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|  |  | <b>OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS,<br/>CUSTOM HOUSE: MUNDRA, KUTCH<br/>MUNDRA PORT &amp; SPL ECONOMIC ZONE, MUNDRA-370421<br/>Phone No.02838-271165/66/67/68 FAX.No.02838-271169/62</b> |
| A   | File No.                                 | VIII/48-56/Exp/Padmavati/CHM/2018-19   |
| B   | Order-in-Original No.                    | CHM/ADC/PK/01 /2019-20   |
| C   | Passed by                                | Shri Prashant Kaduskar,<br>Additional Commissioner of Customs,<br>Custom House, AP & SEZ, Mundra   |
| D   | Date of Order                            | 23.08.2019   |
| E   | Date of Issue                            | 23.08.2019   |
| F   | SCN NO.& Date                            | VIII/48-56/Exp/Padmavati/CHM/2018-19 dated<br>14.03.2019   |
| G   | Noticee / Party /<br>Importer / Exporter | M/s Padmavati Products, Plot No. : E-114, RIICO<br>Industrial Area, Kekri, Ajmer, Rajasthan (IEC-<br>1015016770)   |

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 सीमाशुल्क अपील नियमावली 1982 के नियम 3 के साथ पठित सीमाशुल्क अधिनियम 1962 की धारा 128A के अंतर्गत प्रपत्रसीए- 1-में चारप्रतियों 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:

“सीमाशुल्कआयुक्त (अपील),

7वींमंजिल,मृदुलटावर,टाइम्सऑफइंडियाकेपीछे,आश्रमरोड,अहमदाबाद380 009”

“THE COMMISSIONER OF CUSTOMS (APPEALS),

Having his office at 7<sup>th</sup> 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 इस के साथ निम्नलिखित अवश्य संलग्न किया जाए-

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

(i) उक्त अपील की एक प्रति और

A copy of the appeal, and

(ii) इस आदेश की यह प्रति अथवा कोई अन्य प्रति जिसपर अनुसूची-1 के अनुसार न्यायालय शुल्क अधिनियम-1870 के मदसं-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 ड्यूटि/ 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, सीमाशुल्क) अपील (नियम, 1982 और सीमाशुल्क 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, आयुक्त (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.

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Subject :- SCN VIII/48-56/Exp/Padmavati/CHM/2018-19 dated 14.03.2019 issued to M/s. Padmavati Products. Plot No. E-114, RIICO Industrial Area, Kekri , Rajasthan.

**Brief facts of the case :**

M/s Padmavati Products, Plot No. E-114, RIICO Industrial Area, Ajmer, Rajasthan are engaged in export of "Abrasive Grains" (Custom Tariff Item 25132090) under free shipping bill from Custom Port, Mundra. They filed the Shipping Bill No. 1570760 dated 25.01.2019 for clearance of goods declared as "Abrasive Grains" (80 mesh/120 mesh) classified under Custom Tariff Item 25132090. The net weight declared was 56,000 kg & FOB value declared was Rs. 10,39,194.11/- The country of destination was declared as Belgium.

(2) The DGFT, New Delhi, vide notification 26/2015-20 dated 21.08.2018 has made amendment in export policy in export of "Beach Sand Minerals" falling under Chapter 26 of Schedule 2 of the ITC CHS Classification of Export and Import items. The relevant paras are reproduced as under :

"2 : The existing entries in the note of Chapter 26 of the Schedule 2 of ITC (HS) classification of Export & 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 Sl. 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 Sl. No. 98A is inserted in Chapter 26 of Schedule 2*

| S.No. | Tariff item<br>HS Code   | Unit | Item<br>description  | Export<br>Policy               | Policy<br>Condition                              |
|-------|--|------|--|--------------------------------|--|
| 98A   | 2508 5031<br>2508 5032<br>2508 5039<br>2612 1000<br>2612 2000<br>2614 0010<br>2614 0020<br>2614 0031<br>2614 0039<br>2614 0090<br>2615 1000<br>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 Sl. No. 98A of Chapter 26 of Schedule 2 Export Policy at Sl. No. 98A of Chapter 26 of Schedule 2 Export Policy.***

5. It appeared that as per amended export policy the export of Beach Sand Minerals has been brought under the State Trading Enterprises (STES) and shall be canalized through Indian Rare Earth Ltd. (IREL). The IREL, Mumbai vide Letter No. . IREL/CAN/MUM/2018-19, dated 28.12.2018 has reiterated the directives contained in the aforesaid DGFT's notification dated 21.08.2018 and specifically they reported that; they have been receiving complaint that during past couple of months some export consignments of "Garnet" have been executed under different ITC (HS) code like 25132090 (Natural Abrasive /Others) and the related codes to circumvent canalization. They suggested that as the items being exported in other heading under series of ITC (HS) code 2513 may be tested by doing the mineralogical analysis to curb this practice. In this regards, for sake of clarity, they 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.
6. The instruction was given to the Docks Examination officers to draw the representative Sample of Cargo goods get it tested before granting LEO.
7. The noticee vide letter dated 04.01.2019 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 lapse 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. 94 dated 09.01.2019) for Bond Value of Rs.10,50,000/- 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, N.Delhi(henceforth, CRCL) vide Test Memo No.EXP/MPSEZ/195/26.11.18/18-19 dated 26.11.2018. As per Custom EDI system shipping bills get purged after 15 days, if Let Export order not given within this period. In the instance case, the first shipping bill no. 9033511 filed on 21.11.2018 and after it was purged by default the second shipping bill no. 1231226 filed on 10.01.2019, this shipping bill also got purged as no LEO was given within the permissible time limit of 15 days. Accordingly, third shipping bill no. 1570760 filed on

25.01.2019 and LEO was granted to theon 28.01.2019 for provisional export against the test bond.All these three shipping bills were filed under same invoice no.87/18-19 dated 21.11.2018 having net quantity of 56,000 KGS, with FOB Value of Rs.10,39,194.11/-

8. The Deputy Commissioner (DE), Customs House, Mundra vide letter F.No. VIII/48-15/RMS/Misc./18-19, dated 20.02.2019 has forwarded the Test Report dated 15.02.2019 of Chemical Examiner CRCL, N.Delhi for the said shipment. The said report is as below

**भारत सरकार**  
विद्युत उद्योग विभाग, राजस्व विभाग  
केन्द्रीय अध्यायक कार्यालय, परमेश्वर भवन बिल्डिंग  
केन्द्रीय राजस्व नियंत्रण प्रयोगशाला  
हिल्स रोड, पूना, महाराष्ट्र - 411012



**Government of India**  
Ministry of Finance, Department of Revenue  
Central Board of Indirect Taxes & Customs  
**Central Revenues Control Laboratory**  
Hills Road, Puna, New Delhi - 110012  
Tel: 011-21520131/25843494; Fax: 011-25844995;  
Email: dir.crc-l@cbic.gov.in Website: https://crcl.gov.in

सी. सं. 35-सी. शु./सी. आर. सी. एल./2018-19 दिनांक: 15.02.19

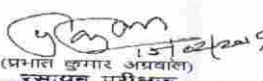
प्रेषक, निदेशक कार्यालय (राजस्व प्रयोगशाला)

सेवा में,  
The Superintendent (DE),  
Office of the Principal Commissioner of Customs  
Mundra Commissionerate, Group- I,  
Customs House MUNDRA,  
Room No. 102, Post Box Building (PUB) "C" Wing,  
AP&BEZ, Adani Port, MUNDRA- 370 421

**विषय:** परीक्षण प्रतिवेदन के अग्रपत्र के सम्बंध में,  
निम्नलिखित नमूने का परीक्षण प्रतिवेदन संलग्न है।


| क्र.सं. | दिनांक   | सी. एल. संख्या | सी.एम / परमेश्वर संख्या | एस.सी. / सी.ई. / दिनांक |
|---------|----------|----------------|-------------------------|-------------------------|
| 1.      | 08.02.19 | 1330 (E)       | 8/18-19, 25.02.19       | 0939511/ 21.11.18       |

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

  
 (प्रभास कुमार अग्रवाल)  
 रसायन परीक्षक  
 केन्द्रीय राजस्व नियंत्रण प्रयोगशाला

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C. No.-35- EVS/CRCL/2018-19, CL-1330E dt-08-02-19 — dt-15-02-19,  
 S/B No. 1570760 dt 25-01-2019.  
 The sample is in the form of greyish brown powder.  
Report = On the basis of physical, chemical & XRD  
 analysis sample is natural garnet. (Almandine - in  
 the form of Iron Aluminium silicate)  
 Density = 4.299 g/cm<sup>3</sup>  
 Sealed sent returned.

  
 15.02.19  
 एम.पी. सिंह/M.P SINGH  
 रसायन परीक्षक ग्रेड II  
 Chemical Examiner Gr II



9. The Chemical Examiner of CRCL, New Delhi, vide Test report dated 15.02.2019 pertaining to goods covered under Shipping Bill No. 1570760 dated 25.01.2019 has clearly reported that on the basis of physical, chemical XRD analysis, it is found that the sample tested is natural garnet. (Almandine in the form of Iron Aluminium Silicate). The density is stated to be 4.299 g/cm<sup>3</sup>.
10. From the test report at 15.02.2019, it appeared that the goods in question are natural garnet and same appear liable to be classified under Custom Tariff Item 25132030 and not as Abrasive Grains (CTD 25132090) as declared and classified by the exporter. Therefore, it appeared 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 appeared 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" where in fact the goods are actually correctly described as "Natural Garnet". Thus, the cargo appeared to be mis-declared in respect of description of the goods. Thus, export cargo appeared mis-declared for description and have been purposely misclassified in the Shipping Bill No. 1570760 dated 25.01.2019, therefore, the cargo is liable for confiscation under Section 113(i) and 113(d) of the Customs Act, 1962. However, the said cargo goods were exported out of India against a Bond and same are not physically viable for confiscation.
11. It also appeared that the Exporter M/s. Padmavati Products, Ajmer 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(i) and 113 (d), they appear liable to penal action under the provisions of Section 114 (i) of the Customs Act, 1962.
12. Therefore, the exporter M/s. **Padmavati Products, Ajmer** were called upon to show cause to the Additional Commissioner of Customs, Custom 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 56000 kgs of goods exported provisionally under Bond vide Shipping Bill No. 1570760 dated 25.01.2019.

- (ii) The said goods released provisionally for export under Bonds, should not be confiscated under the provisions of Section 113(i) and 113(d) 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 Padmavati Products, Ajmer under the provisions of Section 114 (i) of the Customs Act, 1962.
- (iii) why the Bond furnished by the exporter should not be enforced against recovery of fine & penalty imposed.
- Addendum Cum corrigendum to the Show cause notice on dated 25.04.2019 invoking additional section 113(d) and section 114(i) instead of section 114 (iii) for penalty was issued.

**Written Submission :**

13. The exporter vide their written submission dated 06.06.2019 has stated that as per IREL specification, if total content of Aluminium+Iron+Silicate is more than 94 percent the same is classified as natural garnet. This has not been tested or investigated. Hence, it is not proper to allege that goods in question is natural garnet. According to them, the goods are classifiable under HS code 25132090 as abrasive grains and not HS code 25132030 as natural garnet. The CRCL does not give composition. They requested for retest. They have also stated that since the request for retest has not been accepted. It is the violation of principle of natural justice and the test report has to be discarded. They also referred to relied upon the following case law :
- (a) York exports Vs Commissioner of Customs (Exports) [2004(169) EU 175(Tri Mumbai)]
- (b) HariKewalVanaspati Mills Vs Commissioner of Central Excise, Rohtak [2010(202)ECT331(Tri-Del)]
14. They have referred to Indian Minerals Yearbook 2016 (Part-III : Mineral Vericus) 55<sup>th</sup> edition –Chapter 23-Garnet, issued by Indian Bureau Of Mines, Govt. of India. It is stated that garnet deposit suitable for use in abrasive industry are found in Andhra Pradesh, Rajasthan and Telangana garnet found to occur in beach sands along with illeminite, rutile and sillimanite in Kerala, Odisha and Tamilnadu. It has been argued that almandine garnet is found in mines and not on beaches. Since the restriction is applicable or export of beach sand minerals only hence Abrasive grains declared by them are not concerned by the Policy restriction imposed under DGFT Notification No.: 26/2015-20.
15. They have also argued that the goods falling under its code 25132030 have been brought under purview of canalization or export through (State Trading Enterprises) STEs and are



not prohibited under policy like goods under its code 01663100,29030000 etc. Further, it has been argued that penalty under section 114(i) of the Customs Act,1962 only if the noticee attempted to export prohibited goods. In the subject case the goods are not prohibited for exports .Hence provision of Section 114(i) do not apply for levying penalty. Hence, it has been requested to finalise the assessment of Shipping Bill No. 1570760 dated 25.01.2019 also drop the Show Case Notice date 14.03.2019.

**Personal Hearing :**

16. The personal hearing in the matter was held on 06.06.2019 when Shri R.G. Chaudhary, Authorised representative appeared on behalf of the noticee. The learned authorised representative argued that they had requested for test as the department has sought nature and (%) composition of the test does not give the (%) composition. He stated that as per letter of M/s Indian Rare Earth Limited (IREL), the garnet has 97% purity (iron+aluminium+silicate) of medium Garnet has 94% purity (iron+aluminium+silicate). Hence, in absence of percent composition, it cannot be concluded that it is natural garnet. Shri Chaudhary stated that what they are exporting is abrasive grain and not natural garnet. He added that it is not a beach sand mineral and the mineral mined in Rajasthan. He also stated that the goods have been correctly classified under Custom Tariff item 25132090 and that they are freely exportable.
17. The learned authorised representative stated that without admitting even if it is presumed as natural garnet even then also the policy state it is freely exportable with condition at Note 2 of Chapter 25 applies to Beach Sand Mineral only. He added that word "Prohibited" is not used as policy for goods covered under custom Tariff Item 25132030. Hence, there is no question of any confiscation or imposition of any penalty. He added that they have not violated any export policy provision or restriction and as such the bond given cannot be enforced. He requested that there is no case and the Show cause Notice need to be dropped ab initio.

**18. Discussion & Findings :**

Before going into the merits of the case I discuss the what Garnet is for ease of understanding. As per the <https://en.wikipedia.org/wiki/garnets> garnets are a group of Silicate minerals that have been used as gemstones and abrasives. The different types of garnets are pyrope, almandine, spessartine, grossular, uvarovite and andradite. The word garnet is derived from Latin word granatus from granum (Grain/Seed). The garnet species are found in many colours including red, orange, yellow, green, blue, purple, pink, brown, black, colourless with reddish shades most common Garnet species, Light transmission properties can range from gemstone quality transparent specimen, to the opaque varieties for industrial purposes as abrasives. The minerals lustre is categorised as Vitreous (glass like) or resinous (amber-like). The garnet are nesosilicates having a general formula  $X_3Y_2(SiO_4)_3$ . The X site is usually occupied by divalent cations like



Calcium (Ca<sup>+2</sup>), Magnesium (Mg<sup>+2</sup>), Iron(Fe<sup>+2</sup>), Manganese (Mn<sup>+2</sup>). The Y site is occupied by trivalent cations like Aluminium (Al<sup>+3</sup>), Iron (Fe<sup>+3</sup>), Chromium (Cr<sup>+3</sup>) in octahedral/ tetrahedra framework with [SiO<sub>4</sub>]<sup>-4</sup> occupying the tetrahedra. The garnet show a range of hardness on "Mohs" scale of about 6.5 to 7.5. The harder species like almandine are often used for abrasive purpose.

19. I find the Central Revenue Control Laboratory (CRCL), New Delhi vide the test report dated 15.02.2019 have reported that sample tested is natural garnet of Almandine variety/ species and composed of Iron Aluminium Silicate. The Wikipedia further states that Almandine variety has chemical formula Fe<sub>3</sub>Al<sub>2</sub>(SiO<sub>4</sub>)<sub>3</sub>. It is stated in the Wikipedia that Almandine sometimes incorrectly called as almandite is the modern gem known as Carbuncle. The term carbuncle is derived from the latin term meaning like Coal or burning charcoal. The Almandine is corruption of Alabanda, a region in Asia Minor where these stones were cut in ancient times. Chemically, Almandine is an iron aluminium garnet with the formula Fe<sub>3</sub>Al<sub>2</sub>(SiO<sub>4</sub>)<sub>3</sub>. Garnet is a good abrasive and a common replacement for Silica Sand in Sand Blasting. Mixed with very high pressure water, garnet is used to cut steel and other materials in the water jets. Garnet paper is favoured by cabinet makers for furnishing bare wood. Garnet sand is also used for water filtration media. As an abrasive, garnet can be broadly divided into 2 categories, viz. Blasting grade and water jet grade. All pieces which are larger than 60 mesh are normally used for Sand Blasting. The pieces between 60 mesh and 200 mesh are normally used for waterjet cutting. The remaining garnet pieces that are finer than 200 mesh are used for glass polishing and lapping. Regardless of the application, the larger grain sizes are used for faster work and the smaller are used for finer finishing. The largest source of abrasive garnet today is garnet rich beach sand which is quite abundant on Indian and Australian Coast and the main producer today are Australia and India. Most of the garnet at Tuticorin beach in South India is 80 mesh and ranges from 56 mesh to 100 mesh size. The Wikipedia also states that garnet is mined in Western Rajasthan in north western India for past 200 years.
20. With this basic knowledge of garnet, I proceed to decide the case. I find that after receipt of the Show cause Notice the noticee vide letter dated 27.03.2019, has stated that no composition has been given by CRCL and it is improper to conclude that goods are natural garnet HS code 25132030 which as per IREL letter should have more than 94 percent purity (iron+aluminium+silicate). They have asked for retest of the goods to get the composition of ingredients. They again wrote a letter dated 20.04.2019 addressed to DC(Exports) requesting for re-testing of the sample.
21. As requested, by the exporter/Authorised representative, the letter was sent to the Chemical Examiner, CRCL, New Delhi with a request to retest the sample and give the % composition of Natural Garnet in respect of Shipping Bill No. 1520760 dated 25.01.2019 and send the report by return fax, email as adjudication process is ongoing. A reminder

dated 19.06.2019 was also sent to the Chemical Examiner, CRCL, New Delhi to furnish the % composition of the Natural Garnet. The chemical examiner vide a letter C. No. 35-Cus/Misc- corres/2019-20 dated 20.06.2019 addressed to DC (Exports) have stated that the sample has been analysed and reported as per the test query in the test memo i.e. Nature and Composition. The remnant sample has already been returned to the Custom Office. It is also added that no comments on the further query raised will be furnished. The said letter dated 20.06.2019 has been signed by same chemical examiner Sh. M.P.Singh who has given the test report dated 15.02.2019.

21.1 I have gone through the letter dated 28.12.2018 of Indian Rare Earth Ltd. No where the letter of IREL state that the given material can be called as Garnet only if it has 97percent purity or 94percent purity (Medium Garnet) (iron+aluminium+silicate). Nowhere the IREL letter even remotely suggest that if the garnet is less than 94percent or 97percent then it will not qualify as garnet. What the IREL letter encloses is typical specification of OR Coarse Grade (-30+60 Mesh) Garnet and typical OR Medium Garnet (-50+100 mesh) and what has been asked in the Test Memo by the Nature and Composition by the Customs, Mundra. When the letter was sent by Customs , Mundra to CRCL, New Delhi, for retest, the Chemical Examiner vide their letter 20.06.2019 (Letter No: 35-Cus/Misc-Case/2019-20) have informed that the sample has been analysed and reported as per query Nature and Composition. The chemical examiner in the Test Report dated 15.02.2019 have stated that physical, chemical and XRD analysis has been done and sample is found to be Natural Garnet (Nature) and the specific mineral type is Almandine and the composition is given as Iron, Aluminium and Silicate. Thus, I find that the customs have not sought (%) composition and (%) mineralogical analysis and had sought composition which has been given as Iron, Aluminium, Silicate and hence specific mineral Almandine has been named in the test report. Thus, I find that though the sample was sent for retest to CRCL, New Delhi it was not needed as composition has already been given. The percentage mineralogical analysis has never been sought. The test report clearly mention that the nature of sample is natural garnet by chemical, physical and XRD analysis. Thus the nature and composition and density is sufficient to conclude from the test report that subject sample is :

- (a) Natural Garnet
- (b) Specific Mineral is Almandine
- (c) The composition is Iron, Aluminium and Silicate.

22. I further find that Notification 26/2015-2020 dated 21.08.2018 adds entry Sr. No. 98A in schedule 2 of -ITC (HS). The specific entry under Custom Tariff Item 25132030 refers to Garnet. The Notification No. 26/2015-20 adds the condition in export policy that goods with Item Description Beach Sand Minerals as listed viz. Ilmenite, Rutile, Garnet, Monazite, Zirconetc will be exported by State Trading Enterprises only and the Policy Condition mentions the export will be through Indian Rare Earth Ltd (IREL) only. Thus , the goods tested by CRCL, New Delhi have been found to be natural garnet hence



classifiable under Custom Tariff Item 25132030 specifically. The specific mineral "Garnet" is also mentioned under column "Item description" in DGFT Notification 26/2015-2020 dated 21.08.2018. The word Beach Sand Mineral has to be taken as generic term and not specifically only those minerals mined on beach. The natural garnet is found both on beach and inland. It cannot be the aim of policy makers to have the policy prohibition only for Ilmenite, Rutile, Garnet, Zircon etc. which is found on beach sand and not inland. The Custom Tariff Item 25132030 is specifically mentioned in the Notification *ibid* and this Tariff Item also does not differentiate between garnet found on Beach Sand and Mineral inland in India. Thus the beach sand mineral is to be read only an indicative class of goods/ Generic class of goods. The argument by noticee that natural garnet which they are exporting is mined in Rajasthan and not on any beach in India is absurd and farcical. It cannot be aim of any policy maker just to prohibit a type of mineral which are found in beach and Same mineral are if found/mined in land can be allowed to be exported freely under export policy. This interpretation as done by the noticee will produce absurd, irrational and farcical results which will defeat the basic aim of having the prohibition of exporting "Garnet" through a STE viz M/s IREL. This, I find that argument by exporter in this context is ridiculous, non-sensical and preposterous.

23. The other point argued by the noticee in written submissions as well as at the time of personal hearing that since their request for retest has been denied, it is a violation of principle of natural justice and hence the test report dated 15.02.2019 itself should be discarded and cannot be relied upon. I find that the argument of noticee is premature. The letter was sent to the Chemical Examiner, CRCL, New Delhi by the DC Export on 06.06.2019 as well as the Adjudicating Authority reminded them to expedite the matter. The reply by the same Chemical Examiner Shri M. P. Singh dated 20.06.2019 is Annexed to the Order-in-Original as a proof that matter was referred to CRCL, New Delhi for retest and the retest was not denied. Thus, there is no question arises of denial of principle of natural justice to the noticee and the citation of case laws of York Exports Vs. CC(Exports) Mumbai [2004(169)ELT 175(Tri-Mumbai)] and Hari Keval Vanaspati Mills Vs CCE, Rohtak [2010(262)ELT 331(Tri. Del)] is redundant.
24. The other issue raised by the noticee is that the goods exported were classifiable under Custom Tariff Item 25132090-"others" as abrasive grains and not under Custom Tariff Item 25132030-"Garnet". I find the argument made by noticee is incorrect in as much as the test report dated 15.02.2019 received from Central Revenue Central Laboratory, New Delhi clearly mention that on physical, chemical, XRD analysis the sample is found to be natural garnet.(Almandine in the form of Iron Aluminium Silicate). Thus, it is undisputed that goods are natural garnet. The heading in ITC (HS) are as follows :

|          |  |
|----------|--|
| 2513     | Pumice Stone, Emery, Natural Corundum, natural garnet and other natural abrasives, whether or not heat treated |
| 25131000 | Pumice Stone   |
| 251320   | Emery, natural corundum, natural garnet and other natural abrasives  |
| 25132010 | Emery  |
| 25132020 | Natural Corundum   |
| 25132030 | Natural Garnet   |
| 25132090 | Other  |

There exists specific heading 25132030 for “**natural garnet**”. Hence , the classification ought to be under Custom Tariff Item 25132030. When specific description is ascertained on chemical, physical and XRD tests, the contention of the assessee to classify the garnet under 25132090 under description “other” is non-sensical, incorrect and unreasonable argument. Thus, I hold that having ascertained the correct description as “natural garnet” on physical, chemical and XRD analysis the export cargo logically and legally need to be classified under ITC(HS) 25132030 as “natural Garnet”.

25. The notice has taken a plea that goods falling under Custom tariff Item 25132030 have been brought vide Notification 26/2015-20 of DGFT, New Delhi under purview of canalization (export through State Trading Enterprise M/s Indian Rare Earth Limited)—are not prohibited under policy like goods covered under HS code 01063100,29030000,02011000,03027210,15029010. He argued that goods are liable for confiscation only if they are attempted to be exported contrary to any prohibition imposed by or under Custom Act or any other law for the time being in force. Since the export is not prohibited but canalized hence the provisions of Section 113 (d) and 113(i) of the Customs Act, 1962 are not applicable in this case. Also , it is argued that penalty for attempting to export goods under section 114 (i) of the Customs Act, 1962 is impossible only if any prohibition is in force under Customs Act or any other law for the time being in force. Since impugned goods are not prohibited goods , the penalty under Section 114(i) of the Customs Act, 1962 is not impossible in their case. In this context, I find that section 2(33) of the Customs Act, 1962 defines the “**Prohibited Goods**” means any goods the import or export of which is subjected to any prohibition under Custom Act, 1962 or any other law for the time being in force but does not include any such goods in respect of which the condition subject to which goods are permitted to be imported or exported have been complied with. This ipso facto means goods in respect of which conditions subject to which goods are permitted to be exported are not complied with come under preview of “**prohibited goods**”. It is undisputed that goods in question on physical, chemical and XRD testing is found to be “garnet” and hence



classifiable under Custom tariff Item 25132030 of HS code. The policy condition imposed under Notification Number : 26/2015-20 dated 21.08.2018 states that such garnet will be allowed to be exported only through Indian Rare Earth Limited (IREL) which is a State Trading Enterprise. Since this condition which has statutorily imposed under Import-Export Policy 2015-2020 issued in term of Section 3 of the Foreign Trade (Development & Regulation) Act, 1992, of exporting the "garnet" through M/s IREL has not been followed, hence the subject 56,000 kg of 'garnet' classifiable under 25132030 are "**Prohibited goods**" as defined under Section 2(33) of the Customs Act, 1962. I hold that impugned consignment of garnet is subjected to canalisation of export only through STEs M/s IREL and hence does qualify to be prohibited goods. These prohibited goods are consequently liable for confiscation under section 113(d) of the Customs Act, 1962. I also hold that the goods have been purposefully by intent and design described as Abrasive grains, a very misleading description. The actual, correct and truthful description "garnet" has been wilfully suppressed. For this misdeclaration of description made in the related Shipping Bill with a purpose to circumvent the Export Policy provisions (DGFT Notification : 26/2015-20 dated 21.08.2018) the impugned 56,000 kg of garnet covered under Shipping Bill No. 9033511/21.11.2018 (which was later purged from EDI System and LEO was belatedly given) and later shipping was again filed with Shipping Bill No. 1570760/25.01.2019 liable for confiscation under Sec. 113(i) of the Customs Act, 1962 for misdeclaration of description of export goods .

26. I also hold that for their acts and omission to render the goods liable for confiscation under section 113(d) and 113(i) of the Customs Act, 1962 the exporter M/s Padmavati Product, Ajmer, Rajasthan is also liable for penalty under section 114(i) of the Customs Act, 1962. The goods have been released provisionally and exported out of India on exporter furnishing a Bond.
27. In view of the above findings I pass the following order

**ORDER**

- a. I order the rejection of declared description of "Abrasive Grains" and order that actual description for goods covered under Shipping Bill No. 1570760 dated 25.01.2019 on final assessment of the shipping bill be taken as Garnet.
- b. I order rejection of classification of garnet under custom tariff Item 25132090 and order to reclassify the goods under Custom tariff Item 25132030 on final assessment of the Shipping Bill No. 1570160 dated 25.01.2019.
- c. I order the confiscation of the 56000 kgs of garnet having FOB value of Rs. 10,39,194.11/- covered under Shipping Bill No.: 1570760 dated 25.01.2019 filed by M/s Padmavati Products, Ajmer, Rajasthan in terms of Sec.113(d) and Sec.113(i) of the Customs Act, 1962. Since the goods are not available for confiscation being

released on provisional assessment under Bond , I impose a redemption fine of Rs. 2,00,000/- ( Rupees Two Lakh only) in terms of Sec. 125 of the Custom Act,1962.

- d. I also impose penalty of Rs. 1,00,000/- (Rs. One Lakh Only) on M/s Padmavati Products, Ajmer, Rajasthan under provision of Sec. 114(i) of the Customs Act,1962.
- e. I order that the Bond furnished by the exporter be enforced for recovery of fine and penalty imposed. The Shipping Bill No. 1570760 dated 25.01.2019 be assessed finally according to this order.

Enclosed: Letter dated 20.06.2019 from CRCL, New Delhi.



(Prashant Kaduskar) 23/8/2019  
Additional Commissioner  
Custom House, Mundra

To  
M/s Padmavati Products,  
Plot No. : E-114, RIICO Industrial Area,  
Kekri, Ajmer, Rajasthan.

Copy to:

- (1) The Principal Commissioner, Custom House, Mundra.
- (2) The Assistant Commissioner, (RRA), Custom house, Mundra.
- ✓(3) The Assistant Commissioner, (EDI), Custom House, Mundra.
- (4) GM, Marketing, Indian Rare Earth Limited, Mumbai.