

		OFFICE OF THE PRINCIPAL 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.	:	CUS/ASS/MISC/302/2025-EA-O/o Pr Commr-Cus-Mundra	
B. Order-in- Original No.	:	MCH/ADC/MK/356/2024-25 dated 28.03.2025	
C. Passed by	:	Mukesh Kumari, Additional Commissioner of Customs, Customs House, AP & SEZ, Mundra	
D. Date of order /Date of issue	:	28.03.2025 / 29-03-2025	
E. Show Cause Notice No. & Date	:	SCN and PH Waiver	
F. Noticee(s)/Party/ Exporter	:	M/s. Silver Lake Enterprise, 2/4/82/3, Motira Vas, Kanodar, Palanpur, Gujarat	
G. DIN	:	20250371MO0000621453	

- यह अपील आदेश संबन्धित को निःशुल्क प्रदान किया जाता है।
This Order - in - Original is granted to the concerned free of charge.
- 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),
7 वीं 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.”

- 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.
- 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 be accompanied by –

- उक्त अपील की एक प्रति और A copy of the appeal, and
- इस आदेश की यह प्रति अथवा कोई अन्य प्रति जिस पर अनुसूची-1 के अनुसार न्यायालय शुल्क अधिनियम-1870 के मद सं०-6 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 अन्य के ,अधिनियम शुल्क सीमा और 1982,अपील) नियम)। चाहिए जाना किया पालन का मामलों सभी तहत के प्रावधानों सभी

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.

BRIEF FACTS OF THE CASE:

M/s. Silver Lake Enterprise (IEC: FWFPP0071J) (hereinafter referred to as “the Exporter” for sake of brevity) having its registered office at 2/4/82/3, Motira Vas, Kanodar, Palanpur, Gujarat, filed the 02 Shipping bills 4612513 & 4612501 both dated 05.10.2024 through their Customs Broker Online Sea & Air Services (AEBPD9653FCH001) for export of Processed Bentonite Powder falling under CTH-25081090 at Mundra Port. The details of shipping bills are as under:-

TABLE –A

Sr. No.	Shipping Bill No. and Date	Container No.	Description of goods	FOB Value of goods (in Rs.)	Weight (in Kgs)
1	4612513 dated 05.10.2024	TIHU2373142, TRHU3748280 & CSLU1770800	Processed Bentonite Powder	6,77,265/-	84480
2	4612501 dated 05.10.2024	TEMU1128326 & CMAU0768760	Processed Bentonite Powder	4,09,683/-	56453

2. Examination and Investigation:

2.1 Based on the intelligence, the consignments pertaining to Shipping Bills No. 4612513 and 4612501 both dated 05.10.2024 were put on hold for examination by SIIB, Mundra Customs. The said consignment pertaining to Shipping Bill No. 4612513 dated 05.10.2024 was placed in CWC CFS, Mundra and the consignment pertaining to Shipping Bill No. 4612501 dated 05.10.2024 was placed in PSA Ameya (Honeycomb) CFS, Mundra.

2.2 Examination of shipping bill no. 4612513 dated 05.10.2024:

The examination of shipping bill no. 4612513 dated 05.10.2024 was carried out in CWC CFS, Mundra under Panchanama dated 19.10.2024. During the examination, it was found that the goods/cargo covered under shipping bill no. 4612513 dated 05.10.2024 were stuffed in 03 Containers bearing no. TRHU3748280, TIIU2373142 and CSLU1770800 which were sealed with seal no. as detailed hereunder:

Container No.	RFID Seal No.	Line seal no.
TIIU2373142	KLIK20683141	25001938
TRHU3748280	KLIK20683142	25001937
CSLU1770800	KLIK20683143	25001936

During the examination, it was found that the goods were packed in jumbo bags. The jumbo bags were de-stuffed and on opening of jumbo bags, it appeared that the goods were of reddish color and it appeared to be Garnet. However, on quantification, the total no. of 81 jumbo bags were found which did not match with the quantity declared by the exporter i.e. 84.

Further, as per weighment slip, the weight of the cargo/goods was found to be 79,315 Kgs, as detailed below:

TABLE –B

Container Number	Net Weight as per weighment slip (in Kgs)
TIIU2373142	25360
TRHU3748280	26920
CSLU1770800	27035
Total	79315

Further, to check the characteristic and types of cargo/goods, the representative samples were drawn for further lab-testing and the same were sent to IREL (India) Limited, Kerala vide test memo no. 179/24.10.2024.

2.3 Examination of shipping bill no. 4612501 dated 05.10.2024:-

The examination of shipping bill no. 4612501 dated 05.10.2024 was carried out in PSA Ameya (Honeycomb) CFS, Mundra under Panchanama dated 19.10.2024. During the examination, it was found that the goods were stuffed in 02 containers bearing no. TEMU1128326 and CMAU0768760 which were sealed with seal no. as detailed hereunder:

Container No.	RFID Seal No.	Line seal no.
TEMU1128326	KLIK20683144	R6129763
CMAU0768760	KLIK20683145	R6129706

The same were checked with the export documents i.e. Let Export Copy of Shipping bill, and was found to be in order. During the examination, it was found that the goods were packed in jumbo bags. The jumbo bags were de-stuffed and on opening of jumbo bags, it appeared that the goods were of reddish color and it appeared to be Garnet. On quantification, the total no. of jumbo bags i.e. 56 were found as declared by the exporter.

Further, as per weighment slip, the weight of the cargo/goods was found 53,400

Kgs, as detailed below:

TABLE –C

Container Number	Net Weight as per weighment slip (in Kgs)
TEMU1128326	26280
CMAU0768760	27120
Total	53400

Further, to check the characteristic and types of cargo/goods, the representative samples were drawn for further lab-testing and the same were sent to IREL (India) Limited, Kerala vide test memo no. 178/24.10.2024.

2.4 The IREL, Kerala had sent the test reports vide letter dated 29.11.2024 along with the Mineralogical analysis report no. ML-3749 dated 29.11.2024 and Mineralogical analysis report no. ML-3750 dated 29.11.2024, wherein they have stated that “*as per Mineralogical analysis report, the major mineral in the sample is Garnet*”.

As per Mineralogical analysis report no. ML-3749 dated 29.11.2024, there is 97.2% Garnet by weight in the sample drawn from goods pertaining to shipping bill no. 4612501 dated 05.10.2024. The relevant portion of the report is reproduced hereunder:

<i>Minerals</i>	<i>Weight%</i>
<i>Garnet</i>	<i>97.2</i>
<i>Other Heavy Minerals</i>	<i>2.6</i>
<i>Quartz</i>	<i>0.1</i>
<i>Shells</i>	<i>0.1</i>
<i>Total:</i>	<i>100.00”</i>

As per Mineralogical analysis report no. ML-3750 dated 29.11.2024, there is 91.1% Garnet by weight in the sample drawn from goods pertaining to shipping bill no. 4612513 dated 05.10.2024. The relevant portion of the report is reproduced hereunder:

<i>Minerals</i>	<i>Weight%</i>
<i>Ilmenite</i>	<i>0.5</i>
<i>Garnet</i>	<i>91.1</i>
<i>Other Heavy Minerals</i>	<i>7.7</i>
<i>Quartz</i>	<i>0.7</i>
<i>Total:</i>	<i>100.00”</i>

2.5 From the above mineralogical analysis reports received from IREL (India) Ltd, Kerala, the goods were found to be natural garnet. Therefore, the goods pertaining to Shipping bill no. 4612513 dated 05.10.2024 were placed under seizure vide seizure memo (DIN-20241271MO0000510518) dated 03.12.2024 and the same were handed over for safe custody to representative of CWC CFS, Mundra, vide Supratnama dated 03.12.2024.

Further, the goods pertaining to Shipping bill no. 4612501 dated 05.10.2024 were placed under seizure vide seizure memo (DIN-20241271MO0000217909) dated 03.12.2024 and the same were handed over for safe custody to representative of PSA Ameya (Honeycomb) CFS, Mundra, vide Supratnama dated 03.12.2024.

3. Classification of the goods:

3.1 The Mineralogical analysis reports received from the IREL (India) Ltd, Kerala as discussed above have been examined with respect to the declaration made by the exporter to determine the correct and proper CTH of the goods to be exported. The goods covered under Test Memo no. 178/24.10.2024 and 179/24.10.2024 are found to be mis-declared in terms of description of the goods as the goods were declared as "Processed Bentonite Powder under CTH 25081090", however, as per Mineralogical analysis reports, the major mineral in the sample is Garnet. Therefore, the correct Classification of the goods is required to be ascertained. Accordingly, the impugned goods are appropriately classifiable under the heading CTH-25132030.

3.2 The Government of India had issued an Order vide Notification No 26/2015-20 dated 21.08.2018 from F. No. 01/91/171/22/AM 19/EC under the provisions of Section 3 of the Foreign Trade (Development and Regulation) Act, 1992 (Hereinafter referred to as "**the FTDR Act, 1992**") to amend the Export Policy of "Beach Sand Minerals" in Chapter 26 of Schedule 2 of ITC (HS) Classification of Export and Export items.

The Relevant Para, 2, 3 and 4 of the said notification are reproduced here under:-

"2. *The existing entries in the 'Note' of Chapter 26 of Schedule 2 of ITC (HS) Classification of Export and Export 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 of ITC (HS) Classification of Export & Export 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 26151000 2513 2030	Kg.	Beach Sand Minerals [ilmenite, Rutile, Leucoxene (Titanium bearing mineral), Zircon, Garnet Sillimanite and Monazite	STE (State Trading Enterprise	Export Through Indian Rare Earths Limited (IREL)

			(Uranium and Thorium)]		
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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 SI. No. 98A of Chapter 26 of Schedule 2 Export Policy."

3.3 In terms of said Notification No. 26/2015-20 dated 21.08.2018, Garnet classifiable under CTH 25132030 can only be exported through Indian Rare Earth Ltd. (IREL). However, in the instant case the exporter had attempted to export the same by way of mis-declaring the same as Processed Bentonite Powder [RITC-25081090] to avoid the restriction, however, as is evident from the mineralogical analysis reports received from M/s. IREL (India) Ltd., the goods are Garnet classifiable under CTH 25132030 and permitted to be exported by STE as per the above referred notification. Accordingly, the non-compliance of the existing DGFT Policy makes the goods as Prohibited and exporter had attempted to export the same by way of mis-declaring and mis-classifying the same.

3.4 No private person is permitted to export Beach Sand Minerals. M/s. IREL, who were notified as canalizing Agency for export of Natural Garnet falling under CTH No. 25132030 has published SOP for Export Policy of Beach Sand Minerals and Production/Selling and export was regularized. Garnet can be exported through M/s. IREL in accordance with the provisions of the Notification No 26/2015-20 dated 21.08.2018 and after following SOP published by M/s. IREL.

From the above provisions, it is evident that with effect from 21.08.2018 and pursuant to issue of aforesaid Notification No. 26/2015-20 dated 21.08.2018 by the Central Government, the export of Beach Sand Minerals and particularly the Natural Garnet falling under CTH-25132030 has been permitted to be exported through STE, i.e. M/s. Indian Rare Earth Ltd. (Hereinafter referred to as "**M/s. IREL**"), which is the canalizing agency in this regard. No private person has been permitted to export Natural Garnet falling under CTH-25132030. Consequent to issuance of aforesaid above referred Notification dtd. 21.08.2018, M/s. IREL being canalizing agency placed the SOP for export of Natural Garnet etc. Beach Sand Minerals by the producers/sellers, on its website for those who are desirous to export the Beach Sand Minerals.

4.1 During the course of investigation, Summons dated 05.12.2024 and 12.12.2024 were issued to the exporter i.e, M/s. Silver Lake Enterprise to produce the documents and to tender statement pertaining to the Shipping Bill No. 4612513 and 4612501 both dated 05.10.2024. In response, a statement of Shri Sadikhusen Mohmadhusen Pathani, Proprietor of M/s Silver Lake Enterprise was recorded on 12.12.2024, wherein, he, inter-alia stated that:-

- He looks after the day to day work of the firm, M/s. Silver Lake Enterprise and the firm is engaged in export and whole sale business of Food Preparations, Bread, Pastry, Cakes, Biscuits and Other Bakers, Mineral Waters and Aerated Waters and Bentonite powder etc.

- He perused the test report no. ML-3749 and ML-3750 both dated 29.11.2024 received from IREL (India) Limited and agreed with the same. Further, he agreed that the goods attempted to be exported is garnet.
- He stated that they had attempted to export Garnet (CTH-25132030) in the guise of Processed Bentonite Powder under CTH-25081090 through the above-mentioned Shipping Bill nos. 4612513 and 4612501 both dated 05.10.2024.
- He stated that he didn't have the knowledge that export of Garnet CTH-25132030 is restricted commodity as per DGFT policy vide DGFT notification no. 26/2015-2020 dated 21.08.2024.
- He stated that he admit that he made a mistake and willing to pay any fine and penalty imposed under customs Act, 1962 and requested for the permission of Back to town for their consignment mentioned in Shipping Bill nos. 4612513 and 4612501 both dated 05.10.2024 as soon as possible.

4.2 Further, Summons dated 01.01.2025 was issued to the CHA i.e, M/s. Online Sea and Air Services, to produce the documents and to tender statement pertaining to the Shipping Bill nos. 4612513 and 4612501 both dated 05.10.2024. In response, a statement of Shri Naveen Marshal Dsouza, Proprietor of M/s Online Sea and Air Services was recorded on 08.01.2025, wherein, he, inter-alia stated that:-

- He looks after the day to day work of the firm, M/s. Online Sea and Air Services and the firm is engaged in engaged in custom clearance, freight forwarding and logistics.
- He perused the above said shipping bills and submitted that they had filed the same for the export of Processed Bentonite Powder (CTH-25081090).
- He stated that they received enquiry/documents of the consignment mentioned in the above shipping bills from the exporter M/s Silver Lake Enterprise for the export of Processed Bentonite Powder (CTH-25081090).
- He stated that they had completed the KYC verification of M/s Silver Lake Enterprise and submitted the documents regarding KYC verification of shipping bill no. 4612513 and 4612501 both dated 05.10.2024.
- He perused the test report no. ML-3749 and ML-3750 both dated 29.11.2024, received from IREL (India) Limited, and stated that they came to know that the product mentioned in the Shipping bill was not Processed Bentonite powder (CTH-25081090) and was Garnet (CTH-25132030). The containers were factory stuffed under self sealing and he submitted the copy of Self Sealing permission. Further, he stated that they had filled the said shipping bills on the basis of documents provided by the exporter.

- He stated that they are aware that this product, i.e. Garnet under CTH-25132030, is restricted commodity vide notification no. 26/2015-2020 dated 21.08.2024 as per DGFT export policy.
- He further added that they have recently started the operation in Mundra Port and due to geographical distance, they had not noticed the product mentioned by the exporter. They will produce any further information required by customs and will cooperate in further investigation.

From the above, it appeared that the exporter has mis-classified the goods as Processed Bentonite Powder under CTH-25081090, however, as per mineralogical analysis reports received from IREL (India) Ltd, Kerala, the goods have been found as Garnet to be classified under CTH-25132030. The exporter has agreed with the test reports and stated that they had attempted to export Garnet (CTH-25132030) in the guise of Processed Bentonite Powder under CTH-25081090. Further, the exporter has requested for back to town permission for their consignment mentioned in shipping bill nos. 4612513 and 4612501 both dated 05.10.2024.

5. Valuation of the goods

5.1 The exporter had classified the goods as “Processed Bentonite Powder” falling under CTH 25081090. However, after the receipt of test results, the goods were found to be “Garnet” falling under CTH-25132030. Accordingly, it appeared that the goods attempted to be exported by the exporter are appropriately classifiable under the CTH- 25132030 instead of CTH-25081090 declared by the exporter. Based on investigations conducted in the matter, it appeared that the exporter has mis-declared the goods attempted to be exported in terms of classification and value. Therefore, it appeared that the exporter has contravened Section 14 and Section 50 of the Customs Act, 1962 read with Rule 7 of the Customs Valuation (Determination of Value of Export Goods) Rules, 2007 (hereinafter referred to as ‘CV Rules’ for the sake of brevity) in as much as they failed to declare correct classification and value of the goods in the said shipping bills filed by them. Accordingly, the value declared by the exporter appeared to be liable to be rejected in terms of Rule 8 of the CV Rules, *ibid*. Valuation of the goods needs to be done in accordance with provisions of Rule 4 of CV Rules, i.e. valuation of goods of like kind and quality. Export of “Garnet” is restricted and export of the same can only be done through M/s. IREL (India) Ltd. Accordingly, valuation of the goods needs to be done in accordance with the shipping bills filed by M/s. IREL (India) Ltd. M/s. IREL (India) Ltd. had filed a shipping bill on 07.10.2024, wherein, FOB value has been declared as Rs. 19,944/- per MT. Accordingly, the value of the goods attempted to be exported by the exporter comes to Rs. 26,46,868/- (132.715 MT * 19944).

In view of the above discussions, it appeared that the exporter has undervalued the goods and accordingly, the assessable value of the goods is liable to be re-determined as Rs. 26,46,868/- instead of Rs. 10,86,948/- as declared by the exporter in the said shipping bills.

6. RELEVANT LEGAL PROVISIONS:

(A) RELEVANT PROVISIONS OF CUSTOMS ACT, 1962:

6.1 Definitions given in Section 2 of the Customs Act, 1962

(3A) "beneficial owner" means any person on whose behalf the goods are being Exported or exported or who exercises effective control over the goods being Exported or exported;

(33) "prohibited goods" means any goods the Export or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be Exported or exported have been complied with;

(39) "smuggling", in relation to any goods, means any act or omission which will render such goods liable to confiscation under section 111 or section 113 ;

6.2 Relevant portion of Section 50 of the Customs Act, 1962

(2) The exporter of any goods, while presenting a shipping bill or bill of export, shall make and subscribe to a declaration as to the truth of its contents.

(3) The exporter who presents a shipping bill or bill of export under this section shall ensure the following, namely: —

(a) the accuracy and completeness of the information given therein;

(b) the authenticity and validity of any document supporting it; and

(c) compliance with the restriction or prohibition, if any, relating to the goods under this Act or under any other law for the time being in force.

6.3 Section 113. Confiscation of goods attempted to be improperly exported, etc.

(a) ...

(b) ...

(c) ...

(d) any goods attempted to be exported or brought within the limits of any customs area for the purpose of being exported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force;

6.4 Section 114. Penalty for attempt to export goods improperly, etc. -

Any person who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 113 , or abets the doing or omission of such an act, shall be liable, -

(i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty [not exceeding three times the value of the goods as declared by the exporter or the value as determined under this Act]], whichever is the greater;

6.5 Section 114AA. Penalty for use of false and incorrect material. -

If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods.]

6.6 Section 117. Penalties for contravention, etc., not expressly mentioned. -

Any person who contravenes any provision of this Act or abets any such contravention or who fails to comply with any provision of this Act with which it was his duty to comply, where no express penalty is elsewhere provided for such contravention or failure, shall be liable to a penalty not exceeding ¹ [four lakh

rupees].

6.7 SECTION 125: Option to pay fine in lieu of confiscation.

(1) Whenever confiscation of any goods is authorised by this Act, the officer adjudging it may, in the case of any goods, the Exportation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods or, where such owner is not known, the person from whose possession or custody such goods have been seized, an option to pay in lieu of confiscation such fine as the said officer thinks fit:

Provided that where the proceedings are deemed to be concluded under the proviso to sub-section (2) of section 28 or under clause (i) of sub-section (6) of that section in respect of the goods which are not prohibited or restricted, 3 [no such fine shall be imposed]:

Provided further that, without prejudice to the provisions of the proviso to sub-section (2) of section 115, such fine shall not exceed the market price of the goods confiscated, less in the case of Exported goods the duty chargeable thereon.

(2) Where any fine in lieu of confiscation of goods is imposed under sub-section (1), the owner of such goods or the person referred to in sub-section (1), shall, in addition, be liable to any duty and charges payable in respect of such goods.]

(3) Where the fine imposed under sub-section (1) is not paid within a period of one hundred and twenty days from the date of option given thereunder, such option shall become void, unless an appeal against such order is pending.

6.8 Section 3 of the Foreign Trade (Development and Regulation) Act, 1992 Act, 1992

3. Powers to make provisions relating to Exports and exports. –

(1) The Central Government may, by Order published in the Official Gazette, make provision for the development and regulation of foreign trade by facilitating Exports and increasing exports.

(2) The Central Government may also, by Order published in the Official Gazette, make provision for prohibiting, restricting or otherwise regulating, in all cases or in specified classes of cases and subject to such exceptions, if any, as may be made by or under the Order, the Export or export of goods.

(3) All goods to which any Order under sub-section (2) applies shall be deemed to be goods the Export or export of which has been prohibited under section 11 of the Customs Act, 1962 (52 of 1962) and all the provisions of that Act shall have effect accordingly.

6.9 Section 11 of the FTDR Act, 1992:

11. Contravention of provisions of this Act, rules, orders and export and Export policy. –

(1) No export or Export shall be made by any person except in accordance with the provisions of this Act, the rules and orders made thereunder and the export and Export policy for the time being in force.

(2) Where any person makes or abets or attempts to make any export or Export in contravention of any provision of this Act or any rules or orders made thereunder or the export and Export policy, he shall be liable to a penalty not exceeding one thousand rupees or five times the value of the goods in respect of which any contravention is made or attempted to be made, whichever is more.

(3) Where any person signs or uses, or causes to be made, signed or used, any declaration, statement or document submitted to the Director General or any officer authorised by him under this Act, knowing or having reason to believe that such declaration, statement or document is forged or tampered with or false in any material particular, he shall be liable to a penalty of not less than ten thousand rupees or more than five times the value of the goods or services or technology in respect of which such declaration, statement or document had been submitted, whichever is more.

(4)....

(5).....

(6)

(7) ...

(8) Where any contravention of any provision of this Act or any rules or orders made thereunder or the foreign trade policy has been, is being, or is attempted to be, made, the goods (including the goods connected with services or technology) together with any package, covering or receptacle and any conveyances shall, subject to such conditions and requirement as may be prescribed, be liable to confiscation by the Adjudicating Authority.

(9) The goods (including the goods connected with services or technology) or the conveyance confiscated under sub-section (8) may be released by the Adjudicating Authority, in such manner and subject to such conditions as may be prescribed, on payment by the person concerned of the redemption charges equivalent to the market value of the goods or conveyance, as the case may be.

6.10. Rules 11, 14 and 17 of the Foreign Trade (Regulation) Rules, 1993:

11. Declaration as to value and quality of Exported goods. -

On the Exportation into, or exportation out of, any customs ports of any goods, whether liable to duty or not, the owner of such goods shall in the Shipping bills or the Shipping Bill or any other documents prescribed under the Customs Act, 1962 (52 of 1962), state the value, quality and description of such goods to the best of his knowledge and belief and in case of exportation of goods, certify that the quality and specification of the goods as stated in those documents, are in accordance with the terms of the export contract entered into with the buyer or consignee in pursuance of which the goods are being exported and shall subscribe a declaration of the truth of such statement at the foot of such Shipping bills or Shipping Bill or any other documents.

14. Prohibition regarding making, signing of any declaration, statement or documents -

(1) No person shall make, sign or use or cause to be made, signed or used any declaration, statement or document for the purposes of obtaining a licence or Exporting any goods knowing or having reason to believe that such declaration, statement or document is false in any material particular.

(2) No person shall employ any corrupt or fraudulent practice for the purposes of

obtaining any licence or Exporting or exporting any goods.

17. Confiscation and redemption –

(1) Any Exported goods or materials or goods or materials for export or goods or materials connected with Export or export or services or technology, in respect of which--

(a)

(b).....

(c) any condition imposed under the policy with regard to the sale, disposal, Export or export of such goods or materials or goods or materials connected with services or technology;

has been, is being, or is attempted to be contravened, shall together with any package, covering or receptacle in which such goods or goods connected with services or technology are found, be liable to be confiscated be the Adjudicating Authority, and where such goods or materials or goods or materials connected with services or technology are so mixed with any other goods or materials that they cannot be readily separated, such other goods or materials shall also be liable to be so confiscated:

.....

(2)

6.11 Relevant provisions of the Foreign Trade Policy 2023

Para 2.01, Policy regarding Export /Exports of goods

(a) Exports and Exports shall be 'Free' except when regulated by way of 'Prohibition', 'Restriction' or 'Exclusive trading through State Trading Enterprises (STEs)' as laid down in Indian Trade Classification (Harmonized System) [ITC (HS)] of Exports and Exports. The list of 'Prohibited', 'Restricted', and STE items can be viewed under 'Regulatory Updates' at <https://dgft.gov.in>

(b) Further, there are some items which are 'Free' for Export/export, but subject to conditions stipulated in other Acts or in law for the time being in force

Para 2.02(c)

The Export/export policies for all goods are indicated against each item as per its ITC (HS). Schedule 1 of ITC (HS) lays down the Export Policy regime while Schedule II of ITC(HS) lays down the Export Policy regime.

Para 2.21 State Trading Enterprises (STEs)

(a) State Trading Enterprises (STEs) are governmental and non-governmental enterprises, including marketing boards, which deal with goods for export and /or Export. Any good, Export or export of which is governed through exclusive or special privilege granted to State Trading Enterprise (STE), may be Exported or exported by the concerned STE as per conditions specified in ITC (HS).

(b) Such STE(s) shall make any such purchases or sales involving Exports or exports solely in accordance with commercial considerations, including price, quality, availability, marketability, transportation and other conditions of purchase or sale in a non-discriminatory manner and shall afford enterprises of other

countries adequate opportunity, in accordance with customary business practices, to compete for participation in such purchases or sales

(c) DGFT may, however, grant an authorisation to any other entity to Export or export any of the goods notified for exclusive trading through STEs.

6.12 Relevant provisions of Customs Valuation (Determination of Value of Export Goods) Rules, 2007

3. Determination of the method of valuation. - (1) Subject to rule 8, the value of export goods shall be the transaction value. (2) The transaction value shall be accepted even where the buyer and seller are related, provided that the relationship has not influenced the price. (3) If the value cannot be determined under the provisions of sub-rule (1) and sub-rule (2), the value shall be determined by proceeding sequentially through rules 4 to 6.

4. Determination of export value by comparison.- (1) The value of the export goods shall be based on the transaction value of goods of like kind and quality exported at or about the same time to other buyers in the same destination country of Exportation or in its absence another destination country of Exportation adjusted in accordance with the provisions of sub-rule (2). (2) In determining the value of export goods under sub-rule (1), the proper officer shall make such adjustments as appear to him reasonable, taking into consideration the relevant factors, including- (i) difference in the dates of exportation, (ii) difference in commercial levels and quantity levels, (iii) difference in composition, quality and design between the goods to be assessed and the goods with which they are being compared, (iv) difference in domestic freight and insurance charges depending on the place of exportation.

.....

7. Declaration by the exporter.-

The exporter shall furnish a declaration relating to the value of export goods in the manner specified in this behalf.

8. Rejection of declared value.-

(1) When the proper officer has reason to doubt the truth or accuracy of the value declared in relation to any export goods, he may ask the exporter of such goods to furnish further information including documents or other evidence and if, after receiving such further information, or in the absence of a response of such exporter, the proper officer still has reasonable doubt about the truth or accuracy of the value so declared, the transaction value shall be deemed to have not been determined in accordance with sub-rule (1) of rule 3.

2) At the request of an exporter, the proper officer shall intimate the exporter in writing the ground for doubting the truth or accuracy of the value declared in relation to the export goods by such exporter and provide a reasonable opportunity of being heard, before taking a final decision under sub-rule (1).

Explanation. - (1) For the removal of doubts, it is hereby declared that-

(i) This rule by itself does not provide a method for determination of value, it provides a mechanism and procedure for rejection of declared value in cases where there is reasonable doubt that the declared value does not represent the transaction value; where the declared value is rejected, the value shall be determined by proceeding sequentially in accordance with rules 4 to 6.

(ii) The declared value shall be accepted where the proper officer is satisfied about the truth or accuracy of the declared value after the said enquiry in consultation

with the exporter.

(iii) The proper officer shall have the powers to raise doubts on the declared value based on certain reasons which may include -

(a) the significant variation in value at which goods of like kind and quality exported at or about the same time in comparable quantities in a comparable commercial transaction were assessed.

(b) the significantly higher value compared to the market value of goods of like kind and quality at the time of export.

(c) the misdeclaration of goods in parameters such as description, quality, quantity, year of manufacture or production.

7. Confiscation of export goods: -

7.1 Vide Notification No. 47/2015-20 dated 31.01.2018, the Central Government notified the Indian Trade Classification (Harmonized System) of Export Items, 2018 under Section 5 of the FTDR Act, 1992 read with Para 2.01 of the Foreign Trade Policy.

7.2 Later on, vide Order/Notification No. 26/2015-2020 dated 21.08.2018 issued by the Central Government under Section 3 of the FTDR Act, 1992, added entry at Sr. No. 98A in the Schedule 2 of the ITC (HS). In effect, the export of Beach Sand Minerals notified in the said entry No. 98A were brought under STE and they were canalized through M/s. IREL. In the Notification No. 26/2015-2020, it has been specified at Para No. 4 that the Beach Sand Minerals, permitted anywhere in the export policy, would be regulated in terms of the Policy under at Sr. No. 98A of Chapter 26 of Schedule 2 Export Policy. 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, Zircon etc. will be exported by State Trading Enterprises only and the Policy Condition mentions the export will be through Indian Rare Earth Ltd (IREL) only.

7.3 The goods were sent for testing to M/s. IREL and as per their report ML-3749 dated 29.11.2024 and ML-3750 dated 29.11.2024, the goods are found to be garnet and are classifiable under Custom Tariff Item 25132030 specifically. The specific mineral "Garnet" is also mentioned under column "Item description" in DGFT Notification no. 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. Accordingly, the beach sand mineral is to be read only an indicative class of goods/ Generic class of goods. 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.

7.4 In the instant case, the Test Reports received from M/s. IREL (India) Limited, Research Centre, Beach Road, Kollam, Kerala – 690001 clearly show that the subject goods pertaining to the shipping bill nos. 4612513 & 4612501 both dated 05.10.2024 attempted to be exported by the exporter M/s. Silver Lake Enterprise are Garnet. It appeared that even after having knowledge that the goods were Garnet, the exporter had mis-declared and mis-classified their export goods in the shipping bills, they had filed before the Customs officer, with respect to the description of the goods as "Processed Bentonite Powder" and they had declared the classification of the subject goods covered

under the said Shipping Bills under Custom Tariff Item 25081090, whereas there exists specific heading 25132030 for "natural garnet". Hence, the classification of their export goods ought to have been made under Custom Tariff Item 25132030 instead, the exporter had declared classification under CTH 25081090. When specific description is ascertained on the basis of test report, the contention of the exporter to classify the Natural Garnet under 25081090 is totally incorrect, irrelevant, inconsistent and deliberate act of mis-declaration with respect to the description and classification of the export goods, which is in violation of the provisions of Section 50 of the Customs Act, 1962.

7.5 From the facts discussed in foregoing paras, it appeared that by adopting Modus Operandi of mis-declaration of the goods, the exporter attempted to export the subject consignment. They appear to have deliberately mis-declared the goods before Customs Authorities and thereby has contravened the provisions of the Section 50 and 51 of the Customs Act, 1962 as well as Section 11 of the Customs Act, 1962 in light of their contravention of the provisions of Section 11 of the Foreign Trade (Development and Regulation) Act, 1992, Rule 11 and 14 of the Foreign Trade (Regulation) Rules, 1993, Para 2.01, 2.02 and 2.21 of the Foreign Trade Policy, in as much as they had intentionally mis-declared and mis-classified the goods under export with sole aim to circumvent the restrictions imposed against its export in terms of Notification No. 26/2015-20, dtd. 21.08.2018 issued under Section 3 of the FTDR Act, 1992. Therefore, the seized goods as mentioned in above paras appear to be liable to be treated as "Prohibited goods" as defined under Section 2(33) of the Customs Act, 1962 and "Smuggled goods" as defined under Section 2(39) of the Customs Act, 1962. The export goods of M/s. Silver Lake Enterprise seized on 03.12.2024 at Mundra are liable for confiscation under Section 113 (d), 113(h) and 113 (i) of the Customs Act, 1962.

8.1 From the facts and circumstances of the case, it appeared that the exporter was well aware about the actual facts of the case and the exporter had deliberately mis-declared the subject goods with respect to material particulars such as description and classification and attempted to illegally export the same even when they were not having the canalization certificate from M/s. Indian Rare Earth Limited (IREL) as required in terms of Notification No. 26/2015-20 dated 21.08.2020 issued by DFGT. By the act of commission and omission of mis-declaring the subject goods export of which was permitted to be exported by STE and attempting to export illegally the same, M/s. Silver Lake Enterprise have rendered the subject goods covered under shipping bill nos. 4612513 & 4612501 both dated 05.10.2024 liable for confiscation under Section 113 (d), 113(h) and 113(i) of Customs Act, 1962. Therefore, M/s. Silver Lake Enterprise have rendered themselves liable for penalty under Section 114 (i) of the Customs Act, 1962.

8.2 It appeared that the exporter has knowingly submitted false and incorrect declaration in the invoice and shipping bill nos. 4612513 & 4612501 both dated 05.10.2024 submitted before Customs authorities. The exporter has thereby rendered themselves liable for penalty under Section 114 AA of the Customs Act, 1962.

8.3 From the facts discussed above, it emerges that Shri Sadikhusen Mohmadhusen Pathani, Proprietor of M/s. Silver Lake Enterprise had failed to fulfill his responsibility under section 50 of the Customs Act, 1962 regarding verification, truth and accuracy in declaration filed on his name. Accordingly, he has rendered himself liable for penalty under Section 117 of the Customs Act, 1962.

9. Accordingly, an investigation report dated 18.12.2024, was issued proposing the following: -

- a. The CTH and assessable value of the goods are liable to be re-determined to CTH-25132030 and Rs. 26,46,868/- respectively and the said shipping bill nos. 4612513 & 4612501 both dated 05.10.2024 are liable to be re-assessed accordingly under Section 17 of the Customs Act, 1962.
- b. The goods attempted to be exported, i.e. 132.715 MTs of Garnet, are liable for confiscation in accordance with the provisions of Section 113(d), Section 113(h) and Section 113(i) of the Customs Act, 1962;
- c. The exporter M/s Silver Lake Enterprise (IEC FWFPP0071J) liable to penalty Section 114(i) and Section 114AA of the Customs Act, 1962;
- d. Shri Sadikhusen Mohmadhusen Pathani, Proprietor of M/s. Silver Lake Enterprise, is liable to penalty under Section 117 of the Customs Act, 1962.

10. In the investigation report, it has been mentioned that the exporter vide letter dated 17.12.2024 requested to waive issuance of any show cause notice and personal hearing in respect of shipping bill nos. 4612513 & 4612501 both dated 05.10.2024; that they are prepared to pay any applicable duty, interest, fines or penalties and requested for permission to return the goods to the town; that they will not file any appeal or application for a refund claim concerning these issues.

11. Discussion and Finding: -

11.1 Before proceeding to decide the case, I find it pertinent to mention that the exporter, exporter vide letter dated 17.12.2024 requested to waive issuance of any show cause notice and personal hearing in respect of shipping bill nos. 4612513 & 4612501 both dated 05.10.2024; that they are prepared to pay any applicable duty, interest, fines or penalties and requested for permission to return the goods to the town; that they will not file any appeal or application for a refund claim concerning these issues. Thus, I find that in the present case principle of natural justice as provided in Section 122A of the Customs Act, 1962 have been complied with and therefore, I now proceed to decide the case on the basis of documentary evidences available on record.

11.2 I find that Based on the intelligence, the consignments pertaining to Shipping Bills No. 4612513 and 4612501 both dated 05.10.2024 were put on hold for examination. The said consignment pertaining to Shipping Bill No. 4612513 dated 05.10.2024 was placed in CWC CFS, Mundra and the consignment pertaining to Shipping Bill No. 4612501 dated 05.10.2024 was placed in PSA Ameya (Honeycomb) CFS, Mundra.

11.3 I find that the examination of shipping bill no. 4612513 dated 05.10.2024 was carried out in CWC CFS, Mundra under Panchanama dated 19.10.2024. During the examination, it was found that the goods/cargo covered under shipping bill no. 4612513 dated 05.10.2024 were stuffed in 03 Containers bearing no. TRHU3748280, TIIU2373142 and CSLU1770800 which were sealed with seal no. as detailed hereunder:

Container No.	RFID Seal No.	Line seal no.
TIIU2373142	KLIK20683141	25001938
TRHU3748280	KLIK20683142	25001937
CSLU1770800	KLIK20683143	25001936

During the examination, it was found that the goods were packed in jumbo bags. The jumbo bags were de-stuffed and on opening of jumbo bags, it was found that the goods were of reddish color and it appeared to be Garnet. However, on quantification, the total no. of 81 jumbo bags were found which did not match with the quantity declared by the

exporter i.e. 84.

Further, as per weighment slip, the weight of the cargo/goods was found to be 79,315 Kgs, as detailed below:

TABLE –B

Container Number	Net Weight as per weighment slip (in Kgs)
TIHU2373142	25360
TRHU3748280	26920
CSLU1770800	27035
Total	79315

Further, to check the characteristic and types of cargo/goods, the representative samples were drawn for further lab-testing and the same were sent to IREL (India) Limited, Kerala vide test memo no. 179/24.10.2024.

11.4 I find that the examination of shipping bill no. 4612501 dated 05.10.2024 was carried out in PSA Ameya (Honeycomb) CFS, Mundra under Panchanama dated 19.10.2024. During the examination, it was found that the goods were stuffed in 02 containers bearing no. TEMU1128326 and CMAU0768760 which were sealed with seal no. as detailed hereunder:

Container No.	RFID Seal No.	Line seal no.
TEMU1128326	KLIK20683144	R6129763
CMAU0768760	KLIK20683145	R6129706

The same were checked with the export documents i.e. Let Export Copy of Shipping bill, and was found to be in order. During the examination, it was found that the goods were packed in jumbo bags. The jumbo bags were de-stuffed and on opening of jumbo bags, it was found that the goods were of reddish color and it appeared to be Garnet. On quantification, the total no. of jumbo bags i.e. 56 were found as declared by the exporter.

Further, as per weighment slip, the weight of the cargo/goods was found 53,400 Kgs, as detailed below:

TABLE –C

Container Number	Net Weight as per weighment slip (in Kgs)
TEMU1128326	26280
CMAU0768760	27120
Total	53400

Further, to check the characteristic and types of cargo/goods, the representative samples were drawn for further lab-testing and the same were sent to IREL (India) Limited, Kerala vide test memo no. 178/24.10.2024.

11.5 I find that the IREL, Kerala had sent the test reports vide letter dated 29.11.2024 along with the Mineralogical analysis report no. ML-3749 dated 29.11.2024 and Mineralogical analysis report no. ML-3750 dated 29.11.2024, wherein they have stated that “as per Mineralogical analysis report, the major mineral in the sample is Garnet”.

As per Mineralogical analysis report no. ML-3749 dated 29.11.2024, there is 97.2% Garnet by weight in the sample drawn from goods pertaining to shipping bill no. 4612501 dated 05.10.2024. The relevant portion of the report is reproduced hereunder:

<i>“Minerals</i>	<i>Weight%</i>
<i>Garnet</i>	<i>97.2</i>
<i>Other Heavy Minerals</i>	<i>2.6</i>
<i>Quartz</i>	<i>0.1</i>
<i>Shells</i>	<i>0.1</i>
<i>Total:</i>	<i>100.00”</i>

As per Mineralogical analysis report no. ML-3750 dated 29.11.2024, there is 91.1% Garnet by weight in the sample drawn from goods pertaining to shipping bill no. 4612513 dated 05.10.2024. The relevant portion of the report is reproduced hereunder:

<i>“Minerals</i>	<i>Weight%</i>
<i>Ilmenite</i>	<i>0.5</i>
<i>Garnet</i>	<i>91.1</i>
<i>Other Heavy Minerals</i>	<i>7.7</i>
<i>Quartz</i>	<i>0.7</i>
<i>Total:</i>	<i>100.00”</i>

11.6 I find that from the above mineralogical analysis reports received from IREL (India) Ltd, Kerala, the goods were found to be natural garnet. Therefore, the goods pertaining to Shipping bill no. 4612513 dated 05.10.2024 were placed under seizure vide seizure memo (DIN-20241271MO0000510518) dated 03.12.2024 and the same were handed over for safe custody to representative of CWC CFS, Mundra, vide Supratnama dated 03.12.2024.

Further, the goods pertaining to Shipping bill no. 4612501 dated 05.10.2024 were placed under seizure vide seizure memo (DIN-20241271MO0000217909) dated 03.12.2024 and the same were handed over for safe custody to representative of PSA Ameya (Honeycomb) CFS, Mundra, vide Supratnama dated 03.12.2024.

11.7 I find that vide Notification No. 47/2015-20 dated 31.01.2018, the Central Government notified the Indian Trade Classification (Harmonized System) of Export Items, 2018 under Section 5 of the FTDR Act, 1992 read with Para 2.01 of the Foreign Trade Policy.

11.8 I find that later on, vide Order/Notification No. 26/2015-2020 dated 21.08.2018 issued by the Central Government under Section 3 of the FTDR Act, 1992, added entry at Sr. No. 98A in the Schedule 2 of the ITC (HS). In effect, the export of Beach Sand Minerals notified in the said entry No. 98A were brought under STE and they were canalized through M/s. IREL. In the Notification No. 26/2015-2020, it has been specified at Para No. 4 that the Beach Sand Minerals, permitted anywhere in the export policy, would be regulated in terms of the Policy under at Sr. No. 98A of Chapter 26 of Schedule 2 Export Policy. 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, Zircon etc. will be exported by State Trading Enterprises only and the Policy Condition mentions the export will be through Indian Rare Earth Ltd (IREL) only.

11.9 I find that the goods were sent for testing to M/s. IREL and as per their report ML-3749 dated 29.11.2024 and ML-3750 dated 29.11.2024, the goods are found to be garnet and are classifiable under Custom Tariff Item 25132030 specifically. The specific mineral

"Garnet" is also mentioned under column "Item description" in DGFT Notification no. 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. Accordingly, the beach sand mineral is to be read only an indicative class of goods/ Generic class of goods. 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.

11.10 I find that in the instant case, the Test Reports received from M/s. IREL (India) Limited, Research Centre, Beach Road, Kollam, Kerala – 690001 clearly show that the subject goods pertaining to the shipping bill nos. 4612513 & 4612501 both dated 05.10.2024 attempted to be exported by the exporter M/s. Silver Lake Enterprise are Garnet. I find that even after having knowledge that the goods were Garnet, the exporter had mis-declared and mis-classified their export goods in the shipping bills, they had filed before the Customs officer, with respect to the description of the goods as "Processed Bentonite Powder" and they had declared the classification of the subject goods covered under the said Shipping Bills under Custom Tariff Item 25081090, whereas there exists specific heading 25132030 for "natural garnet". Hence, the classification of their export goods ought to have been made under Custom Tariff Item 25132030 instead, the exporter had declared classification under CTH 25081090. When specific description is ascertained on the basis of test report, the contention of the exporter to classify the Natural Garnet under 25081090 is totally incorrect, irrelevant, inconsistent and deliberate act of mis-declaration with respect to the description and classification of the export goods, which is in violation of the provisions of Section 50 of the Customs Act, 1962.

11.11 I find that by adopting Modus Operandi of mis-declaration of the goods, the exporter attempted to export the subject consignment. They have deliberately mis-declared the goods before Customs Authorities and thereby have contravened the provisions of the Section 50 and 51 of the Customs Act, 1962 as well as Section 11 of the Customs Act, 1962 in light of their contravention of the provisions of Section 11 of the Foreign Trade (Development and Regulation) Act, 1992, Rule 11 and 14 of the Foreign Trade (Regulation) Rules, 1993, Para 2.01, 2.02 and 2.21 of the Foreign Trade Policy, in as much as they had intentionally mis-declared and mis-classified the goods under export with sole aim to circumvent the restrictions imposed against its export in terms of Notification No. 26/2015-20, dtd. 21.08.2018 issued under Section 3 of the FTDR Act, 1992. Therefore, the seized goods as mentioned in above paras are liable to be treated as "Prohibited goods" as defined under Section 2(33) of the Customs Act, 1962 and "Smuggled goods" as defined under Section 2(39) of the Customs Act, 1962. The export goods of M/s. Silver Lake Enterprise seized on 03.12.2024 at Mundra are liable for confiscation under Section 113 (d), 113(h) and 113 (i) of the Customs Act, 1962.

11.12 I find that from the facts and circumstances of the case, the exporter was well aware about the actual facts of the case and the exporter had deliberately mis-declared the subject goods with respect to material particulars such as description and classification and attempted to illegally export the same even when they were not having the canalization certificate from M/s. Indian Rare Earth Limited (IREL) as required in terms of Notification No. 26/2015-20 dated 21.08.2020 issued by DGFT. By the act of commission and omission of mis-declaring the subject goods export of which was permitted to be exported by STE and attempting to export illegally the same, M/s. Silver Lake Enterprise have

rendered the subject goods covered under shipping bill nos. 4612513 & 4612501 both dated 05.10.2024 liable for confiscation under Section 113 (d), 113(h) and 113(i) of Customs Act, 1962. Therefore, M/s. Silver Lake Enterprise have rendered themselves liable for penalty under Section 114 (i) of the Customs Act, 1962.

11.13 As regard the Penalty under section 114AA of Customs Act, 1962 on Exporter, M/s Silver Lake Enterprise is concerned, ongoing through the facts of the case, I find that the exporter has knowingly submitted false and incorrect declaration in the invoice and shipping bill nos. 4612513 & 4612501 both dated 05.10.2024 submitted before Customs authorities. The exporter has thereby rendered themselves liable for penalty under Section 114 AA of the Customs Act, 1962.

11.14 As regard the penalty under Section 117 of the Customs Act, 1962 on the Proprietor of M/s Silver Lake Enterprises, from the facts discussed above, it emerges that Shri Sadikhusen Mohmadhusen Pathani, Proprietor of M/s. Silver Lake Enterprise had failed to fulfill his responsibility under section 50 of the Customs Act, 1962 regarding verification, truth and accuracy in declaration filed on his name. Accordingly, he has rendered himself liable for penalty under Section 117 of the Customs Act, 1962.

12 In view of the forgoing discussions and findings, I pass the following order:

ORDER

- i. I hereby order to reject the declared description, classification, FOB value and quantity of the goods to be exported vide shipping bill nos. 4612513 & 4612501 both dated 05.10.2024 and the same are to be re-determined, description as "Natural Garnet", classification as 25132030, total FOB value as Rs. 26,46,868/- and total quantity as 132.715 MTs;
- ii. I hereby order to confiscate the goods viz "Natural Garnet" having quantity of Wt. 132.715 MTs and having re-assessed FOB Value of the goods as Rs. 26,46,868/- (Rupees Twenty-Six Lakh Forty-Six Thousand Eight Hundred Sixty-Eight only) vide Shipping Bill nos. 4612513 & 4612501 both dated 05.10.2024, export of which is restricted and attempted to export improperly & illegally, the exporter have rendered the subject goods liable for confiscation under Section 113(d), 113(h) & 113(i) of the Customs Act, 1962. However, I give the option to the exporter to redeem the same for Back to Town against payment of a Redemption Fine of Rs 5,00,000/- (Rupees Five Lakhs only) under section 125 of the Customs Acts,1962.
- iii. I impose penalty of Rs. 2,50,000/- (Rupees Two Lakhs Fifty Thousand Only) on the exporter, viz., M/s. Silver Lake Enterprise, holding IEC No. FWFPP0071J under Section 114(i) of the Customs Act, 1962.
- iv. I impose penalty of Rs 3,00,000/- (Rupees Three Lakhs only) on the exporter, viz., M/s. Silver Lake Enterprise, holding IEC No. FWFPP0071J under Section 114AA of the Customs Act, 1962.
- v. I impose penalty of Rs 1,00,000/- (Rupees One Lakh only) on Shri Sadikhusen Mohmadhusen Pathani, Proprietor of M/s. Silver Lake Enterprise, holding IEC No. FWFPP0071J under Section 117 of the Customs Act, 1962 for the contravention as mentioned in para 11.14 above.

13. This order is issued without prejudice to any other action that may be contemplated against the exporter or any other person(s) under the provisions of the Customs Act, 1962

and rules/regulations framed thereunder or any other law for the time being in force in the Republic of India.

MUKESH KUMARI
ADDITIONAL COMMISSIONER
ADC/JC-I-O/o Pr Commissioner-Customs-Mundra

F.No. CUS/ASS/MISC/302/2025-EA

Date : 29-03-2025

BY SPEED POST

To,
M/s. Silver Lake Enterprise,
2/4/82/3, Motira Vas, Kanodar,
Palanpur, Gujarat

Copy to:-

- (1) The Deputy Commissioner (TRC)/RRA/EDI.
- (2) Guard File.