		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/ 48-67/EXP/YUVRAJ/CHM/2018-19
B	Order-in-Original No.	MCH/ADC/SK/11/2020-21
C	Passed by	Shri Sushant Kumar, Additional Commissioner of Customs, Customs House, AP & SEZ, Mundra
D	Date of Order	05.05.2020
E	Date of Issue	05.05.2020
F	SCN NO. & Date	VIII/48-67/EXP/YUVRAJ/CHM/2018-19 dated 25.04.2019
G	Noticee / Party / Exporter	M/s. Yuvraj Minerals, Plot No. D-67,NU4, Gandhidham-370201 (IEC ACCPJ0763D)

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 ज्ञापन के साथ ड्यूटी /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, 1982और सीमा शुल्क अधिनियम, 1962के 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/48-67/EXP/YUVRAJ/CHM/2018-19 dated 25.04.2019 issued to M/s. Yuvraj Minerals, Plot No. D-67,NU4, Gandhidham-370201 (IEC ACCPJ0763D).

Brief facts of the case:

M/s. Yuvraj Minerals, Plot No. D-67, NU4, Gandhidham-370201 (IEC ACCPJ0763D) (henceforth referred to as "Noticee or "Exporter") are engaged in the export of "Abrasive (Custom Tariff Item 25132090)" from the Customs port of Mundra.

2. The Customs Broker M/s. Ganesham Cargo, Mundra (henceforth, Customs Broker) on behalf of the exporter presented a Shipping Bill No. 1921701 dated 09.02.2019 (**RUD-1**) to Docks Examination Officers, Customs House Mundra for Let Export Order of the cargo declared as "Abrasive", classified under Custom Tariff Item 25132090, having Net Quantity of 84 MTs, with FOB Value of Rs.15,11,944.50 under Invoice No.YKZ/03/2018-19 dated 09.02.2019. The said export cargo was sought to be exported to Bahrain.

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 overleaf-*

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, Leucosene (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) requested that they may be missing the connecting vessels due to the delay in procedure of getting lab test report and their LC is getting lapsed due to non-connection of the vessels and they are paying heavy ground rent charges. 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. 161 dated 22.02.2019) for Bond Value of Rs.15,00,000/- (**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/07/18-19 dated 19.02.2019 (**RUD-4**). LEO was granted to them on 22.02.2019 for provisional export against the said test bond.

7. Whereas it appears that the Test Report dated 18.03.2019 received from the Chemical Examiner, CRCL, New Delhi for the said cargo shipment is appended below (**RUD-5**)-

भारत सरकार
केन्द्रीय राजस्व नियंत्रण प्रयोगशाला
दिल्ली नगर कोट, मुम्बई विस्ती - 110002



Government of India
Ministry of Finance, Department of Revenue
Central Board of Indirect Taxes & Customs
Central Revenue Control Laboratory
Hillside Road, Pusa, New Delhi - 110012
Tel: 011-2342013/23843494; Fax: 011-23843495
Email: dir.crcl@cbic.gov.in Website: http://crcl.gov.in

दिनांक: 18.03.19

सी. स. 35-सी शु. सी. आर. सी. एल./2018-19


प्रपत्र: निदेशक कार्यालय (राजस्व प्रयोगशाला)

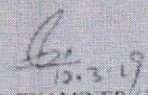
सेवा में:
The Superintendent (DPP)
Office of the Principal Commissioner of Customs
Mundra Commissionerate
Custom House MUNDRA,
SH. Port User Building, Mundra Fort,
MUNDRA/Gujarat- 370 421

विषय: परीक्षण प्रतिवेदन के अर्पण के सम्बन्ध में:
निम्नलिखित नमूनों का परीक्षण प्रतिवेदन संलग्न है।

क्र.स.	दिनांक	सी. एल. संख्या	टी.एम. / फाइल संख्या	एस.सी. / वी.ई. / दिनांक
1	5.03.19	1396 (E)	EXP/MP&SEZ/07/2018-19 UL 19 2.19	1921701/09.02.19

नमूने / नमूनों का शेष कार्यालय में 15 दिनों के भीतर प्राप्त करे अन्यथा उसे / उन्हें नष्ट कर दिया जाएगा।


(अंजली कुमार, अधीक्षक)
रसायन परीक्षक
केन्द्रीय राजस्व नियंत्रण प्रयोगशाला

TEST RESULT	
Test Report No. C No. 25-Cus/CR2/2013/2-1396 E	RR. Date 5-3-19
Lab No. 2-1396 E dt 5-3-13	Examination ID.
TEST RESULT: The sample is in the form of reddish brown coloured powder. on the basis of physical, chemical & IR Analysis.	
Sample is natural garnet (Almandine - in the form of Iron Aluminum silicates)	
Density = 4.297 g/cm ³	
Said Report is Re-verified.	
Analysed and returned to the Asst. Commissioner of And the result Technical opinion as above.	
Remnant Sample Fully Consumed/Returned.	
Date:	
 12.3.19 CHEMICAL EXAMINER / DY. CHIEF CHEMIST M.P. SINGH CHEMICAL EXAMINER GR-II	

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 classified under Custom Tariff Item 25132030 and not as Abrasive (Custom Tariff Item 25132090) as declared and classified by the exporter. Therefore, it appears that the exporter has mis-declared the said goods as Abrasive, 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" 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 misclassified in the Shipping Bill No. 1921701 dated 09.02.2019, 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. Yuvraj Minerals, Gandhidham 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 and have with intent and design attempted to export mis-declared goods "Abrasive" 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. Yuvraj Minerals, Gandhidham** are hereby called upon to show cause to the Additional Commissioner of Customs, (Export) Custom House, Mundra as to why;

- (i) the declared description "Abrasive" 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 84 MTs of goods exported provisionally under Bond vide Shipping Bill No. 1921701 dated 09.02.2019.
- (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. Yuvraj Minerals, Gandhidham 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 recovery of fine & penalty imposed.

Written Submission:

Shri Vikas Mehta, Consultant & Authorized Representative has been appointed by M/s. Yuvraj Minerals, Gandhidham to represent them in the matter of SCN No. VIII/ 48-67/EXP/YUVRAJ/CHM/2018-19 dated 25.04.2019.

He stated that the entire case of department is based on Test Report dated 18.03.2019 received by department from Chemical Examiner, CRCL, New Delhi. The test memo and test report reproduced on page 3 of the notice, are summarized on para 8 of the notice as under:

"In the above Chemical Report, it has been reported that the sample is natural Garnet (Almandine-in-the form of Iron Aluminium Silicate)."

Further, he stated that the term "Natural Garnet" is neither defined in Customs Tariff Act, 1975 nor in the Notification No. 26/2015-2020 dated 21.08.2018 issued by DGFT. Even Almandine is nowhere defined or explained therein. He referred to Wikipedia, which explains Almandine as under:

“Almandine ... also known as almandite, is a species of mineral belonging to the garnet group. The name is a corruption of alabandicus, which is the name, applied by Pliny the Elder to a stone found or worked at Alabanda, a town in Caria in Asia Minor. Almandine is an iron alumina garnet, of deep red color, inclining to purple. It is frequently cut with a convex face, or en cabochon, and is then known as carbuncle. Viewed through the spectroscope in a strong light, it generally shows three characteristic absorption bands.”

Thus, he argued that an item can be considered as Almandine only if following properties are exhibited:

- (i) Almandine is of deep red color, inclining to purple (In contrast, the test report relied by department says that sample is of reddish brown color).
- (ii) It is cut with a convex face (neither tested nor reported).
- (iii) Viewed through the spectroscope in a strong light, it shows three characteristic absorption bands. (Neither tested nor reported).

He further added that the test memo and test report relied by the department does not indicate that the sample was tested for any one or all the above properties. Consequently, the allegation levelled against M/s. Yuvraj that sample is Almandine is not supported by any appropriate test report.

He requested the department that the principles of natural justice would require that the remnant sample lying in custody of the department must be tested for the above said properties to establish the true and correct nature of goods exported by M/s. Yuvraj, to enable them to make suitable submissions.

M/s. Yuvraj also requested to permit cross-examination of chemical examiner which opined that sample is Almandine (without testing the same for the aforesaid parameters).

Record of Personal Hearing

Shri Vikas Mehta, consultant & authorized representative of the Noticee Company appeared before me on 18.03.2020, submitted a written reply dated 18.03.2020 and reiterated the same. He has nothing else to add.

Discussion & Findings:

1. I have gone through the Show Cause Notice, the written submission by the Noticee and relevant legal provisions & proceed to decide the case based on the same.
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 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 Noticee argues that the entire case of department is based on Test report dated 18.03.2019 received by the department from Chemical Examiner, CRCL, New Delhi, which is as below:-

"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)".

Noticee contends that the term "Natural Garnet" is neither defined in the Customs Tariff Act, 1974 nor in the Notification No. 26/2015-2020 dated 21.08.2018 issued by the DGFT and even Almandine is no where defined or explained therein. They further state that in Wikipedia, Almandine is explained as under:

"Almandine ... also known as almandite, is a species of mineral belonging to the garnet group. The name is a corruption of alabandicus, which is the name, applied by Pliny the Elder to a stone found or worked at Alabanda, a town in Caria in Asia Minor. Almandine is an iron alumina garnet, of deep red color, inclining to purple. It is frequently cut with a convex face, or en cabochon, and is then known as carbuncle. Viewed through the spectroscope in a strong light, it generally shows three characteristic absorption bands."

Based on the above, they have zeroed on following properties of Almandine:-

- (i) Almandine is of deep red color, inclining to purple (In contrast, the test report relied by department says that sample is of reddish brown color).
- (ii) It is cut with a convex face (neither tested nor reported).
- (iii) Viewed through the spectroscope in a strong light, it shows three characteristic absorption bands. (Neither tested nor reported).

Now, they contend that the test memo and test report relied by the department does not indicate that the ample was tested for any one or all the above properties and therefore, the allegation that the sample is Almandine is not supported by any appropriate test report and they sought testing of remnant sample to establish true and correct nature of goods exported by them. In this regard, kind attention is invited to para 2 and 3 above which discuss in detail the properties of garnet including the Almandine. It is very clearly mentioned that the garnet has different species viz pyrope, almandine, spessartine, grossular & andradite. Garnet species are found in many colors including red, orange, yellow, green, blue, purple, pink, brown, black and colourless. It is also mentioned that 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. Almandine is of deep red color inclining to purple whereas the sample in question is of reddish brown color as pointed out by the Noticee is totally irrelevant here. From the submission of the Noticee itself, it is seen that the Almandine of deep red color inclining to purple is in respect of the mineral stone found in Asia Minor. The sample at hand is in respect of a variety of Almandine to be used for Abrasive purposes owing to its hardness and therefore, its color differs. In minerals, color varies depending on presence of impurities therein. Therefore, the Test report cannot be challenged on the ground of color of the sample. Further, the point that it is frequently cut with a convex face is in respect of a gemstone whereas in the instant case, the sample finds application for abrasive purposes as claimed by the Noticee themselves. The third point that viewed through the spectroscope in a strong light, it shows three characteristic absorption bands is a subject

matter of testing procedure involved in testing the sample. The CRCL, New Delhi has tested the sample on the basis of physical, chemical and XRD analysis to conclude that the sample is natural garnet (Almandine in the form of Iron Aluminium Silicates). Therefore, the contention that this is a property of Almandine is not correct. Moreover, it cannot be claimed that the CRCL, New Delhi has not used the said process of spectroscopy for testing the sample. The CRCL, New Delhi being a public body having expertise of testing minerals and other substances cannot be questioned on above said frivolous and absurd grounds. The test report dated 12.03.2019 from the CRCL, New Delhi was communicated to the Noticee vide the SCN issued from F.No. VIII/48-67/EXP/YUVRAJ/CHM/2018-19 dated 25.04.2019 and thereafter, they chose to remain silent on the said report till they were called for personal hearing second time i.e. on 18.03.2020 (the first PH was granted on 12.03.2020, when none appeared for the same). Thus, they submitted their written reply to the SCN vide their Advocate's letter dated 18.03.2020 and requested for the testing of the sample for three properties as discussed hereinbefore and for making detailed submission on receipt of the test report and also requested to permit cross-examination of chemical examiner who opined that the sample is almandine. Thus, asking for cross-examination of the chemical examiner after one year of their report is nothing but a dilatory tactics being adopted by the Noticee to delay the adjudication proceedings and the same need be rejected as also ruled by the Hon'ble Apex Court in the matter of M/s Ugham Chand Bhandari Versus Commissioner of Central Excise, Madras[2004(167) E.L.T. 491(S.C.)], wherein they ruled as below:-

"It is also submitted that since the test report of the chemical examiner was not correct and was not clear, the appellants sought re-test of the samples drawn or in the alternative cross-examination of the chemical examiner, but no re-testing as provided in Rule 56 was allowed by the Commissioner on the ground that the request was made beyond 90 days....."

The denial of cross examination was due to the lapse of the appellant and cannot take advantage of the same in these proceedings"

In this regard, it is pertinent to refer to decision of the Hon'ble High Court of Madras in the matter of M/s Visal Lubetech Corpn. Versus Additional Commissioner of Customs, Coimbatore [2016(342) E.L.T. 201 (Mad.)], wherein they ruled as below:

"The person, whom they seek to cross examine is an officer/Government servant, working as a Chemical Examiner in the Central Revenue's Control Laboratory of the Department of Revenue, Ministry of Finance, Government of India. The said officer is not a witness to the proceedings. No statement has been recorded by the Department from such an officer either prior to the issuance of show cause notice or thereafter. Thus, the duty exercised by the Chemical Examiner of the Central Laboratory is in effect discharging a statutory duty and therefore, he is not a witness to the proceedings. The petitioner seeks to

take advantage of certain observations made by the test report to state that it is inconsistent with the other averments made therein. It is not in dispute that no statement was recorded from the Officer, who submitted the report. In other words, there is no "examination in chief", for permitting cross-examination. At best, the report can be taken as it is and the petitioner has to contest his case based on the findings recorded in the report. The petitioner requested an opportunity to cross examine the Officer, who submitted a report. This was considered by the respondent and an order was passed on 29-1-2016, rejecting such a request. Accordingly, the petitioners will not be entitled to canvass the issue regarding their right to cross-examine the Chemical Examiner of the Central Revenue's Control laboratory". In the instant case, statement of the Chemical Examiner has not been recorded as a witness. Also, there is no examination-in-chief of the Chemical Examiner.

Moreover, in the matter of M/s Krishnaram Dyeing & Finishing Works versus Commissioner of the Central Excise & Customs, Surat [2007 (209) E.L.T. 410 (Tri.-Mumbai)], the CESTAT ruled "the question of cross-examination without examination-in-chief is not legally sustainable".

Accordingly, cross-examination of the Chemical Examiner as sought at the time of personal hearing is not liable to be permitted and I decline to accept the request for such cross-examination.

4.1 In this context, I find that the test report of CRCL, New Delhi laboratory Lab No: CL-27 Exp dated 10.04.2019 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 4.284 gm/cm³. Beyond this, nothing is stated. Apart from questioning the Test report dated from CRCL, New Delhi, the Noticee has not submitted a single word about the nature and composition of their export goods viz Abrasive. They have neither given any literature nor write up for what they claim as Abrasive. Therefore, I reject the request of the Noticee for re testing of the sample and cross-examination of the Chemical Examiner for reason discussed herein before.

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. Yuvraj Minerals, Gandhidham under shipping bill no. 1921701 dated 09.02.2019. The ascertained correct description is also (Natural) garnet and therefore, the declared description "Abrasive" 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	1921701 dated 09.02.2019	84,000	Rs 15,11,944.5/-	Natural Garnet

7. In view of the above, I hold that the description "Abrasive" mentioned in impugned Shipping Bill no. 1921701 dated 09.02.2019 is clear cut misdeclaration of description & 84,000 Kgs of Garnet valued at Rs.15,11,944.5/- covered under Shipping Bill no. 1921701 dated 09.02.2019 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 their acts of commissions and omissions which have rendered the export of "Garnet" liable for confiscation under Section 113 (i) & (d) of the Customs Act, 1962, the exporter M/s. Yuvraj Minerals, Gandhidham is also liable for penalty under Section 114 (i) of the Customs Act, 1962.

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

ORDER

8.1 I order the rejection of declared description "Abrasive" mentioned in Shipping Bill no. 1921701 dated 09.02.2019 and order that actual description

for goods under this shipping bill on final assessment of shipping bill be taken as 'Garnet'.

8.2 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. 1921701 dated 09.02.2019.

8.3 I order confiscation of 84,000 Kg of Garnet having FOB value of Rs. 15,11,944.5/- and covered under Shipping Bill no. 1921701 dated 09.02.2019 filed by M/s. Yuvraj Minerals, Gandhidham, 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. 3,50,000/- (Rupees Three Lakhs Fifty Thousands only) in terms of Section 125 of the Customs act, 1962.

8.4 I also impose a penalty of Rs.2,60,000/- (Rupees Two Lakhs Sixty Thousands only) under Section 114 (i) of the Customs Act, 1962.

8.5 I order that the Bonds furnished by the exporter be enforced for recovery of fine & penalty imposed. The Shipping Bill no. 1921701 dated 09.02.2019 be assessed finally in conformity with this order as regards description and classification of goods exported.

h
5/5/2020

(Sushant Kumar)

Additional Commissioner
Customs House, Mundra

DIN-20200571MO 00008S5F02

**M/s. Yuvraj Minerals,
Plot No. D-67,NU4,
Gandhidham-370201.
(IEC ACCPJ0763D)**

Copy to:

- (1) The Commissioner, Customs House, Mundra.
- (2) The Assistant/Deputy Commissioner (RRA), Customs House, Mundra.
- ✓(3) The Assistant/Deputy 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

