

	OFFICE OF THE COMMISSIONER CUSTOM HOUSE, KANDLA NEAR BALAJI TEMPLE, NEW KANDLA Phone : 02836-271468/469 Fax: 02836-271467	
DIN- 20240671ML0000016534		
A	File No.	GEN/ADJ/ADC/1122/2024-Adjn-O/o Commr-Cus-Kandla
B	Order-in-Original No.	KDL/ADC/DPB/07/2024-25
C	Passed by	Dev Prakash Bamanavat Additional Commissioner of Customs, Custom House, Kandla.
D	Date of Order	24.06.2024
E	Date of Issue	24.06.2024
F	SCN NO. & Date	Waiver of Show Cause notice
G	Noticee / Party / Importer / Exporter	M/s Goods and Commodities Trading registered at Plot No. 445A, Sector-II, KASEZ, Gandhidham, Gujarat

1. यह मूल आदेश संबंधित को निःशुल्क प्रदान किया जाता है।

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

2. यदि कोई व्यक्ति इस मूल आदेश से असंतुष्ट है तो वह सीमाशुल्क अपील नियमावली 1982 के नियम 3 के साथ पठित सीमाशुल्क अधिनियम 1962 की धारा 128A 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:

“सीमाशुल्कआयुक्त) अपील(,
7वीं मंजिल,मृदुलटावर,टाइम्सऑफ इंडिया के पीछे,आश्रम रोड़,अहमदाबाद380 009”
“THE COMMISSIONER OF CUSTOMS (APPEALS),
Having his office at 7th Floor, Mridul Tower, Behind Times of India,
Ashram Road, Ahmedabad-380009.”

3. उक्त अपील यह आदेश भेजने की दिनांक से60 दिन के भीतर दाखिल की जानी चाहिए।

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

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

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

- (i) उक्त अपील की एक प्रति और

A copy of the appeal, and

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

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

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

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

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

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

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

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

BRIEF FACTS OF THE CASE:-

M/s Goods and Commodities Trading registered at Plot No. 445A, Sector-II, KASEZ, Gandhidham, Gujarat (hereinafter referred to as “the exporter”) filed the following 6 Shipping Bills at Kandla SEZ for the export of “*other natural abrasive*” under CTH 25132090:

Sr. No.	Shipping Bill No. and date	Container No.	FOB Value	Commodity declared
1	4008028 dated 02-05-2024	TGHU2738773	584219	Other natural abrasive CTH: 25132090
2	4008030 dated 02-05-2024	CAXU2820569	584219	
3	4008031 dated 02-05-2024	BSIU2117518	584219	
4	4008032 dated 02-05-2024	TTNU3405490	584219	
5	4008079 dated 03-05-2024	CAXU2932738	584219	
6	4008080 dated 03-05-2024	TTNU2113534	584219	
	Total		35,05,314/-	

2. The containers were put on hold for the purpose of examination by SIIB, Mundra on the suspicion that the cargo was restricted/prohibited. During the course of examination, officers from SIIB, Mundra drew samples and forwarded them to CRCL, Kandla for the purpose of testing/chemical analysis. In the meanwhile, the matter was transferred to SIIB, Kandla vide letter bearing F. No. S/15-29/G&C/SIIB-C/CHM/2024-25 dated 21-05-2024 by the Deputy Commissioner (SIIB), Custom House, Mundra for further investigation.
3. In this regard, CRCL Kandla vide test reports dated 24-05-2024 (**RUD-1**) reported as follows:-

Sr. No.	Shipping Bill No. and Test Memo no./Date	Lab No.	Test Report
1	4008030 4008028 both dated 02.05.2024 and 4008079 dated 03-05-2024. (TM no.- 14/17.05.2024)	1675-SIIB/24-05-2024	<i>Nature:</i> <i>The sample as received is in the form of reddish brown gritty coarse powder.</i> <i>Composition: It is mainly composed of silicates of aluminum & Iron together other oxides.</i> <i>Specific Gravity= 4.18</i> <i>Aluminium (as Al2O3, , % by wt) = 8.59</i> <i>Iron (as Fe2O3, % by wt.)= 27.27</i> <i>Silica (as SiO2, % by Wt.) = 38.48</i> <i>Loss on Ignition (% by Wt.) = 0.75</i>

			<p><i>Notes/Comments:</i></p> <p><i>For exact identification, due to lack of testing facility (Crystallography study) whether it is Natural or otherwise could not be ascertained.</i></p> <p><i>If, necessary the sample may be forwarded to CRCL, New Delhi or other Govt. Laboratory for the same.</i></p>
2	4008031 4008032 both dated 02.05.2024 and 4008080 dated 03-05-2024. (TM no.- 15/17.05.2024)	1676- SIIB/24-05- 2024	<p><i>Nature:</i></p> <p><i>The sample as received is in the form of reddish brown gritty coarse powder</i></p> <p><i>Composition: It is mainly composed of silicates of aluminum & iron together other oxides.</i></p> <p><i>Specific Gravity= 4.22</i></p> <p><i>Aluminium (as Al2O3, , % by wt) = 7.55</i></p> <p><i>Iron (as Fe2O3, % by wt.)= 25.97</i></p> <p><i>Silica (as SiO2, % by Wt.) = 34.49</i></p> <p><i>Loss on Ignition (% by Wt.) = 0.68</i></p> <p><i>Notes/Comments:</i></p> <p><i>For exact identification, due to lack of testing facility (Crystallography study) whether it is Natural or otherwise could not be ascertained.</i></p> <p><i>If, necessary the sample may be forwarded to CRCL, New Delhi or other Govt. Laboratory for the same.</i></p>

4. As discussed above, the consignment of aforesaid shipping bills was put on hold for the purpose of examination on suspicion of goods being restricted/prohibited items. However, on perusal of the test reports it appears that the test reports are inconclusive in nature. CRCL, Kandla further intimated that the exact identification could not be conducted for the want of testing facility (Crystallography study).
5. In this regard, the Custom Tariff for chapter heading CTH 2513 is reproduced hereunder:-

<i>Sr. No.</i>	<i>CTH</i>	<i>DESCRIPTION</i>
	2513	PUMICE STONES; EMERY; NATURAL CORUNDUM, NATURAL GARNET AND OTHER NATURAL ABRASIVES, WHETHER

		OR NOT HEAT-TREATED
1	2513 1020	Pumice stone
2	2513 20	Emery, natural corundum, natural garnet and other natural abrasives:
3	2513 2010	Emery
4	2513 2020	Natural corundum
5	2513 2030	Natural garnet
6	2513 2090	Other

6. In this regard, DGFT notification no. 26/2015-20 dated 21.08.2018 regarding export policy of beach sand minerals (BSM) in is reproduced as under:-

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

“NOTE:

1. Export of Rare Earth compounds classified as Beach Sand Minerals (BSM) , namely [Ilmenite, Rutile, Leucoxene(Titanium bearing mineral), Zircon, Garnet, Sillimanite and Monazite (Uranium and Thorium)], shall be regulated in terms of 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 & Import Items 2018 as follows:

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

7. In light of the above notification, the items mentioned therein have an export policy of “STE (State Trading Enterprise)” and the prescribed policy condition reads “Export through Indian Rare Earths Limited (IREL)”.As the test reports are inconclusive, the possibility of goods covered under aforesaid 6 shipping bills being restricted could not be ruled out.

8. However, in the meanwhile, the exporter vide his letter dated 14.06.2024 intimated that their export order could not be executed in time due to which their export order has been cancelled and requested permission for back to town of the 06 containers pertaining to Shipping bills no.

4008028, 4008030, 4008031, 4008032 all dated 02.05.2024 and 4008079 & 4008080 both dated 03-05-2024.

9. In response to above request, the fact that the test reports were inconclusive and the samples may need to be re-tested for the purpose of exact identification was intimated to the exporter vide this office’s letter dated 19-06-2024 (DIN NO.: 20240671ML00005075DE). Further, it was intimated to the exporter vide the aforesaid letter that in case, the goods are found to be restricted/prohibited, the goods will be liable for confiscation and the matter will be adjudicated by the competent authority. In response to this, the exporter vide heir letter dated 20-06-2024 has requested to spot adjudicate the matter and waived their right to Show Cause Notice and agreed to pay the applicable fine/penalty if any.
10. As discussed above, the possibility of goods being restricted in light of Notification No. 26/2015-20 dated 21.08.2018 could not be ruled out on account of in-conclusiveness of the test reports. Further, if goods found to be restricted, goods are liable to confiscation under the provisions of Section 113(d) of the Customs Act, 1962 and penal action under Section 114(i) of the Customs Act, 1962 after adjudication by the competent authority.
11. Further, in a case a re-test had established that the goods were restricted in nature, the goods would not have been allowed to be exported and the same would be allowed back to town after adjudication, on imposition of appropriate Redemption fine/penalties as applicable.
12. However, in the instant case, the exporter himself has requested that the goods covered under said Shipping Bills may be granted back to town by adjudicating the matter and expressed their consent to pay the applicable fine/penalty, if any.
13. In view of the above facts, the investigation report proposed that the case may be adjudicated considering the impugned goods as restricted.

14. **Waiver of SCN and personal hearing:-**

The exporter has requested for waiver of SCN in the instant matter. In the instant matter, the issue pertains to Section 124 of the Customs Act. As per first proviso to Section 124 of the Customs Act, 1962 the show cause notice and personal hearing may be considered oral at the request of the person concerned. Therefore, in light of the said provision, the exporter is allowed waiver of Show cause notice and personal hearing.

DISCUSSION AND FINDINGS:-

15. I find that the exporter filed the following 6 Shipping Bills at Kandla SEZ for the export of “*other natural abrasive*” under CTH 25132090:

Sr. No.	Shipping Bill No. and date	Container No.	FOB Value	Commodity declared
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1	4008028 dated 02-05-2024	TGHU2738773	584219	Other natural abrasive CTH: 25132090
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3	4008031 dated 02-05-2024	BSIU2117518	584219	
4	4008032 dated 02-05-2024	TTNU3405490	584219	
5	4008079 dated 03-05-2024	CAXU2932738	584219	
6	4008080 dated 03-05-2024	TTNU2113534	584219	
	Total		35,05,314/-	

16. I further find that the test reports, conducted at CRCL, Kandla, vide its test report gave its findings as:-

Sr. No.	Shipping Bill No. and Test Memo no./Date	Lab No.	Test Report
1	4008030 4008028 both dated 02.05.2024 and 4008079 dated 03-05-2024. (TM no.- 14/17.05.2024)	1675-SIIB/24-05-2024	<i>Nature:</i> <i>The sample as received is in the form of reddish brown gritty coarse powder.</i> <i>Composition: It is mainly composed of silicates of aluminum & Iron together other oxides.</i> <i>Specific Gravity= 4.18</i> <i>Aluminium (as Al2O3, , % by wt) = 8.59</i> <i>Iron (as Fe2O3, % by wt.)= 27.27</i> <i>Silica (as SiO2, % by Wt.) = 38.48</i> <i>Loss on Ignition (% by Wt.) = 0.75</i> <i>Notes/Comments:</i> <i>For exact identification, due to lack of testing facility (Crystallography study) whether it is Natural or otherwise could not be ascertained.</i> <i>If, necessary the sample may be forwarded to CRCL, New Delhi or other Govt. Laboratory for the same.</i>
2	4008031 4008032 both dated 02.05.2024 and 4008080 dated 03-05-2024. (TM no.- 15/17.05.2024)	1676-SIIB/24-05-2024	<i>Nature:</i> <i>The sample as received is in the form of reddish brown gritty coarse powder</i> <i>Composition: It is mainly composed of silicates of aluminum & iron together other oxides.</i> <i>Specific Gravity= 4.22</i> <i>Aluminium (as Al2O3, , % by wt) = 7.55</i> <i>Iron (as Fe2O3, % by wt.)= 25.97</i>

			<i>Silica (as SiO2, % by Wt.) = 34.49</i> <i>Loss on Ignition (% by Wt.) = 0.68</i> <i>Notes/Comments:</i> <i>For exact identification, due to lack of testing facility (Crystallography study) whether it is Natural or otherwise could not be ascertained.</i> <i>If, necessary the sample may be forwarded to CRCL, New Delhi or other Govt. Laboratory for the same.</i>
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17. It is clear from the test reports that the subject goods were abrasive in nature and clearly the “identification in respect of its constituents” were provided by the CRCL, kandla as given below:-

Composition: It is mainly composed of silicates of aluminum & iron together other oxides.

Specific Gravity= 4.22

Aluminium (as Al2O3, , % by wt) = 7.55

Iron (as Fe2O3, % by wt.)= 25.97

Silica (as SiO2, % by Wt.) = 34.49

Loss on Ignition (% by Wt.) = 0.68

18. I find that the Investigation report has referred to the DGFT Notification No. no. 26/2015-20 dated 21.08.2018 regarding export policy of beach sand minerals (BSM) in order to propose that the subject goods were allowed to be exported only through the State enterprises. The relevant extract of the Notification is reproduced as under:-

2. The existing entries in the 'Note' of Chapter 26 of Schedule 2 of ITC(HS) Classification of Export and Import Items 2018 are substituted as under :						
"NOTE:						
1. Export of Rare Earth compounds classified as Beach Sand Minerals (BSM) , namely [Ilmenite, Rutile, Leucoxene(Titanium bearing mineral), Zircon, Garnet, Sillimanite and Monazite (Uranium and Thorium)], shall be regulated in terms of 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 & Import Items 2018 as follows:						
S.No.	Tariff Item	HS Code	Unit	Item Description	Export Policy	Policy Condition
98A		2508 5031	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)
		2508 5032				
		2508 5039				
		2612 1000				
		2612 2000				
		2614 0010				
		2614 0020				
		2614 0031				
		2614 0039				
		2614 0090				
		2615 1000				
		2513 2030				

19. On going through the above notification, I find that the items mentioned in the above notification matches with the description of the goods attempted to be improperly exported

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by the exporter as the beach sand minerals like Garnet have similar properties and constituents as the impugned goods.

20. I find that the noticee has also not challenged the department's view that the goods are restricted in nature.

21. I find that the exporter has agreed to attempt to export restricted goods and is ready to pay the redemption fine and penalty and requested for Back to town permission of the cargo.

22. In view of the above, I hereby pass the following order:-

- (i) I order to confiscate the goods valued at Rs. 35,05,314/- under Section 113(d) of the Customs Act, 1962. However, I give them an option to redeem the goods on payment of redemption fine of Rs. 3,50,000/- (Rupees Three lakhs fifty thousands) under Section 125 of the Customs Act, 1962.
- (ii) I impose penalty of Rs. 1,00,000/- (Rupees One lakh) under Section 114(i) of the Customs Act, 1962.
- (iii) I allow Back to Town of cargo attempted to be exported vide six Shipping Bills mentioned in Para 15 above subject to the payment of redemption fine and penalty imposed above.

23. This order is issued without prejudice to any other action that may be taken against the exporter or any other person under the Customs Act, 1962 or any other law for the time being in force.

(Dev Prakash Bamanavat)
Additional Commissioner

F.No. GEN/ADJ/ADC/1122/2024-Adjn-O/o Commr-Cus-Kandla

DIN- 20240671ML0000016534

To,

M/s Goods and Commodities Trading

Plot No. 445A, Sector-II, KASEZ, Gandhidham,

Gujarat

Copy to:-

1. The Deputy / Assistant Commissioner (Export)/Review/EDI/TRC/SIIB, Customs House, Kandla for necessary action.
2. The Deputy Commissioner, Customs, KASEZ, Gandhidham.
3. Guard File.