

DIN-20200371MO 00007K6AD9



**OFFICE OF THE COMMISSIONER OF CUSTOMS,
CUSTOM HOUSE: MUNDRA, KUTCH
MUNDRA PORT & SPL ECONOMIC ZONE, MUNDRA-370421
Phone No.02838-271165/66/67/68 FAX.No.02838-271169/62**

A	File No.	F. No. VIII/ 48-32/EXP/Kunal/CHM/2019-20
B	Order-in-Original No.	MCH/ADC/SK/121/2019-20
C	Passed by	Shri Sushant Kumar, Additional Commissioner of Customs, Customs House, AP & SEZ, Mundra
D	Date of Order	15.03.2020
E	Date of Issue	15.03.2020
F	SCN NO. & Date	VIII/ 48-32/EXP/Kunal/CHM/2019-20 dated 23.05.2019
G	Noticee / Party / Exporter	M/s. Kunal Exim, 31 to 36, Palikabazar, Nr. Nagarpalika, Mehsana, Gujarat (IEC 0811028542)

1. यह अपील आदेश संबन्धित को निःशुल्क प्रदान किया जाता है।

This Order - in - Original is granted to the concerned free of charge.

2. यदि कोई व्यक्ति इस अपील आदेश से असंतुष्ट है तो वह सीमा शुल्क अपील नियमावली 1982 के नियम 3 के साथ पठित सीमा शुल्क अधिनियम 1962 की धारा 128 A के अंतर्गत प्रपत्र सीए- 1- में चार प्रतियों में नीचे बताए गए पते पर अपील कर सकता है-

Any person aggrieved by this Order - in - Original may file an appeal under Section 128 A of Customs Act, 1962 read with Rule 3 of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -1 to:

“सीमा शुल्क आयुक्त (अपील),

7वीं मंजिल, मृदुल टावर, टाइम्स ऑफ इंडिया के पीछे, आश्रम रोड़, अहमदाबाद 380 009”

“THE COMMISSIONER OF CUSTOMS (APPEALS),

**Having his office at 7th Floor, Mridul Tower, Behind Times of India,
Ashram Road, Ahmedabad-380 009.”**

3. उक्त अपील यह आदेश भेजने की दिनांक से 60 दिन के भीतर दाखिल की जानी चाहिए।

Appeal shall be filed within sixty days from the date of communication of this order.

4. उक्त अपील के पर न्यायालय शुल्क अधिनियम के तहत 5 -/रुपए का टिकट लगा होना चाहिए और इसके साथ निम्नलिखित अवश्य संलग्न किया जाए-

Appeal should be accompanied by a fee of Rs. 5/- under Court Fee Act it must accompanied by -

(i) उक्त अपील की एक प्रति और

A copy of the appeal, and

(ii) इस आदेश की यह प्रति अथवा कोई अन्य प्रति जिस पर अनुसूची 1-के अनुसार न्यायालय शुल्क अधिनियम 1870-के मद सं. 6-में निर्धारित 5 -/रुपये का न्यायालय शुल्क टिकट अवश्य लगा होना चाहिए ।

This copy of the order or any other copy of this order, which must bear a Court Fee Stamp of Rs. 5/- (Rupees Five only) as prescribed under Schedule - I, Item 6 of the Court Fees Act, 1870.

5. अपील जापान के साथ इयूटि /ब्याज /दण्ड /जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये ।

Proof of payment of duty / interest / fine / penalty etc. should be attached with the appeal memo..

6. अपील प्रस्तुत करते समय, सीमा शुल्क) अपील (नियम, 1982 और सीमा शुल्क अधिनियम, 1962 के अन्य सभी प्रावधानों के तहत सभी मामलों का पालन किया जाना चाहिए ।

While submitting the appeal, the Customs (Appeals) Rules, 1982 and other provisions of the Customs Act, 1962 should be adhered to in all respects.

7. इस आदेश के विरुद्ध अपील हेतु जहां शुल्क या शुल्क और जुर्माना विवाद में हो, अथवा दण्ड में, जहां केवल जुर्माना विवाद में हो, Commissioner (A) के समक्ष मांग शुल्क का 7.5 % भुगतान करना होगा।

An appeal against this order shall lie before the Commissioner (A) on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.

Subject: - SCN VIII/ 48-32/EXP/Kunal/CHM/2019-20 dated 23.05.2019 issued to M/s. Kunal Exim, 31 to 36, Palikabazar, Nr. Nagarpalika, Mehsana, Gujarat (IEC 0811028542) .

Brief facts of the case:

M/s. Kunal Exim, 31 to 36, Palikabazar, Nr. Nagarpalika, Mehsana, Gujarat (IEC 0811028542) (henceforth referred to as "Noticee or "Exporter") are engaged in the export of "Natural Abrasive Grains", (Custom Tariff Item 25132090) from the Customs port of Mundra.

2. The Customs Broker M/s. A.M.Logistics, Mundra (henceforth, Customs Broker) on behalf of the exporter presented a Shipping Bill No.2391664 dated 28.02.2019 (**RUD-1**) to Docks Examination Officers, Customs House Mundra for Let Export Order of the cargo declared as "Abrasive Grains", classified under Custom Tariff Item 25132090, having Net Quantity of 60 MTs, with FOB Value of Rs.12,16,190/- under Invoice No.40/2018-19 dated 22.02.2019. The said export cargo was sought to be exported to JAPAN.

3. Whereas, it appears that the Directorate General of Foreign Trade, New Delhi (herein after referred to as "DGFT") vide Notification No.26/2015-20, dated 21.08.2018 (**RUD-2**) has made amendment in export policy of "Beach Sand Minerals" in Chapter 26 of Schedule 2 of ITC (HS) Classification of Export and Import Items. The para 2,3, and 4 of the above notification are re-produced as under:

".....2. The Existing entries in the 'Note' of Chapter 26 of Schedule 2 of ITC (HS) Classification of Export and Import Items 2018 are substituted as under:

"NOTE:

1. Export of Rare Earth compounds classified as Beach Sand Minerals (BSM), namely [Ilmenite, Rutile, Leucoxene (Titanium bearing mineral), Zircon, Garnet, Sillimanite and Monazite (Uranium and Thorium)], shall be regulated in terms of SI. No. 98A of Chapter 26 Schedule 2 of ITC(HS) Classification.

2. Other minerals under code 2617 are freely exportable, except those which have been notified as prescribed substances and controlled under Atomic Energy Act, 1962".:

3. A new entry at SI. No. 98A is inserted in Chapter 26 of Schedule 2 of ITC (HS) Classification of Export & Import Items 2018 as follows-

S.No.	Tariff item HS Code	Unit	Item description	Export Policy	Policy Condition
98A	2508 5031 2508 5032 2508 5039 2612 1000 2612 2000 2614 0010 2614 0020 2614 0031 2614 0039 2614 0090 2615 1000 2513 2030	Kg	Beach Sand Minerals [Ilmenite, Rutile, Leucoxene (Titanium bearing mineral), Zircon, Garnet, Sillimanite and Monazite (Uranium and Thorium)]	STE (State Trading Enterprise)	Export through Indian Rare Earths Limited (IREL)

4. Effect of this Notification:

Export of Beach Sand Minerals have been brought under STE and shall be canalized through Indian Rare Earths Limited (IREL). Beach sand minerals, permitted anywhere in the export policy, will now be regulated in terms of policy under at SI. No. 98A of Chapter 26 of Schedule 2 Export Policy”.....


4. Whereas, it appears that export of above mentioned goods, i.e Beach Sand Minerals have been brought under State Trading Enterprise and is canalized through Indian Rare Earth Limited (IREL). In this regards, for sake of clarity, M/s. IREL have supplied typical specifications of OR Coarse grade (-30 + 60) Garnet and OR Medium Garnet for guidance. They also suggested that any product with predominant content of Garnet in the export consignment needs to be classified as Garnet under ITC (HS) code 25132030.


5. Whereas, in pursuant to above provisions, while assessing the said export consignments, instruction were given to the Dock Examination officer to Draw the representative Sample of cargo goods get it tested before granting LEO.

6. However, the exporter (Noticee) vide their letter dated 28.02.2019 have undertaken that the goods to be exported is not 100% natural garnet submitted that the goods to be exported is not beach natural garnet and requested that they may be missing the connecting vessels due to the delay in procedure of getting lab test report and also have to pay heavy ground rent. They also stated that obtaining sample report takes more time to submit to this office for

obtaining Let Export Order, this process affects delay in their export shipment, therefore they requested to allow them to process and issue LEO before obtaining sample report from the lab. Therefore, the exporter furnished a BOND UNDERTAKING (Bond No. 179 dated 11.03.2019) for Bond Value of Rs.12,25,000/- **(RUD-3)**, against said export consignments; pending chemical test report. Accordingly, samples of cargo were drawn by the Officers of Docks examination Section for test and sent to Central Revenue Control Laboratory, New Delhi (henceforth, CRCL) vide Test Memo No.EXP/MP&SEZ/66/18-19 dated 11.03.2019 **RUD-4)**. LEO was granted to them on 12.03.2019 for provisional export against the said test bond.

7. Whereas it appears that the Test Report dated 29.03.2019 received from the Chemical Examiner, CRCL, New Delhi for the said cargo shipment is appended below **(RUD-5)**-

		T.M NO. IME/MP & SEZ/ <u>66/18-19</u> DTD:- <u>03/2019</u>	CUSTOM HOUSE MUNDRA
		Date <u>28/3/19</u>	Date <u>15/3/19</u> <u>26/3/19</u>
(TO BE FILLED BY IMPORTER / EXPORTER - CHA) THE FOLLOWING SAMPLES FORWARDED FOR FAVOUR OF ANALYSIS			
Group	S/B NO	Date	Type
	<u>2391664</u>	<u>28/02/2019</u>	CHA No
Manufactures Name	<u>M/S KUNAL EXIM</u>		
Supplier's Name	<u>31 TO 36, PALIKABAZAR</u>		
Name and address of Importer / Exporter	<u>NR. NAGARPALIKA</u>		
	<u>MEHSANA, GUJARAT - 0</u>		
Country	<u>JAPAN</u>	Vessel's Name	
Import/ Export	<u>EXPORT</u>		
Marks & Numbers			
Description	<u>NATURAL ABRASIVE</u>		
Specification			
Brand	Literature Enclosed		
FOR OFFICE USE ONLY			
Key Word	1. <u>NATURE</u>	5. WHETHER THE SAMPLE CONSIST OF BEACH SAND MINERAL (LEMENITE, RUTILE LEUCOXENECITANUM BEARING MINERAL), ZIRCON, GARNET, SILIMANITE AND MONAZITE (URANIUM AND THORIUM)	
	2. <u>COMPOSITION</u>		
	3. <u>CHEMICAL COMPOSITION</u>		
	4. <u>CTH</u>		
Condition of Release	1. Against Bond (A) Bond No.	(B) Exp. Date	
	2. Partial Release Raga Release		
Signature of Shd <u>11/3/19</u>	Superintendent of Customs <u>11/3/19</u> SUPERINTENDENT OF CUSTOMS MUNDRA		
PANKAJ KUMAR PREVENTIVE OFFICER (DE, MUNDRA PORT & SEZ			
2019-5-17 10:51			

भारत सरकार वित्त मन्त्रालय राजस्व विभाग केन्द्रीय अपत्यक्ष कर एवं सीमा शुल्क बोर्ड केन्द्रीय राजस्व नियन्त्रण प्रयोगशाला हिज साइड रोड, पुसा, नई दिल्ली- 110012		Government of India Ministry of Finance, Department of Revenue Central Board of Indirect Taxes & Customs Central Revenues Control Laboratory Hillside Road, Pusa, New Delhi - 110012 Tel: 011-23520123/23543494 Fax: 011-23843495 Email: dir.crsi, shcc@nsic.in Website: http://crcl.gov.in
--	---	---

TEST REPORT

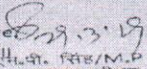
Lab No. CL-1559E Date: 26.3.19

Name & Contact Information of Customer: Superintendent of customs, Mundra.
 Identification Method Used: Date of Receipt: 26.3.19
 Description Of Sample: Abrasive powder
 Sample Plan: Sample not Drawn By this Laboratory.

S.No.	Parameter	Test Method	Result in SI units	Specified Value
1.	XRD Analysis		Iron Aluminium silicate	-

Report: The sample is in the form of reddish brown coloured powder. On the basis of physical, chemical & XRD analysis, the sample is natural Garnet (Almandine- in the form of Iron Aluminium Silicate).
 Density = 4.314 gm/cm³

Sealed remnant returned.

Signature: 
 CE-1/CE-II
 श्री. पी. एम. पी. सिंग
 रजिस्टर एग्जामिनेटर ग्रे II
 Chemical Examiner Gr. II

Note 1: The results relate only to the items tested
 Note 2: Sample not Drawn by this laboratory
 Note 3: The report shall not be reproduced except in full without approval of this laboratory.

2019-5-17 10:52

8. In the above Chemical Report, it has been reported that the **sample is natural Garnet (Almandine-in-the form of Iron Aluminum Silicates).**

9. From the above chemical report, it appears that the cargo/goods in question is "Natural Garnet" and same appear liable to be classifiable under Custom Tariff Item 25132030 and not as Abrasive Grains (Customs Tariff Item 25132090) as declared and classified by the exporter. Therefore, it appears that the exporter has mis-declared the said goods as Abrasive Grains, seeking to export the goods classifiable under Custom Tariff item 25132030 which are restricted for exports only through the State Trading Enterprise. Therefore, it appears that the exporter has contravened the provisions of export policy as stipulated by DGFT and mis-declared the Custom Tariff item No. on purpose & intent to circumvent the restrictions imposed through the Export Policy. The exporter also purposefully mis-declared the description of the goods as "Abrasive Grains" when in fact the goods are actually correctly liable to be described as "Natural Garnet". Thus, the cargo appeared to be mis-declared in respect of description of the goods. Thus, it appears mis-declared for description and have been purposely mis-classified in the Shipping Bill No. 2391664 dated 28.02.2019, therefore, the cargo is liable for confiscation under Section 113(d) and (i) of the Customs Act, 1962. However, the said cargo goods were exported out of India against a Bond and same are not physically available for confiscation.

10. It further appears that the Exporter M/s. Kunal Exim, Mehsana have furnished false and incorrect information in the invoice and check list of the shipping bill and thereby, attempted to export the cargo of Natural Garnet in the guise of Abrasive Grains and have with intent and design attempted to

export mis-declared goods "Abrasive Grains" and for their act of omission and commission to make the goods liable for confiscation under Section 113(d) and (i), they appear liable to penal action under the provisions of Section 114 (i) of the Customs Act, 1962.

11. Now, therefore, the exporter M/s. Kunal Exim, Mehsana are hereby called upon to show cause to the Additional Commissioner of Customs, Customs House, Mundra as to why;

- (i) the declared description "Abrasive Grains" and the declared classification under Custom Tariff Item 25132090 should not be rejected and description "Natural Garnet" and classification under Custom Tariff item 25132030" should not be taken as correct description and classification for 60MTs of goods exported provisionally under Bond vide Shipping Bill No. 2391664 dated 28.02.2019.
- (ii) the said goods released provisionally for export under Bonds, should not be confiscated under the provisions of Section 113(d) and (i) of the Customs Act, 1962. As the goods has been provisionally released on exporter furnishing Bond, therefore redemption fine under section 125 of the Customs Act, 1962 should not be imposed upon them.
- (iii) penalty should not be imposed on the exporter M/s. Kunal Exim, under the provisions of Section 114 (i) of the Customs Act, 1962.
- (iv) why the Bond furnished by the exporter should not be enforced against for recovery of fine & penalty imposed.

Written Submission:

It is stated that the cargo was lying at the CFS for long time for want of clearance from the port. Regular attempts to clear the consignment were not heeded due to the lack of clarity of the nature of Cargo, whether it is Natural Garnet or Abrasive.

Finally, the permission was granted to export the cargo by Hon Commissioner of Customs, Mundra against the PD Bond for pending Test Report from CRCL, (New Delhi). Accordingly the samples were drawn by the Concerned Officer (DE) for Test Report and sent across to CRCL (New Delhi) as per the Notification No 26/2015-2020 to determine the below mentioned:

- 1) Nature
- 2) Chemical Composition
- 3) CTH

- 4) Whether the samples consist of beach sand minerals (Ilmenite, Rutile, Leucoxene) Titanium Bearing mineral), Zircon, Garnet, Silimanite and Monazite (Uranium and Thorium).

And they have received the letter alongwith Test report from CRCL Delhi provided by you stating that "The sample is in the form of reddish Brown colored powder on the basis of physical, chemical and XRD analysis, the sample is natural garnet (Almandine in the form of Iron, Aluminum Silicates)" and as per Test report presented by CRCL, New Delhi, the cargo classified as Natural Garnet.

In this context, they explained that as per Test memo they declared that the cargo is abrasive only which have been processed, washed and dried for the content as abrasive. It is processed as per tailored need of the client, in no way it is natural, in fact, it is processed.

They also stated that the CRCL Test report is not proper, as per standard and do not stand the authenticity as it is processed abrasive with content of Silica and Iron in majority to be used as abrasive whereas as per CRCL test report it is Natural Garnet, thus, they disagree with the Test report.

They also stated that their cargo is Abrasive Grain and not Garnet although the color of cargo is similar in nature but In order to get an objective view, they requested get the Test report done detailing the below mentioned 1 Analysis parameters (as per Notification No 26/2015-20)

- 1) Nature (not required as its already stated)
- 2) Chemical Composition
- 3) CTH
- 4) Whether the samples consist of beach sand minerals (Ilmenite, Rutile, Leucoxene) Titanium bearing mineral), Zircon, Garnet, Silimanite and Monazite.
- 5) Percentage of Garnet if any or otherwise.

1. Abrasive Grain is a Different abrasive media with different composition and characteristics and bears HS CODE 25132090.
2. These two products garnet and abrasive bearing starkly different characteristics, applications and they are exported from different ports altogether. Garnet from Vizag and South and abrasive grains from Mundra, India and thus they shouldn't be mistaken for each other.
3. Their material is purchased from Rajasthan and not a Beach Sand Mineral. Our products "abrasive grains" is mined from mines which not only consist of our products but also feldspar, mica, almandine and other minerals and also mixtures of two or more compounds. Our product is composed of silicates of iron and aluminum together with other oxides and mica and feldspar.

4. On the contrary, composition of garnet includes minerals like Ilmenite, Titanium dioxide etc. which is collaborated by the attached specification sheet of garnet which was marketed by one of the well-known Indian companies. Kindly note that states that there might be some ingredients which may be common in garnet and abrasive grains but their % composition varies significantly and hence, cannot be labelled as Garnet.
5. Their products are processed to tailor specific needs of our clients, like for example has higher composition of iron oxides and mica which needs to be separated in a sieving process.

With regards to notification no. 26/2015-20, please consider the below points which explains why they cannot classify their products under HS code 25132030 which is meant for garnet only and not abrasive grains.

Explanation: Their material "Abrasive Grain" which is being Exported under HS Code No. 25132090 vs Beach garnet have Different Mineral Composition (we are submitting NABL accredited tests herewith and Mineralogical analysis of BARTON (The Biggest supplier of Garnet Abrasive in the World) Rock and beach Garnet) and Absence of Monazite Components unlike Beach Garnet, Since it is sourced from Rajasthan and not sourced from Beach and since it does not contain Rare Earth Elements.

- 1) Paragraph 2 of the Notification Mentions "Other Mineral under Code 2617 are Freely Exportable, except those which have been notified as prescribed substance and control Under Atomic Energy Act 1962."

Explanation: Our Material Natural abrasive Grain does not fall Under the Notification for Prescribed substances which are controlled under Atomic Energy Act 1962 (We have attached herewith the Prescribed Substance List which clearly mention Garnet or its Present Components), also the radioactivity for our product is Diffuse NORM unlike beach Garnet whose Radioactivity is Diffuse TENORM.

They attached certain documents that highlight that their material is different from Beach Garnet Sand (Which is BSM)

- 1) Notification No.26/2015-2020 dated 21 Aug 2018 which clearly mentions that Exporter of only "BSM" will be channelized through Indian Rare Earth Limited.

- 2) Department of Materials Science and Engineering Department Science and Engineering Dept. Showing the BSM is a suite of Seven Minerals which are known as Heavy Minerals. Out of which the BSM is a Phosphate of Rare Earth and Thorium which render the Mineral Radioactive and is the only commercial source of Rare Earth Mineral in India.

- 3) Atomic Minerals Directorate for Exploration and Research showing the states with the reserve of BSM deposits (Rajasthan not being one of them)

4) Technical Data of BARTON which is One with Ilmenite having the Presence of Radio Active Elements like Uranium and Thorium identical to that of beach garnet sourced from India which is BSM.

In view of the facts, they requested for the re-report is done, ease of doing business should be allowed for exports.

Record of Personal Hearing

Shri Girishbhai Chintan Patel, Manager and authorized representative of M/s Kunal Exim, Mehsana, appeared before me for personal hearing. He stated that they have submitted written reply dated 04.03.2019 and he has confirmed the same. He has nothing else to add.

Discussion & Findings:

1. I have gone through the Show Cause Notice, the written submission by the notice & proceed to decide the case based on the same and relevant legal provisions.
2. Before going into the merits of the case, I discuss what the material called as "Garnet" is for ease of understanding the case. As per literature available at <https://en.wikipedia.org/wiki/garnets> are a group of Silicate Minerals that have been used since the Bronze Age as gemstones & abrasives. All species of garnets possess similar physical properties and crystal form but differ in chemical composition. The different species are pyrope, almandine, spessartine, grossular & andradite. Garnet species are found in many colours including red, orange, yellow, green, blue, purple, pink, brown, black and colourless.
3. Garnets are nesosilicates having the general formula $X_3Y_2(SiO_4)_3$. The X site is usually occupied by divalent cations (Ca, Mg, Fe, Mn)²⁺ and the Y site by trivalent cations (Al, Fe, Cr)³⁺ in an octahedral/tetrahedral framework with $[SiO_4]^{4-}$ occupying the tetrahedra. Because the chemical composition of garnet varies, the atomic bonds in some species are stronger than in others. As a result, this mineral group shows a range of hardness on the Mohs scale of about 6.5 to 7.5. The harder species like almandine are often used for abrasive purposes.

3.1 Almandine

Almandine, sometimes incorrectly called almandite, is the modern gem known as carbuncle. The term "carbuncle" is derived from the Latin meaning "live coal" or burning charcoal. Chemically, almandine is an iron-aluminum garnet with the formula $Fe_3Al_2(SiO_4)_3$. The deep red transparent stones are often called precious garnet are used as gemstones.

3.2 Industrial Uses:

Garnet sand is a good abrasive and a common replacement for silica sand in sand blasting. Alluvial garnet grains which are rounder are more suitable for such blasting treatments. Mixed with very high pressure water, garnet is used to cut steel and other materials in water jets. For water jet cutting, garnet extracted from hard rock is suitable since it is more angular in form, therefore more efficient in cutting. Garnet sand is also used for water filtration media. As an abrasive, garnet can be divided into 2 categories, blasting grade & water jet grade. There are different kinds of abrasive garnets which can be divided based on their origin. The largest source of abrasive garnet today is garnet-rich beach sand which is quite abundant on Indian and Australian coasts and the main producers today are Australia and India. Most of the garnet at Tuticorin beach in South India is 80 mesh & ranges from 56 mesh to 100 mesh size. River garnet is particularly abundant in Australia. Rock garnet is perhaps the garnet type used for longest period of time. This type of garnet is produced in America, China & Western India. Garnet has been mined in western Rajasthan in north western India for the past 200 years, but mainly for the gemstone grade stones. Abrasive garnet was mainly mined as a secondary product while mining for gem garnets and was used as lapping and polishing media for the glass industries.

4. The exporter/noticee has argued that they have received the test report which states:-

"The sample is in the form of reddish brown coloured powder on the basis of physical, chemical & XRD Analysis, the sample is natural garnet (Almandine in the form of Iron Aluminium Silicates)".

The noticee, vide their written reply dated 04.03.2020 has contended that the sample were forwarded to CRCL as per the Notification No. 26/2015-20 to determine 1) Nature 2) Chemical Composition 3) CTH 4) Whether the samples consist of Beach Sand Minerals (Illuminite, Rutile, Leucoxene) Titanium bearing mineral), Zircon, Garnet, Silimanite and Monazite (Uranium and Thorium) and the Test report from CRCL, New Delhi is showing the goods as natural garnet whereas they confirm that as per the test memo they clarify that the cargo is abrasive which have been processesd,washed and dried for the content as abrasive and it is processed as per tailored need of the client, in no way it is natural, in fact it is processed. They further contend that the test report is not p4roper ans has not been done as per the standards, they want the re report done as per the specific details as per notification no. 26/2015-2020 clearly showing 1) Chemical Composition 2) CTH 3) Whether the samples consist of Beach Sand Minerals (Illuminite, Rutile, Leucoxene) Titanium bearing mineral), Zircon, Garnet, Silimanite and Monazite (Uranium and Thorium) 5) Percentage of garnet if any or otherwise.

In this context, they state that their cargo is Abrasive and not garnet To justify their basis that Garnet and Natural Abrasive are different and to differentiate the two products, they have put the following points:-

- (i) Abrasive Grain is a different Abrasive media with different composition and characteristics & bears HS code 25132090.
- (ii) These two products viz Garnet & Natural Abrasive have starkly different characteristics, applications and they are exported from different ports altogether. Garnet from Vizag & South India and abrasive grains from Mundra, India & thus they should not be mistaken for each other.
- (iii) Their material purchased from Rajasthan and not a Beach sand Mineral. Their products "Abrasive Grains" is mined from mines which not only consist of their products but also feldspar, mica, and almandine & other minerals & also mixture of two or more compounds. Their product is composed of silicates of iron & aluminium together with other oxides & mica & feldspar.
- (iv) It has also been argued that on the contrary, composition of Garnet includes minerals like Ilmenite, Titanium dioxide etc. which is corroborated by the attached specification sheet of garnet, which was marketed by one of the well-known Indian companies. They requested to note that there is negative elements from garnet, mica, feldspar etc but can not be labelled as any one in particular. Since there are traces of similar composition % differs from the prescribed range of these minerals.
- (v) Their products are processed to tailor specific needs of their clients.

Further they contend that they cannot classify their product under HS Code 25132030 which is meant for Garnet only and not Abrasive grains (with reference to Notification No. 26/2015-2020) on following grounds:-

- a) Their material Abrasive grain which, is being exported under HS code 25132090 versus Beach Garnet have different mineral composition,
- b) Absence of Monazite components unlike Beach Garnet, since it is sourced from Rajasthan and not sourced from Beach and since, it does not contain Rare Earth elements,
- c) Their material Natural abrasive grain does not fall under Notification No. 26/2015-2020.

In support of their claim, they have stated in their letter dated 04/03/2020 that they have attached six documents,

4.1 In this context, I find that the test report of CRCL, New Delhi laboratory Lab No: CL-1559 E dated 29.03.2019 has clearly concluded that on basis of physical, chemical & XRD analysis, the sample is natural garnet (Almandine in form of Iron Aluminium Silicate). The density is stated to be 4.314 gm/cm³. Beyond this, nothing is stated. This means that there is no presence of mica, feldspar, any oxides as alleged by the noticee. The exporter has proffered that Garnet & Abrasive grains are different. Mere argument to this effect has been done without an iota of evidence. No physical, visible or tangible evidence is furnished as to why the Garnet is to be treated different from Abrasive Grains. The argument made by exporter that their product is

composed of Silicates of Iron & Aluminium together with oxides & mica & feldspar is unfounded & the arguments are misleading, false & fraudulent. The test report unambiguously reports the goods as natural garnet. The noticee has neither given any literature, test report or write up for what they claim are Abrasive Grains. The argument made are only figment of imagination, the averments are absurd & fictitious. The statement that garnet includes mineral like Ilmenite, titanium dioxide, etc. are abinitio false. No specification sheet of any so called well known company has been furnished as mentioned by them in their written submission. I reject the averments in toto as being false and also take a note of attempt to mislead the adjudicating authority.

4.2 Further the exporter has proffered that Abrasive grain which is being exported under HS code no. : 25132090 Vs. Beach Garnet has different mineral composition. They have made a statement that they are submitting NABL accredited test herewith and mineralogical analysis of BARTON and absence of Monazite components unlike beach garnet, since it is not sourced from Beach and since it does not contain rare earth elements. They have also merely stated that para 2 of the Notification no. 26/2015-20 dated 21.08.2018 mentions "other minerals under code 2617 are freely exportable, except those which have been notified as prescribed substances and controlled under Atomic Energy Act, 1962". They further explain that their material "Abrasive Grains" does not fall Under the Notification for Prescribed substances which are controlled under Atomic Energy Act 1962. Also, they mention that the radioactivity for their product is Diffuse NORM unlike beach Garnet whose Radioactivity is Diffuse TENORM. They have also merely mentioned that Notification No. 26/2015-2020 dated 21.08.2018 mention that only Beach sand Mineral (BSM) is canalized through M/s Indian Rare Earth Ltd (M/s IREL), it is also mentioned that BSM is mixture of seven minerals which are known as heavy minerals out of which BSM is phosphate of Rare Earths and Thorium which render the mineral radioactive and it the only commercial source of Rare earth Mineral in India. They have also written about Ilmenite having presence of radioactive elements like Uranium and Thorium. They have also mentioned atomic minerals showing the States with the reserves of BSM deposits (Rajasthan not being one of them). Further they have mentioned of prescribed substance under Atomic Energy Act, 1962 and reports of IREL of Beach Garnet and reports of BARTON of rock Garnet and difference in both reports. I find that first of all the arguments are inconsequential and infructuous as it does not answer the question when the test report mention the goods exported as "natural garnet" then why it should not be covered under Notification no. 26/2015-2020 and why the classification should not be done under Customs Tariff Item 25132030 which specifically cover Garnet. No justification has been given as to how and why the Abrasive Grains are different from Garnet. Big claims about BSM and phosphates of Rare earth, technical data of Barton, about Ilmenite Mineral which is totally redundant and irrelevant to the issue involved and shows the illiteracy of the exporter about issue involved and also exposes the attempt to mislead the

adjudicating authority and a futile attempt to proffer that Abrasive Grains as something different from Garnet.

5. The ITC (HS) for Chapter 25 reads

2513	- Pumice stones; emery; natural corundum, natural garnet and other natural abrasives, whether or not heat-treated
2513 10 00	- Pumice stone
2513 20	- Emery, natural corundum, natural garnet and other natural abrasives:
2513 20 10	- Emery
2513 20 20	- Natural Corundum
2513 20 30	- Natural garnet
2513 20 90	- Other

In Schedule 2, of the Custom Tariff, a new entry 98A has been added. This entry has specific mention of Tariff Item (HS Code) 25132030 in column Tariff Item HS Code and the item description is "Beach Sand Mineral (Ilmenite, Rutile, Leucoxene, Titanium bearing mineral, zircon, garnet, sillimanite and monazite (Uranium and Thorium), under the column item description. Under item with title export policy it is mentioned that STE (State Trading Enterprises) and under column policy it is mentioned that export through M/s Indian Rare Earth Limited (M/s IREL). The test report of CRCL, New Delhi clearly mentions the goods as "Natural Garnet". Hence, the goods are liable for classification under Custom Tariff Item 25132030 only and not under Customs Tariff Item 25132090 as has been declared by the exporter M/s Kunal Exim, Mehsana under shipping bill no. 2393664 dated 28.02.2019. The ascertained correct description is also (Natural) garnet and therefore, the declared description "Abrasive Grains" needs to be rejected.

6. I hold that subject goods viz. 'Garnet' is classifiable as per export policy in vogue vide notification No.26/2015-20 dated 21.08.2018 viz. goods need to be exported only through State Trading Enterprises viz. M/s Indian Rare Earth Limited. Since, this condition, which is statutorily imposed under Import-Export Policy issued in terms of Section 3 of the Foreign Trade (Development & Regulation) Act, 1992 of exporting garnet through M/s IREL is not followed for the following goods:-

Sr No	Shipping Bills Details	Net Weight Kg	FOB Value Rs.	Ascertained Description
1	2391664 dated 08.02.2019	60,000	Rs 12,16,190/-	Natural Garnet

Hence, I hold that 60,000 Kgs of natural garnet valued at Rs. 12,16,190/- is liable for confiscation under section 113 (d) and 113(i) of Customs Act 1962.

7. The argument has also been done that the goods exported have not been sourced from Beach and hence not covered under Notification no. 26/2015-20 dated 21.08.2018, as it is not Beach Sand Mineral and goods are from Rajasthan origin and not mined from beach. I find there is specific entry in Customs Tariff Item (HS) 25132030 which is for Natural Garnet. The specific Mineral "Garnet" is also mentioned under column "Item Description" in Notification No. 26/2015-20 dated 21.08.2018 of DGFT. The term Beach Sand Mineral has to be taken as Generic term and not specially of only those minerals mined on the beach. The natural garnet is found both on beach and inland. As per the literature in Wikipedia, Garnet is mined in Rajasthan and also at Tuticorin beach in South India. I hold that it can never be the aim of the policy makers to have policy prohibition of allowing export only for Ilmenite, Rutile, Garnet, Zircon, Sillimanite etc. which is found in beach sand and not inland. The Customs Tariff item 25132030 is also specifically mentioned in the DGFT Notification No. 26/2015-20 dated 21.08.2018 and the tariff item appearing in the Customs Tariff also does not differentiate between garnet found on Beach Sand and Mineral inland in India. Thus, the word Beach Sand minerals is to be read only as class of Goods/Generic class of goods and not those specifically found on Beach Sand. The argument by exporter that natural garnet which they are exporting is mined in State of Rajasthan & is not a beach mineral is farcical, irrational & absurd. It cannot be aim of any policy maker just to prohibit/canalize a type of mineral which is found on beach & allow the same mineral to be exported freely under export policy if found/mined inland. Such export policy will be non-implementable. The interpretation as done by noticee will produce absurd, irrational & farcical result which will defeat the basic aim & purpose of having the prohibition of exporting garnet through a State Trading Enterprises (STE) viz M/s IREL. Thus, I find that argument by exporter in this context is non-sensical & ridiculous.

8. In view of the above, I hold that the description "Natural Abrasive" mentioned in impugned Shipping Bill no. 2391664 dated 28.02.2019 is clear cut misdeclaration of description & the 60,000 Kg of Garnet covered under Shipping Bill no. 2391664 dated 28.02.2019 is liable for confiscation under Section 113 (i) of the Customs , 1962. For violation of export policy as discussed above the natural garnet exported is also liable for confiscation under Section 113(d) of Customs Act, 1962. I also hold that for acts and omission to do any acts which have rendered the export of "Garnet" liable for confiscation under Section 113 (i) & (d) of the Customs Act, 1962, the exporter M/s Kunal Exim, Mehsana is also liable for penalty under Section 114 (i) of the Customs Act, 1962.

9. In view of the above, I pass the following order-

ORDER

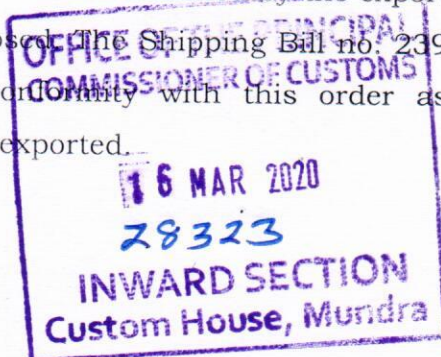
9.1 I order the rejection of declared description "Abrasive Grains" mentioned in Shipping Bill no. 2391664 dated 20.02.2019 and order that actual description for goods under this shipping bill on final assessment of shipping bills be taken as 'Garnet'.

9.2 I order the rejection of classification of garnet under customs tariff item 25132090 and order to reclassify the goods under Customs Tariff item 25132030 on final assessment of Shipping Bill no. 2391664 dated 28.02.2019.

9.3 I order confiscation of 60,000 Kg of Garnet having FOB value of Rs. 12,16,190/- and covered under Shipping Bill no. 2391664 dated 28.02.2019 filed by M/s Kunal Exim, Mehsana, in terms of Section 113(d) & 113 (i) of the Customs Act, 1962. Since, the goods are not available for confiscation being released provisionally under bond, I impose fine of Rs. 2,50,000/- (Rupees Two Lakhs Fifty Thousands only) in terms of Section 125 of the Customs act, 1962.

9.4 I also impose a penalty of Rs.2,00,000/- (Rupees Two Lakhs Fifty Thousands only) under Section 114 (i) of the Customs Act, 1962.

9.5 I order that the Bonds furnished by the exporter be enforced for recovery of fine & penalty imposed. The Shipping Bill no. 2391664 dated 28.02.2019 be assessed finally in conformity with this order as regards description and classification of goods exported.



h
16/3/2020

(Sushant Kumar)
Additional Commissioner
Customs House, Mundra

DIN-20200371MO 00007K6AD9

**M/s. Kunal Exim,
31 to 36, Palikabazar,
Nr. Nagarpalika, Mehsana, Gujarat
(IEC 0811028542)**

Copy to:

- (1) The Principal Commissioner, Customs House, Mundra.
- (2) The Assistant Commissioner (RRA), Customs House, Mundra.
- ✓ (3) The Assistant Commissioner (EDI), Customs House, Mundra.
- (4) GM, Marketing, Plot No.1207, ECIL Bldg, Veer Savarkar Marg Opp. Siddhivinayak Temple, Prabhadevi, Mumbai-400 028, Indian Rare Earth Limited, Mumbai.
- (5) Guard file