.350** grams having purity 999.0 (24KT) recovered/ derived from semisolid/ paste substance/ material consisting of weight 774.710 grams, having Market Value at **Rs.45,22,759/-** (Rupees Forty-Five Lakh Twenty-Two Thousand Seven hundred and Fifty-Nine only) and tariff value at **Rs.39,24,036/-** (Rupees Thirty Nine Lakhs Twenty Four Thousand and Thirty Six only) placed under seizure under panchnama dated 19.12.2023 and seizure memo order dated 19.12.2023 should not be confiscated under Section 111(d), 111(f), 111(i), 111(j), 111(l) and 111(m) of the Customs Act, 1962;

- (ii) Penalty should not be imposed upon the passenger, under Section 112(a) and 112(b) of the Customs Act, 1962.

**Defence Reply and Personal Hearing:**

**9.** Shri Vijayan (Pseudo name Shri Mahesh Mahesh) has not submitted written reply to the Show Cause Notice.

**10.** Shri Vijayan (Pseudo name Shri Mahesh Mahesh) was given opportunity to appear for personal hearing on 14.08.2024; 20.08.2024 and 22.08.2024 but neither the Noticee or his representative appear for personal hearing on the given dates.

**Discussion and Findings:**

**11.** I have carefully gone through the facts of the case. Though sufficient opportunity for filing reply and personal hearing had been given, the Noticee has not come forward to file his reply/ submissions or to appear for the personal hearing opportunities offered to him. The adjudication proceedings cannot wait until the Noticee makes it convenient to file his submissions and appear for the personal hearing. I, therefore, take up the case for adjudication ex-parte, on the basis of evidences available on record.

**12.** In the instant case, I find that the main issue to be decided is whether the 706.350 grams of 01 gold bar, recovered/ derived from recovered/ derived from semisolid paste/ substance/ material consisting of weight 774.710 gram, having Tariff Value of Rs.39,24,036/- (Rupees Thirty-Nine Lakhs Twenty-Four Thousand Thirty-Six Only) and Market Value of Rs.45,22,759/- (Rupees Forty-Five Lakhs Twenty-Two Thousand Seven Hundred Fifty-Nine Only), seized vide Seizure Memo/ Order under Panchnama proceedings both dated 19.12.2023, on a reasonable belief that the same is liable for confiscation under Section 111 of the Customs Act, 1962 (hereinafter referred to as 'the Act') or not; and whether the passenger is liable for penal action under the provisions of Section 112 of the Act.



**13.** I find that the Panchnama has clearly drawn out the fact that on the basis of specific intelligence that one Passenger namely Shri Vijayan S/o Shri Karuppian, (Pseudo name Shri Mahesh Mahesh), (hereinafter referred to as 'the passenger/ Noticee'), is suspected to be carrying restricted/ prohibited goods through Domestic Indigo Flight No. 6E446, which arrived from Mumbai to SVPI Airport, Ahmedabad (Domestic Airport, Terminal -1) on 19.12.2023 and therefore a thorough search of all the baggage of the passenger as well as his personal search was required to be carried out. The officers checked the passport of all the passengers deplaning from the said flight and they identified a passenger namely Shri Mahesh Mahesh having Seat No. 10E and informed him that they will guide him from the airplane. Hence, the passenger was guided from the airplane to ensure that the goods are not handed over to someone else.

**14.** I also find that the AIU officers in presence of two independent witnesses, under Panchnama proceedings dated 19.12.2023, asked the passenger, if he had anything dutiable to declare to the Customs authorities, to which the said passenger replied in negative. The AIU officer asked the said passenger to place the articles he was carrying in his clothes in a Plastic tray. The passenger took out mobile, belt, wallet etc. and took out some heavy paste like substance of yellow colour packed in transparent pouches from the jeans zip covering cloth of his jeans. The AIU officers asked the said passenger about the heavy paste like substance of yellow colour packed in transparent pouches, to which the passenger replied that these pouches contain gold in paste form. The AIU officers asked the said passenger about the ownership of the said gold paste material, to which the passenger replied that a person namely Rahul who lives in Chennai, asked him to go to Mumbai and collect the Gold Paste carried by international transit passengers (Dubai to Sri Lanka) at Mumbai International Airport, Sahar, Mumbai. He further stated that he was told to collect the gold paste placed in dustbin near Gate No. 2 of transit area. He further stated that he knew that the gold was smuggled in to India by Sri Lankan carriers at Mumbai Airport and his job was to collect the gold and bring it out of Mumbai International Airport and hand it over to the person Rahul in Chennai. In execution of this planning, the passenger firstly travelled

to Mumbai on 16.12.2023 and stayed there, for 02 days after that he collected the gold from some area near to exit of Mumbai international Airport and got the ticket of Mumbai to Hyderabad on his name i.e. Vijayan vide which he entered the Mumbai Airport Departure Area.

15. I also find that the passenger further submitted that, after entering in Mumbai Airport, he got the instructions to collect a boarding pass (from the dustbin of some particular bathroom of departure area) having "Shri Mahesh Mahesh" name on it of Indigo 6E446 flight from Mumbai to Ahmedabad vide which he travelled to Ahmedabad on 19.12.2023. He further stated that from Ahmedabad he has to go to Chennai by purchasing new flight ticket from Ahmedabad to Chennai and deliver the gold paste material to Rahul. He further stated that he would get Rs.5000/- from Rahul in favour of supplying this material to him.

16. It is on record that Shri Kartikey Vasantrai Soni, the Government Approved Valuer, after weighing the said yellow color paste material on his weighing scale, Shri Kartikey Vasantrai Soni informed that the said material grossly weighing 774.710 Grams. After completion of extraction/ conversion, the Government Approved Valuer informed that Gold Bar weighing 706.350 Grams having purity 999.0/ 24kt is derived from the 774.710 Grams of semisolid paste substance consisting of gold paste and chemical mix. Further, the Govt. Approved Valuer informed that the total Tariff Value of the said gold bar is **Rs.39,24,036/-** (Rupees Thirty-Nine Lakhs Twenty-Four Thousand Thirty-Six only) and Market value is **Rs.45,22,759/-** (Rupees Forty-Five Lakhs Twenty-Two Thousand Seven Hundred Fifty-Nine only). The details of the Valuation of the said extracted gold bar are tabulated as below:

Sl. No.	Details of Items	PCS	Net Weight in Gram	Purity	Tariff Value (Rs.)	Market Value (Rs.)
1.	Gold Bar	1	706.350	999.0/ 24 Kt	39,24,036/-	45,22,759/-

17. Accordingly, the gold bar having purity 999.0/24 Kt. weighing 706.350 grams, recovered from Shri Vijayan (Pseudo name Shri

Mahesh Mahesh) was seized vide Panchnama dated 19.12.2023, under the provisions of the Customs Act, 1962, on the reasonable belief that the said gold bar was smuggled into India by the said passenger through domestic airport, with an intention to evade payment of Customs duty and accordingly the same was liable for confiscation under the Customs Act, 1962 read with Rules and Regulation made thereunder.

I also find that the said 706.350 grams of 1 gold bar obtained from the 774.710 Grams of semisolid paste substance consisting of gold paste and chemical mix, having Tariff Value of Rs.39,24,036/- and Market Value of Rs.45,22,759/- carried by the passenger Shri Vijayan (Pseudo name Shri Mahesh Mahesh) appeared to be "smuggled goods" as defined under Section 2(39) of the Customs Act, 1962. The offence committed is admitted by the passenger in his statement recorded on 19.12.2023 under Section 108 of the Customs Act, 1962.

**18.** I also find that the passenger had neither questioned the manner of the Panchnama proceedings at the material time nor controverted the facts detailed in the Panchnama during the course of recording his statement. Every procedure conducted during the Panchnama by the Officers was well documented and made in the presence of the Panchas as well as the passenger. In fact, in his statement, he inter alia stated that he arrived from Indigo Flight No. 6E446 having seat No. 10E and sequence no. 0122, at Sardar Vallabhbhai Patel International Airport, Ahmedabad, at Terminal-1 from Mumbai. Furthermore, he accepted that the said Gold Bar (1 Piece) having weight 706.350 Grams which was derived from the semisolid paste substance consisting of gold paste and chemical mix pouches from the passenger having gross weight 774.710 concealed the semisolid paste substance consisting of gold paste and chemical mix pouches from the passenger. He also admitted that he is only a carrier, he did not know who purchased the said gold paste. He only knew that, a person namely Rahul who lives in Chennai, asked me to go to Mumbai and collect the gold paste carried by International Transit passengers (Dubai to Sri Lanka) at Mumbai International Airport, Sahar, Mumbai. He stated that he was told to collect gold paste placed in dustbin near Gate No. 2 of transit area. He stated that he knew that the gold was smuggled in to India

by Sri Lankan Carriers at Mumbai Airport but his job was only to collect the gold and bring it out from Mumbai International Airport and hand it over to the person Rahul in Chennai for which he will give him Rs.5,000/- Further, he again confirmed the recovery of gold bar weighing 706.350 Grams, has Market Value at Rs.45,22,759/- and tariff value at Rs. 39,24,036/- from him during the course of Panchnama dated 19.12.2023. He has clearly admitted that he was aware that import of gold without payment of Customs duty was an offence but as he wanted to save Customs duty, he had concealed the same with an intention to clear the gold illicitly to evade Customs duty and thereby violated provisions of the Customs Act, the Baggage Rules, the Foreign Trade (Development & Regulations) Act, 1992, the Foreign Trade (Development & Regulations) Rules, 1993 and the Foreign Trade Policy 2015-2020.

**19.** Further, the passenger has accepted that he had not declared the said gold paste concealed by him, to the Customs authorities. It is clear case of non-declaration with an intent to smuggle the gold. Accordingly, there is sufficient evidence to say that the passenger had kept the said 1 gold bar, derived from the semisolid paste substance consisting of gold paste and chemical mix pouches, (**'the said gold' for short**), which was in his possession and failed to declare the same before the Customs Authorities on his arrival at Terminal-1, SVPIA, Ahmedabad (Domestic Airport). I also find that in his statement, the passenger admitted that he is only the carrier, he did not know who purchased gold paste. He only knew that, a person namely Rahul who lives in Chennai, asked me to go to Mumbai and collect the gold paste carried by International Transit passengers (Dubai to Sri Lanka) at Mumbai International Airport, Sahar, Mumbai. He stated that he was told to collect gold paste placed in dustbin near Gate No. 2 of transit area. He stated that he knew that the gold was smuggled in to India by Sri Lankan Carriers at Mumbai Airport but his job was only to collect the gold and bring it out from Mumbai International Airport and hand it over to the person Rahul in Chennai for which he will give him Rs.5,000/-. The case of smuggling of gold recovered from his possession and which was kept undeclared with an intent of smuggling the same and in order to evade payment of Customs duty is

conclusively proved. Thus, it is proved that the passenger violated Section 77, Section 79 of the Customs Act for import/ smuggling of gold which was not for bonafide use and thereby violated Rule 11 of the Foreign Trade Regulation Rules 1993, and para 2.26 of the Foreign Trade Policy 2015-20. Further as per Section 123 of the Customs Act, 1962, gold is a notified item and when goods notified thereunder are seized under the Customs Act, 1962, on the reasonable belief that they are smuggled goods, the burden to prove that they are not smuggled, shall be on the person from whose possession the goods have been seized.

**20.** From the facts discussed above, it is evident that Shri Vijayan (Pseudo name Shri Mahesh Mahesh) had carried the said gold weighing 774.710 grams, with an intention to smuggle and remove the same without payment of Customs duty, thereby rendering the said gold derived of 24Kt/999.00 purity totally weighing 706.350 grams, liable for confiscation, under the provisions of Sections 111(d), 111(f), 111(i), 111(j), 111(l) & 111(m) of the Customs Act, 1962. By concealing the said gold and not declaring the same before the Customs, it is established that the passenger had a clear intention to smuggle the gold clandestinely with the deliberate intention to evade payment of Customs duty. The commission of above act made the impugned goods fall within the ambit of 'smuggling' as defined under Section 2(39) of the Act.

**21.** It is seen that the Noticee had not declared the said gold which was in his possession, as envisaged under Section 77 of the Act read with the Baggage Rules and Regulation 3 of Customs Baggage Declaration Regulations, 2013. It is also observed that the imports were also for non-bonafide purposes. Therefore, the said improperly imported gold weighing 706.350 grams concealed by him, without declaring to the Customs cannot be treated as bonafide household goods or personal effects. The passenger has thus contravened the Foreign Trade Policy 2015-20 and Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 read with Section 3(2) and 3(3) of the Foreign Trade (Development and Regulation) Act, 1992.

It is, therefore, proved that by the above acts of contravention, the passenger has rendered the said gold bar weighing 706.350 grams, having Tariff Value of Rs.39,24,036/- and Market Value of Rs.45,22,759/- recovered and seized from the passenger vide Seizure Order under Panchnama proceedings both dated 19.12.2023 liable to confiscation under the provisions of Sections 111(d), 111(f), 111(i), 111(j), 111(l) & 111(m) of the Customs Act, 1962. By using the modus of gold concealed by him, it is observed that the passenger was fully aware that the import of said goods is offending in nature. It is, therefore, very clear that he has knowingly carried the gold and failed to declare the same on his arrival from Mumbai to Ahmedabad. It is seen that he has involved himself in carrying, keeping, concealing, and dealing with the impugned goods in a manner which he knew or had reasons to believe that the same is liable to confiscation under the Act. It is, therefore, proved beyond doubt that the Noticee has committed an offence of the nature described in Section 112 of the Customs Act, 1962 making him liable for penalty under Section 112 of the Customs Act, 1962.

**22.** I find that the Noticee confessed of carrying the said gold of 706.350 grams concealed by him and attempted to remove the said gold from the Airport without declaring it to the Customs Authorities violating the para 2.26 of the Foreign Trade Policy 2015-20 and Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 read with Section 3(2) and 3(3) of the Foreign Trade (Development and Regulation) Act, 1992 further read in conjunction with Section 11(3) of the Customs Act, 1962 and the relevant provisions of Baggage Rules, 2016 and Customs Baggage Declaration Regulations, 2013. As per Section 2(33) "prohibited goods" means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with. The improperly imported gold by the passenger without following the due process of law and without adhering to the conditions and procedures of import have thus acquired the nature of being prohibited goods in view of Section 2(33) of the Act.

**23.** It is quite clear from the above discussions that the gold was concealed and not declared to the Customs with the sole intention to evade payment of Customs duty. The record before me shows that the passenger did not choose to declare the prohibited/ dutiable goods with the wilful intention to smuggle the impugned goods. The said gold bar weighing 706.350 grams, having Tariff Value of Rs.39,24,036/- and Market Value of Rs.45,22,759/- recovered and seized from the passenger vide Seizure Order under Panchnama proceedings both dated 19.12.2023. Despite having knowledge that the goods had to be declared and such import is an offence under the Act and Rules and Regulations made under it, the passenger had attempted to remove the said gold bar weighing 706.350 grams, by deliberately not declaring the same by him with the wilful intention to smuggle the impugned gold into India. I, therefore, find that the passenger has committed an offence of the nature described in Section 112(a) & 112(b) of the Customs Act, 1962 making him liable for penalty under provisions of Section 112 of the Customs Act, 1962.

**24.** I further find that the gold is not on the list of prohibited items but import of the same is controlled. The view taken by the Hon'ble Supreme Court in the case of Om Prakash Bhatia however in very clear terms lay down the principle that if importation and exportation of goods are subject to certain prescribed conditions, which are to be fulfilled before or after clearance of the goods, non-fulfilment of such conditions would make the goods fall within the ambit of 'prohibited goods'. This makes the gold seized in the present case "prohibited goods" as the passenger, trying to smuggle it, was not eligible passenger to bring it in India or import gold into India in baggage. The said gold bar weighing 706.350 grams, was recovered from his possession, and was kept undeclared with an intention to smuggle the same and evade payment of Customs duty. Further, the passenger concealed the said gold in his clothes. By using this modus, it is proved that the goods are offending in nature and therefore prohibited on its importation. Here, conditions are not fulfilled by the passenger.

**25.** In view of the above discussions, I hold that the said gold bar weighing 706.350 grams, carried and undeclared by the Noticee with an intention to clear the same illicitly from Airport and evade payment of Customs duty are liable for absolute confiscation. Further, the Noticee in his statement dated 19.12.2023 stated that he has carried the gold by concealment to evade payment of Customs duty. In the instant case, I find that the gold was carried by the Noticee for getting monetary benefit and that too by concealment. I am therefore, not inclined to use my discretion to give an option to redeem the gold on payment of redemption fine, as envisaged under Section 125 of the Act.

**26.** Further, before the Kerala High Court in the case of Abdul Razak [2012(275) ELT 300 (Ker)], the petitioner had contended that under the Foreign Trade (Exemption from application of rules in certain cases) Order, 1993, gold was not a prohibited item and can be released on payment of redemption fine. The Hon'ble High Court held as under:

*"Further, as per the statement given by the appellant under Section 108 of the Act, he is only a carrier i.e. professional smuggler smuggling goods on behalf of others for consideration. We, therefore, do not find any merit in the appellant's case that he has the right to get the confiscated gold released on payment of redemption fine and duty under Section 125 of the Act."*

**27.** In the case of Samynathan Murugesan [2009 (247) ELT 21 (Mad)], the High Court upheld the absolute confiscation, ordered by the adjudicating authority, in similar facts and circumstances. Further, in the said case of smuggling of gold, the High Court of Madras in the case of Samynathan Murugesan reported at 2009 (247) ELT 21(Mad) has ruled that as the goods were prohibited and there was concealment, the Commissioner's order for absolute confiscation was upheld.

**28.** Further I find that in a recent case decided by the Hon'ble High Court of Madras reported at 2016-TIOL-1664-HC-MAD-CUS in respect of Malabar Diamond Gallery Pvt Ltd, the Court while holding gold jewellery as prohibited goods under Section 2(33) of the Customs Act, 1962 had recorded that "restriction" also means prohibition. In Para 89 of the order, it was recorded as under:



89. While considering a prayer for provisional release, pending adjudication, whether all the above can wholly be ignored by the authorities, enjoined with a duty, to enforce the statutory provisions, rules and notifications, in letter and spirit, in consonance with the objects and intention of the Legislature, imposing prohibitions/restrictions under the Customs Act, 1962 or under any other law, for the time being in force, we are of the view that all the authorities are bound to follow the same, wherever, prohibition or restriction is imposed, and when the word, "restriction", also means prohibition, as held by the Hon'ble Apex Court in *Om Prakash Bhatia's case* (cited supra).

**29.** The Hon'ble High Court of Madras in the matter of Commissioner of Customs (AIR), Chennai-I Versus P. SINNASAMY 2016 (344) E.L.T. 1154 (Mad.) held-

*Tribunal had arrogated powers of adjudicating authority by directing authority to release gold by exercising option in favour of respondent - Tribunal had overlooked categorical finding of adjudicating authority that respondent had deliberately attempted to smuggle 2548.3 grams of gold, by concealing and without declaration of Customs for monetary consideration - Adjudicating authority had given reasons for confiscation of gold while allowing redemption of other goods on payment of fine - Discretion exercised by authority to deny release, is in accordance with law - Interference by Tribunal is against law and unjustified -*

*Redemption fine - Option - Confiscation of smuggled gold - Redemption cannot be allowed, as a matter of right - Discretion conferred on adjudicating authority to decide - Not open to Tribunal to issue any positive directions to adjudicating authority to exercise option in favour of redemption.*

**30.** In 2019 (370) E.L.T. 1743 (G.O.I.), before the Government of India, Ministry of Finance, [Department of Revenue - Revisionary Authority]; Ms. Mallika Arya, Additional Secretary in Abdul Kalam Ammangod Kunhamu vide Order No. 17/2019-Cus., dated 07.10.2019 in F. No. 375/06/B/2017-RA stated that it is observed that C.B.I. & C. had issued instruction vide Letter F. No. 495/5/92-Cus. VI, dated 10.05.1993 wherein it has been instructed that "in respect of gold seized for non-declaration, no option to redeem the same on redemption fine under Section 125 of the Customs Act, 1962 should be given except in very trivial cases where the adjudicating authority is satisfied that there was no concealment of the gold in question".

**31.** Given the facts of the present case before me and the judgements and rulings cited above, the said gold bar weighing 706.350 grams, carried by the passenger is therefore liable to be confiscated absolutely. I therefore hold in unequivocal terms that the said gold bar weighing 706.350 grams, placed under seizure would be liable to absolute confiscation under Section 111(d), 111(f), 111(i), 111(j), 111(l) & 111(m) of the Customs Act, 1962.

**32.** I further find that the passenger had involved himself and abetted the act of smuggling of the said gold bar weighing 706.350 grams, carried by him. He has agreed and admitted in his statement that he travelled with the said gold from Mumbai to Ahmedabad, which he received/ obtained from flight left by the international passenger. Despite his knowledge and belief that the gold carried by him is an offence under the provisions of the Customs Act, 1962 and the Regulations made under it, the Passenger attempted to smuggle the said gold of 706.350 grams, having purity 999.0 by concealment. Thus, it is clear that the passenger has concerned himself with carrying, removing, keeping, concealing and dealing with the smuggled gold which he knows very well and has reason to believe that the same are liable for confiscation under Section 111 of the Customs Act, 1962. Therefore, I find that the passenger is liable for penal action under Sections 112(a)(i) of the Act and I hold accordingly.

**33.** Accordingly, I pass the following Order:

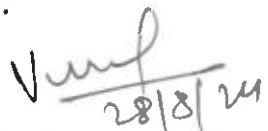
#### **ORDER**

- i) I order absolute confiscation of One Gold Bar, weighing **706.350** grams having purity 999.0 (24KT) recovered/ derived from semisolid/ paste substance/ material consisting of weight 774.710 grams, having Market Value at **Rs.45,22,759/-** (Rupees Forty-Five Lakh Twenty-Two Thousand Seven hundred and Fifty-Nine only) and tariff value at **Rs.39,24,036/-** (Rupees Thirty Nine Lakhs Twenty Four Thousand and Thirty Six only) placed under seizure under Panchnama dated 19.12.2023 and seizure memo order dated

19.12.2023, under the provision of Section 111(d), 111(f), 111(i), 111(j), 111(l) and 111(m) of the Customs Act, 1962;

- ii) I impose a penalty of **Rs.14,00,000/-** (Rupees Fourteen Lakhs Only) on Shri Vijayan (Pseudo name Shri Mahesh Mahesh) under the provisions of Section 112(a)(i) of the Customs Act, 1962.

**34.** Accordingly, the Show Cause Notice No. VIII/10-263/SVPIA-D/O&A/HQ/2023-24 dated 09.05.2024 stands disposed of.

  
**(Vishal Malani)**  
Additional Commissioner  
Customs, Ahmedabad

F. No: VIII/10-263/SVPIA-D/O&A/HQ/2023-24      Date: 28.08.2024  
**DIN: 20240871MN0000829359**

**BY SPEED POST AD**

To,

**Shri Vijayan S/o Shri Karuppian**

**(Pseudo name Shri Mahesh Mahesh),**

3-11-A, Kottayanthoppu, Mimisal, Post - Avudaiyarkovil Taluk,  
Mimisal, Chatrapattinam Pudukkottai, Tamilnadu-614621.

**Copy to:**

- (i) The Principal Commissioner of Customs, Ahmedabad. (Kind Attn: RRA Section)
- (ii) The Dy./Asstt. Commissioner of Customs (AIU), SVPIA, Ahmedabad.
- (iii) The Dy./Asstt. Commissioner of Customs (TRC), Ahmedabad.
- (iv) The System In charge, Customs HQ, Ahmedabad for uploading on official web-site i.e. <http://www.ahmedabadcustoms.gov.in>
- ✓ (v) Guard File.