

	<b>OFFICE OF THE COMMISSIONER</b> <b>CUSTOM HOUSE, KANDLA</b> <b>NEAR BALAJI TEMPLE, NEW KANDLA</b> <b>Phone : 02836-271468/469 Fax: 02836-271467</b>	
<b>DIN- 20240871ML000000C1EF</b>		
A	File No.	GEN/ADJ/ADC/1420/2024-Adjn-O/o Commr-Cus-Kandla
B	Order-in-Original No.	KDL/ADC/DPB/18/2024-25
C	Passed by	Dev Prakash Bamanavat Additional Commissioner of Customs, Custom House, Kandla.
D	Date of Order	08.08.2024
E	Date of Issue	08.08.2024
F	SCN NO. & Date	Waiver of Show cause notice
G	Noticee / Party / Importer / Exporter	<p>1. M/s Maa ChemfoodPvt. Ltd (IEC: 1312017988) situated at Satyam, Opp. Hotel Haveli, Bhilwara-311001.</p> <p>2. Shri Santosh Aggarwal.</p> <p>3. M/s Madhav Workland, Custom House Agent.</p> <p>4. Shri Sapan Khemchandani M/s Madhav Workland, Custom House Agent.</p>

यह मूल आदेश संबन्धित को निःशुल्क प्रदान किया जाता है।

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

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),

7 वीं मंजिल, मृदुलटावर, टाइम्स ऑफ इंडिया के पीछे, आश्रम रोड, अहमदाबाद 380 009”

“THE COMMISSIONER OF CUSTOMS (APPEALS),

Having his office at 7<sup>th</sup> Floor, Mridul Tower, Behind Times of India,  
Ashram Road, Ahmedabad-380009.”

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 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 जापन के साथ ड्रूटी/ 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 शुल्कया 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**

1. Intelligence gathered by the Officer of Special Intelligence Investigation Branch (SIIB) of Custom House Kandla indicated that Natural Garnet, which is a restricted item for export, was being exported by some exporter in illegal manner by way of mis-declaring the same as Industrial Salt (RITC Code 25010010). Acting upon the intelligence, inquiries were initiated by the SIIB, which revealed that under shipping bill No. 9638683 dated 04.05.2024, Shipping Bill No. 9583225 dated 03.05.2024 and Shipping Bill No. 9638105 dated 04.05.2024 was filed by M/s Maa Chemfood Pvt. Ltd (IEC: 1312017988) situated at Satyam, Opp. Hotel Haveli, Bhilwara-311001(hereinafter referred to as Maa Chemfood Pvt. Ltd) through the Customs Broker M/s.Madhav Workland. Acting upon the intelligence, the Shipping Bill were scrutinized on EDI system and it was found that the shipping bill No. 9638683 dated 04.05.2024, Shipping Bill No. 9583225 dated 03.05.2024 and Shipping Bill No. 9638105 dated 04.05.2024 were submitted on 03.05.2024 (Shipping Bill No. 9583225) & 04.05.2024 (Shipping Bill No. 9638105 & 9638683) and was examined on 06.05.2024 and subsequently LEO was granted on

06.05.2024. Further, the consignment in the said shipping bill was having permission of Self Sealing from the competent authority.

2. The details of the consignment covered vide under shipping bill No. 9638683 dated 04.05.2024, Shipping Bill No. 9583225 dated 03.05.2024 and Shipping Bill No. 9638105 dated 04.05.2024 filed by M/s Maa Chemfood Pvt. Ltd is as follows;

TABLE-A

<b>Sr.No.</b>	<b>Shipping Bill No and Date</b>	<b>Container No.</b>
<b>1</b>	<b>9638683 dated 04.05.2024</b>	<b>HDMU2538569</b>
<b>2</b>		<b>APZU3515945</b>
<b>3</b>		<b>ARXU8072105</b>
<b>4</b>	<b>9638105 dated 04.05.2024</b>	<b>HLXU3101613</b>
<b>5</b>		<b>FCIU3293160</b>
<b>6</b>		<b>GATU0386870</b>
<b>7</b>		<b>TDTU7831670</b>
<b>8</b>		<b>YMLU3321883</b>
<b>9</b>		<b>TGHU0182598</b>
<b>10</b>	<b>9583225 dated 03.05.2024</b>	<b>CRSU1204659</b>
<b>11</b>		<b>CLHU3379380</b>
<b>12</b>		<b>WWWU2613291</b>

Further, the location of the cargo was traced and it was found that the said 12 containerized cargo, under shipping bill No. 9638683 dated 04.05.2024, Shipping Bill No. 9583225 dated 03.05.2024 and Shipping Bill No. 9638105 dated 04.05.2024, have been port in and are currently stacked in Kandla International Container terminal. Accordingly, letter F.No. CUS/SIIB/HOC/59/2024 dated 10.05.2024 was issued to the Deputy / Assistant Commissioner (DE), under intimation to the Kandla International Container Terminal, for holding the cargo against shipping bill No. 9638683 dated 04.05.2024, Shipping Bill No. 9583225 dated 03.05.2024 and Shipping Bill No. 9638105 dated 04.05.2024.

3. Subsequently, the letter F.No. CUS/SIIB/HOC/59/2024 dated 13.05.2024 & 20.05.2024 was written directing the exporter to arrange for examination of the consignment and be present with necessary documents along with intimation to the Custom House agent of the Exporter to be present at the time of examination with necessary documents. Thereafter, the exporter vide email dated 21.05.2024 authorised Shri Sapan Khemchandani, authorised person of M/s

Madhav Workland who is the Custom House agent of M/s Maa Chemfood Pvt. Ltd for examination purpose. Further, this office vide letter F.No. CUS/SIIB/HOC/59/2024 dated 28.05.2024 again requested the exporter to appear for examination as examination of the cargo was still pending till that date and also requested for movement of containers from Kandla International Containers Terminal to M/s A V Joshi, CFS for examination of the Cargo. Subsequently, the officers from SIIB section vide letter F.No. CUS/SIIB/HOC/59/2024 dated 31.05.2024 directed M/s A V Joshi CFS for the movement of containers from Kandla International Containers Terminal to A V Joshi, CFS for examination.

4. Thereafter, the examination of 12 containers, under shipping bill No. 9638683 dated 04.05.2024, Shipping Bill No. 9583225 dated 03.05.2024 and Shipping Bill No. 9638105 dated 04.05.2024, was conducted at A V Joshi, CFS vide Panchnama dated. 03.06.2024 wherein it was found that the said cargo contains some reddish Brown color small crystal type material which does not appears to be Industrial Salt as declared in the shipping bill wherein it was mentioned that the said goods are of description i.e. Industrial Salt (HSN 25010010). Representative samples were drawn from the containers mentioned at Table A vide Panchnama dated. 03.06.2024 and sent for testing to M/s.IREL (India) Limited, Research Centre, Beach Road, Kollam, Kerala – 690001 vide letter F.No. CUS/SIIB/HOC/59/2024 dated 05.06.2024.
5. Subsequently, searches were conducted at the premises of M/s Shree Chem Food Pvt. Ltd, as for the said premises, the Self Sealing permission has been obtained by M/s Maa Chem Food Pvt Ltd. The exporter i.e. M/s Maa Chem food Pvt Ltd has obtained self-sealing permission from the Customs House Kandla for the premises situated at M/s Shree Chem Food Pvt Ltd, Survey No. 350, NH 8A, Village Chopadava, Bhachau (Kutch), Gujarat. The brief of the panchnama proceedings drawn at the above-mentioned premises is as under;

- **Panchanama dated 22.06.2024 drawn in respect of M/s ShreeChem Food Pvt Ltd. situated at Survey No. 350, NH 8A, Village Chopadava, Bhachau (Kutch), Gujarat and Plot No. 164, Opp. Navneet Gas Agency, Sector 1(A), Gandhidham 370201.**

The said registered premises, i.e. Survey No. 350, NH 8A, Village Chopadava, Bhachau (Kutch), Gujarat ,belongs to M/s ShreeChem Food Pvt. Ltd and at this premises processing and packing of Salt was being done for M/s Shree Chem Food Pvt Ltd. The Other premises, i.e. Plot No. 164, Opp. Navneet Gas Agency, Sector 1(A), Gandhidham 370201, is the office premises of M/s Shree Chem Food Pvt. Ltd where documents and other accounting work is being maintained. During

the search proceedings, Shri Sajjan Kumar Agarwal, one of the Director of M/s Shree Chem Food Pvt Ltd, informs the officers that they have allowed M/s Maa Chem Food Pvt Ltd for factory stuffing and had earlier given the NOC on letter head to M/s Maa Chem Food Pvt. Ltd. for factory stuffing. Further, a file containing documents in respect of sales made to M/s Maa Chem Food Pvt. Ltd was retrieved during the search proceedings.

6. The Statement of ShriSajjan Kumar Agarwal was also recorded under section 108 of the Customs Act, 1962 on dated 25.06.2024 wherein he interlia stated that

- M/s Shree Chem Food Pvt Ltd is engaged in manufacturing and supply of Salt such as Industrial Salt, Edible Salt and Iodised Salt. They procure Raw Salt from local market and then process and packaging is being done. He is one of the Director of the said Company and looks after day to day working of the company. He along with Umesh Goyal are the authorised signatory of the company. Their finished goods are sold majorly in domestic market. Apart from this, they sometime export iodised and industrial salt in Gulf countries, UK and African countries.
- They have taken IEC i.e. 3709002737 on 12.03.2010 and from this IEC only they are exporting Salt. They have taken Self Sealing Permission for export on dated 07.06.2018 for export of Iodised Refined Salt and all types of Salt and are exporting the containers under Self Seal Permission.
- They are providing all type of salt to other company for their export purpose as per buyers demand. The details of the companies/merchant exporters are as under;
  - M/s U S Salt
  - M/s Hindustan Finechem
  - M/s Saara Mori
  - M/s Balaji Mine Chem
  - M/s MaaChem Food Pvt Ltd
  - M/s Nayasa International
- They would like to state that they have not given their premises on rent / lease to any company for obtaining self sealing permission for export purpose. Although they have given NOC letter for factory stuffing to the following companies for export purpose.
  - M/s U S Salt
  - M/s Hindustan Finechem

- M/s Saara Mori
  - M/s Balaji Mine Chem
  - M/s MaaChem Food Pvt Ltd
  - M/s Nayasa International
- The above mentioned companies themselves manages the stuffing process and export related documentation. The companies themselves seal the container at our premises using RFID seal and line seal. The RFID seal and Line seal are procured by the said companies themselves.
- M/s Maa Chem Food Pvt Ltd is their clients since 2016. They provide Industrial Salt, Iodised Salt and Edible salt to M/s Maa Chem Food Pvt ltd. They have taken Self Sealing Permission for export purpose on the basis of NOC given by them for their premises.
- As far as the goods i.e. Salt procured by M/s Shree Chem Food Pvt Ltd, M/s Shree Chem Food Pvt Ltd were aware about the said Self Sealing Permission. Other than this, M/s Shree Chem Food Pvt Ltd have no idea regarding the export made by M/s MaaChem Food Pvt Ltd till date by way of using Self sealing Permission issued for their premises.
- M/s Shree Chem Food Pvt Ltd are not aware that the self sealing permission has been obtained based on the NOC given by them for their premises for export of all kind of salt which is specifically procured by them. For trade purpose, M/s Shree Chem Food Pvt Ltd have allowed certain companies to obtain self sealing permission who procure goods from them. In that also, the companies are themselves responsible for fulfilling export related obligations. Apart from this, M/s Shree Chem Food Pvt Ltd have no idea that M/s MaaChem Food Pvt ltd has attempted export under Shipping Bills No. 9638683 dated 04.05.2024, 9638105 dated 04.05.2024 & 9583225 dated 03.05.2024 using self sealing permission of their premises i.e. Survey No. 350, Chopadava, behind Sizlon, Bachau, Gandhidham.

7. The test result of the sample sent to M/s IREL was received by this office vide letter dated 06.07.2024 and based on the sample analysis, the test results are as under

Sr.No.	Test Memo Number	Sample Reference Number	Test Result
1	103/08.02.2024	IRERC-101A/24	97.5% Garnet
2	104/08.02.2024	IRERC-101B/24	98.6% Garnet
3	105/08.02.2024	IRERC-101C/24	87.7% Garnet

4	106/08.02.2024	IRERC-101D/24	97.3% Garnet
5	107/08.02.2024	IRERC-101E/24	97.4% Garnet
6	108/08.02.2024	IRERC-101F/24	99.0% Garnet
7	109/08.02.2024	IRERC-101G/24	97.7% Garnet
8	110/08.02.2024	IRERC-101H/24	98.5% Garnet
9	111/08.02.2024	IRERC-101I/24	96.1% Garnet
10	112/08.02.2024	IRERC-101J/24	96.9% Garnet
11	113/08.02.2024	IRERC-101K/24	97.1% Garnet
12	114/08.02.2024	IRERC-101L/24	95.8% Garnet

8. Accordingly, summon F.No. CUS/SIIB/HOC/59/2024 dated 08.07.2024 was issued to M/s MaaChemfood Pvt Ltd for recording of the statement. ShriSantoshAggarwal, authorised person of M/s MaaChemfood Pvt Ltd appeared on 08.07.2024 and statement of ShriSantoshAggarwal was recorded under section 108 of the Customs Act 1962 wherein he stated that

- They have declared export of Industrial salt in the Shipping Bills No. 9638683, 9638105 both dated 04.05.2024 & Shipping Bills No. 9583225 dated 03.05.2024. The said cargo was to be exported to UAE. The said Shipping Bills were filed under Self Sealing permission and as per Annexure-C of the said Shipping Bill, the goods were stuffed and self sealed at the premises of M/s Shree Chem Food Pvt Ltd situated at Survey No 350, Chopadava, Behind Sizlon, Bachau, Kutch.
- He agrees that the said cargo was neither procured from M/s Shree Chem Food Pvt Ltd nor self sealed / stuffed at the premises of M/s Shree Chem Food Pvt Ltd situated at Survey No 350, Chopadava, Behind Sizlon, Bachau, Kutch. Instead, they have stuffed the same in a warehouse situated at Ashok Warehousing and Allied Industries, Survey No. 59 & 60, Vill. Varsana, Tal. Anjar (Kutch).
- The Self Sealing permission dated 31.01.2018 for the Export of Salt for premises situated at M/s Shree Chem Food Pvt Ltd, Survey No 350, Chopadava, Behind Sizlon, Bachau, Kutch was obtained by M/s MaaChem Food Pvt Ltd for the Export of Salt. In respect of the said Cargo, in order to evade examination from Customs authority, they have declared the said shipping bills under Self Sealing.
- M/s MaaChem Food Pvt Ltd have booked Containers from Rama Vessel Handlers.
- On perusal of the test report dated 06.07.2024, he agrees that test samples from the said cargo under Shipping Bills No.

9638683, 9638105 both dated 04.05.2024 & Shipping Bills No. 9583225 dated 03.05.2024 contains "**Garnet**".

- The said containers under Shipping Bills No. 9638683, 9638105 both dated 04.05.2024 & Shipping Bills No. 9583225 dated 03.05.2024 contains Garnet. The said cargo was being exported to M/s Aries Building Materials Trading LLC, UAE.
- He hereby peruse the Notification No. 26/2015-20 dated 21.08.2018 of DGFT vide which Sr No. 98A has been inserted in Chapter 26 in schedule 2 of ITC HS Classification of Export & Import Items 2018 by virtue of which Export of Garnet has been Restricted and to be canalized through IREL (India) Limited only. Hesubmitted that he was not aware of the facts that Export of Garnet is restricted. He accept that Garnet classifiable under CTH 25132030 is restricted as per Notification 26/2015-20 dated 21.08.2018 and is liable for confiscation under Customs Act 1962.
- He further stated that he used to export Salt to different locations such as Gulf Countries, Europe, Africa, South Pacific and Bangladesh. This is first time, he procured Garnet and was exporting the said cargo under Shipping Bills No. 9638683, 9638105 both dated 04.05.2024 & Shipping Bills No. 9583225 dated 03.05.2024. They have misdeclared the said commodity as Industrial Salt as previously they were exporting the said commodity regularly. They are regular exporter of salt in Gulf countries so when they got the order for Garnet, they attempt to export the same under this shipment.

9. The Natural Garnet, in 12 containerized cargo under shipping bill No. 9638683 dated 04.05.2024, Shipping Bill No. 9583225 dated 03.05.2024 and Shipping Bill No. 9638105 dated 04.05.2024, were placed under seizure vide seizure memo dated. 09.07.2024 and copy of the said Seizure memo was handed over to ShriSantoshAggarwal, Authorised Person of M/s.MaaChemfood Pvt Ltd.
10. Further, summon F.No. CUS/SIIB/HOC/59/2024 dated 11.07.2024 was also issued to M/s Madhav Workland, the Customs House Agent of M/s MaaChem Food Pvt Ltd, for recording of the statement. ShriSapanKhemchandani, authorised representative of M/s Madhav Workland appeared on 12.07.2024 wherein he interalia stated that
  - He had been associated with M/s MaaChem Food Pvt Ltd from last 6 years. ShriSantoshAggarwal approached him for export of Industrial Salt and since then he is providing clearing services to M/s MaaChem Food Pvt Ltd. M/s MaaChem Food Pvt Ltd pay him 1300 Rs per container as agency charges.

- He filed the Shipping Bill No. 9638683 dated 04.05.2024, Shipping Bill No. 9583225 dated 03.05.2024 and Shipping Bill No. 9638105 dated 04.05.2024 of M/s MaaChem Food Pvt Ltd based on the documents, i.e. Invoice, packing List and annexure, provided by ShriNaresh, manager of M/s MaaChem Food Pvt Ltd. Some time when ShriNaresh is on leave, ShriSantosh Gupta provides the export documents necessary for the filing of the shipping bills.
- The containers were booked by M/s MaaChem Food Pvt.Ltd only. M/s MaaChem Food Pvt Ltd provided the documents for customs formalities and clearance only.
- He was aware that the said export under shipping bill No. 9638683 dated 04.05.2024, Shipping Bill No. 9583225 dated 03.05.2024 and Shipping Bill No. 9638105 dated 04.05.2024 were under Self Sealing. He never visited the said premises situated at Survey No. 350, NH 8A, Village Chopadava, Bhachau (Kutch), Gujarat.
- He perused the reports dated 06.07.2024 and stated that he had no idea about the export of garnet or any other material as he did not open the seal of the containers. They were informed by M/s MaaChem Food Pvt Ltd that M/s MaaChem Food Pvt. Ltd are exporting Industrial Salt only and asked to prepare documents accordingly for export purpose.
- Further, he was not aware about the mis-declaration as he was only responsible for filing of Shipping Bills based on the documents submitted by M/s MaaChem Food Pvt Ltd.

11.1 The exporter declared the goods as Industrial Salt (RITC Code 25010010). Whereas, it appears that the Central Govt had in his capacity as Additional Secretary to the Government of India had from F. No. 01/91/171/22/AM 19/EC issued an Order vide Notification No 26/2015-20 dated 21.08.2018 on behalf of the Central Government 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 Import 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 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 SI No. 98A is inserted in Chapter 26 of Schedule 2 of ITC (HS)*

*Classification of Export & Import Items 2018 as follow's :-*

*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 anjwheterin the export policy, will now be regulated in terms of policy under SI. No. 984 of Chapter 26 of Schedule 2 Export Policy."*

11.2 In terms of said Notification No.26/2015-20 dated 21.08.2018, Garnet classifiable under CTH 25132030 could only be exported through Indian Rare Earth Ltd. (IREL).

However, in the instant case the exporter tried to export the same by way of mis-declaring the same as 'Industrial Salt' to avoid the restriction, however, the goods were found as Garnet classifiable under CTH 25132030, which are restricted in nature. Thus the noncompliance of the existing DGFT Policy makes the goods as Prohibited and exporter tried the same by way mis-declaring and mis-classifying the same.

11.3 No private person is permitted to export Beach Sand and Minerals. M/s. IREL, who were notified as canalizing Agency for export of Natural Garnet falling under CTH No.25132030 also publishing SOP for Export Policy of Beach Sand Minerals and Production/Selling and export was regularized.

11.4 The relevant policy provisions pertaining to the export of Garnet.

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

*(33) "prohibited goods" means any goods the import 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 imported 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;*

*Section 50(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*

*Section 50(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 Actor under any other law for the time being in force.*

*Section 51: Clearance of goods for exportation.—*

*(1) Where the proper officer is satisfied that any goods entered for export are not prohibited goods and the exporter has paid the duty, if any, assessed thereon and any charges payable under this Act in respect of the same, the proper officer may make an order permitting clearance and loading of the goods for exportation:*

*Provided that such order may also be made electronically through the customs automated system system on the basis of risk evaluation through appropriate selection criteria:*

*Provided further that the Central Government may, by notification in the Official Gazette, permit certain class of exporters to make deferred payment of said duty or any charges in such manner as may be provided by rules.*

*(2) Where the exporter fails to pay the export duty, either in full or in part, under the proviso to sub-section (1) by such due date as may be specified by rules, he shall pay interest on said duty not paid*

*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;*
- (i) any goods entered for exportation which do not correspond in respect of value or in any material particular with the entry made under this Act or in the case of baggage with the declaration made under section 77.*

*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;*

*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.]*

*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 [four lakh rupees].*

*Section 3 of the FTDR Act, 1992 reads as follow:*

*3. Powers to make provisions relating to imports and exports. - I*

*(1) The Central Government may, by Order published in the Official Gazette, make provision for the development and regulation of foreign trade by facilitating imports 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 import or export of goods.*

*(3) All goods to which any Order under sub-section (2) applies shall be deemed to be goods the import 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.*

*Section 11 of the FTDR Act, 1992 specifies as follow:*

*11. Contravention of provisions of this Act, rules, orders and export and import policy.*

(1) *No export or import 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 import policy for the time being in force.*

(2) *Where any person makes or abets or attempts to make any export or import in contravention of any provision of this Act or any rules or orders made thereunder or the export and import 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.*

*Rules 11, 14 and 17 of the Foreign Trade (Regulation) Rules, 1993 provides as follow:*

**11. Declaration as to value and quality of imported goods. -**

On the importation 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 Bill of Entry 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 Bill of Entry 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 importing 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 importing or exporting any goods.

**17. Confiscation and redemption.-**

(1) Any imported goods or materials in respect of which -

(a) ..

(b) ..

(c) any condition imposed under the Policy with regard to the sale or disposal of such goods or materials, has been, is being, or is attempted to be, contravened, shall together with any package, covering or receptacle in which such goods are found, be liable to be confiscated by the Adjudicating Authority, and where such goods or materials 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 :

Provided that where it is established to the satisfaction of the Adjudicating Authority that any goods or materials which are liable to confiscation under this rule, had been imported for personal use, and not for any trade or industry, such goods or materials shall not be ordered to be confiscated.

(2)...

The following are the relevant provisions of the Foreign Trade Policy 2015-20, which has been extended further.

Para 2.01,

*Exports and Imports — 'Free unless regulated*

- (a) *Exports and Imports 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 (Harmonised System) [ITC (HS)] of Exports and Imports.*
- (b) *Further, there are some items which are free for import/export, but subject to conditions stipulated in other Acts or in law for the time being in force*

*Para 2.02 (c)*

*The import/export policies for all goods are indicated against each item in ITC (HS). Schedule 1 of ITC (HS) lays down the Import Policy regime while Schedule 2 of ITC(HS) details the Export Policy regime.*

*Para 2.20 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 import. Any good, import or export of which is governed through exclusive or special privilege granted to State Trading Enterprise (STE), may be imported or exported by the concerned STE as per conditions specified in ITC (HS). The list of STEs notified by DGFT is in Appendix-2J.*
- (b) *Such STE(s) shall make any such purchases or sales involving imports 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 import or export any of the goods notified for exclusive trading through STEs.*

11.5. From the above, 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 No. 25132030 has been brought under the regime of State Trading Enterprises (STEs) and M/s. Indian Rare Earth Ltd. (Hereinafter referred to as "M/s. IREL") were notified as canalizing agency in this respect. No private person has been permitted to export Natural Garnet falling under CTH No. 25132030.

11.6 Consequent to issue of aforesaid Notification dated 21.08.2018, M/s. IREL being canalizing agency placed on their website the SOP for export of

Natural Garnet etc. Beach Sand Minerals by the producers/sellers, who were desirous to export the Beach Sand Minerals.

## 12. Summary of Investigation

M/s MaaChemfood Pvt Ltd (IEC: 1312017988) situated at Satyam, Opp. Hotel Haveli, Bhilwara-311001 attempted to export Natural Garnet, which is a restricted item for export, by way of mis-declaring the same as Industrial Salt (RITC Code 25010010) under shipping bill No. 9638683 dated 04.05.2024, Shipping Bill No. 9583225 dated 03.05.2024 and Shipping Bill No. 9638105 dated 04.05.2024. The said Shipping Bill was filed under Self Sealing permission. ShriSantoshAggarwal, authorised signatory during recording of his statement accepted that the said cargo was neither procured from M/s Shree Chem Food Pvt Ltd nor self sealed / stuffed at the premises of M/s Shree Chem Food Pvt Ltd situated at Survey No 350, Chopadava, Behind Sizlon, Bachau, Kutch. Instead, they have stuffed the same in a warehouse situated at Ashok Warehousing and Allied Industries, Survey No. 59 & 60, Vill. Varsana, Tal. Anjar (Kutch). Further, the test result of the sample sent to M/s IREL was received by this office vide letter dated 06.07.2024 which also confirmed that the said cargo is "Garnet" which is a restricted for export. ShriSapanKhemchandani, authorised signatory of M/s Madhav Workland, Custom House Agent of M/s MaaChem Food Pvt Ltd also submitted that they have filed the shipping bills on the basis of the export documents provided by M/s MaaChem Food Pvt Ltd.

## 13. Confiscation of export goods: -

13.1. Vide Notification No. 47/2015-20, dtd.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 2015-2020.

13.2. 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 was specified at Para No. 4 thereof by the Central Government 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. 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. 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.

13.3. Further, Vide Notification No. 01/2023, dtd.31.03.2023, issued under Section 5 of the FTDR Act, 1992, the Central Government has notified Foreign Trade Policy, 2023 which came into force on dated 01.04.2023

13.4. In the instant case, the Test Reports of IREL (India) Limited, Research Centre, Beach Road, Kollam, Kerala - 690001 clearly show that the subject goods pertaining to the shipping bill No. 9638683 dated 04.05.2024, Shipping Bill No. 9583225 dated 03.05.2024 and Shipping Bill No. 9638105 dated 04.05.2024 attempted to be exported by M/s.MaaChemfood Pvt Ltd are natural garnet. The statement dated 08.07.2024 of ShriSantoshAggarwal, appeared as per summons on 08.07.2024, was recorded under Section 108 of the Customs Act, 1962 wherein he inter alia stated that the goods attempted to be exported by them is garnet. It is evident that even after having known that the goods were Garnet, ShriSantoshAggarwal had mis-declared and mis-classified their export goods in the Shipping Bill they had filed before the Customs officer, with respect to the description of the goods as "Industrial Salt" and they had declared the classification of the subject goods covered under the said Shipping Bills under Custom Tariff Item 25010010, whereas there exists specific heading 25132030 for "natural garnet". Hence, the classification of their export goods outlet to have been made under Custom Tariff Item 25132030 instead have declared classification under CTH 25010010. When specific description is ascertained on the basis of test report, the contention of the exporter to classify the Natural Garnet under 25010010 which is for 'Others' category 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, From the facts discussed in foregoing paras, it appears that by adopting Modus Operandi of mis-declaration of the goods, the said 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 & 14 of the Foreign Trade (Regulation) Rules, 1993, Para 2.01, 2.02 and 2.20 of the Foreign Trade Policy 2015-20, 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 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.MaaChemfood Pvt Ltd seized on 09.07.2024 at Kandla are liable for confiscation under Section 113 (d) and 113 (i) of the Customs Act, 1962.

14. From the facts discussed above, it appears that ShriSantoshAggarwal, Authorised signatory of M/s MaaChemfood Pvt Ltd,with the intent to export Natural Garnet mis-declared the goods in the 12 Containers under shipping bill No. 9638683 dated 04.05.2024, Shipping Bill No. 9583225 dated 03.05.2024 and Shipping Bill No. 9638105 dated 04.05.2024 and directedShriSapanKhemchandani, Authorised Signatory of M/s Madhav Workland, Custom House Agent of M/s MaaChem food Pvt Ltd for filingofshipping bill No. 9638683 dated 04.05.2024, Shipping Bill No. 9583225 dated 03.05.2024 and Shipping Bill No. 9638105 dated 04.05.2024.

14.1 Meanwhile, ShriSantoshAggarwal booked 12 containers for shipment from M/s. Rama Vessel Handlers for shipment to Jaber Aliundershipping bill No. 9638683 dated 04.05.2024, Shipping Bill No. 9583225 dated 03.05.2024 and Shipping Bill No. 9638105 dated 04.05.2024for Garnet meant to be delivered to M/s. Aries Building Material Trading LLC wherein goods were described as Industrial Salt in the export documents.

14.2 ShriSapanKhemchandani, representative of Customs Broker M/s. Madhav Workland filed the Shipping Bill on the basis of the exports documents available with them. The shipping bill No. 9638683 dated 04.05.2024, Shipping Bill No. 9583225 dated 03.05.2024 and Shipping Bill

No. 9638105 dated 04.05.2024 were submitted on 03.05.2024 (Shipping Bill No. 9583225) & 04.05.2024 (Shipping Bill No. 9638105 & 9638683) and was examined on 06.05.2024 and subsequently LEO was granted on 06.05.2024. Further, the consignment in the said shipping bill was having permission of Self Sealing from the competent authority. All the 12 Containers were gate in and were placed in Kandla International Container Terminal. After that, the shipment was put on hold by SIIB Section, Custom House, Kandla. Examination was conducted by the officers of SIIB Kandla at A V Joshi under Panchnama proceedings on dated 03.06.2024 and samples were taken wherein it was found that MaaChemfood Pvt Ltd had placed with them 12 containers of Natural Garnet which had arrived at Kandla International Container Terminal for export to Jaber-Ali. It has also came to notice that ShriSantoshAggarwal had taken self-sealing permission from Custom House Kandla for the premises situated at M/s Shree Chem Food Pvt Ltd, Survey No. 350, NH 8A, Village Chopadava, Bhachau (Kutch), Gujarat, the officers of SIIB Kandla Custom House had also searched the said premise under Panchnama dated 22.06.2024. The result of the test report sent to IREL was received by this office on dated 06.07.2024 and was perused by ShriSantoshAggarwal, authorized representative of M/s MaaChem Food Pvt. Ltd. during recording of the statement on dated 08.07.2024 wherein he admitted that the said test result are correct and with an intent to export garnet, mis-declared the goods in the 12 Containers under shipping bill No. 9638683 dated 04.05.2024, Shipping Bill No. 9583225 dated 03.05.2024 and Shipping Bill No. 9638105 dated 04.05.2024. On the basis of the Test Report and confession statement of ShriSantoshAggarwal, the Natural Garnet weighing 336 MTS (28 MTS\* 12 Containers ) valued at Rs.76,59,996/- were placed under seizure on 09.07.2024.

14.3 ShriSantoshAggarwal have requested for waiver of Show Cause Notice and Personal Hearing against the said proceedings vide letter dated 09.07.2024 as the goods are pending for clearance since long and the cargo is decaying in the form of crust which will eventually cause huge loss to the exporter. Further, they requested to release the consignment for back to town.

14.4 Further, this office earlier requested M/s IREL (India) Ltd to provide the Domestic and Export price of Garnet. M/s IREL vide letter dated 14.02.2024 submitted the export/domestic price of different types of Garnet under canalisation which is as under;

Mesh Size	16/32 Mesh	20/40 mesh	20/60 mesh	30/60 mesh	80 mesh
Export Price	220-276	238-276	230-276	230-255	200

(FOB,USD/PMT)						
Domestic Price (Rs/MT)	17,759- 22,215	18,861- 22,204	18,227- 21,942	18,378- 20,463	16,123	

In the present case, vide the result of the test report received from M/s IREL vide letter dated 06.07.2024, the mesh size of the Garnet is between 20/40 and 20/60. Therefore, the valuation of the Cargo may be considered at higher side i.e. 276 USD/ PMT (FOB). In view of the above the revised value of the Cargo would be Rs.76,59,996/- (336MT \* 276 USD \* 82.60(*exchange rate as per Shipping Bill*))

15. The exporter was well aware about the actual facts of the case, it appears that M/s. Maa Chemfood Pvt. Ltd, 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 restricted and attempting to export illegally the same, M/s. MaaChemfood Pvt Ltd have rendered the subject goods covered under shipping bill No. 9638683 dated 04.05.2024, Shipping Bill No. 9583225 dated 03.05.2024 and Shipping Bill No. 9638105 dated 04.05.2024 liable for confiscation under Section 113 (d) and 113(i) of Customs Act, 1962. Therefore, M/s. MaaChemfood Pvt Ltd through its authorised signatory ShriSantoshAggarwal have rendered themselves liable for penalty under Section 114 (i)& 114AA of the Customs Act, 1962.

16.1 M/s MaaChemfood Pvt Ltd has knowingly submitted false and incorrect declaration in the shipping bill No. 9638683 dated 04.05.2024, Shipping Bill No. 9583225 dated 03.05.2024 and Shipping Bill No. 9638105 dated 04.05.2024 submitted before Customs authorities. The exporter has thereby rendered themselves liable for penalty under Section 114 and 114AA of the Customs Act, 1962.

16.2 ShriSantoshAggarwal, Authorised Signatory and Director of M/s Maa Chemfood Pvt. Ltd. is equally responsible to, the company for the conduct of business of the company. As per IEC records, it has been noticed that ShriSantoshAggarwal, Authorised Signatory and Director of M/s Maa Chemfood Pvt. Ltd was the key person of this company who was very well aware about the characteristics, specification and classification of subject goods vis-a-vis provisions relating to Customs Act, 1962 other allied Acts and Import Policy. Being Authorised Signatory and Director of the said company, he had supervised all the matters related to the Export and dealings with the overseas suppliers and other associates and making

documentation/submissions with Customs Authorities. From the facts and evidences gathered during investigation, it appears that ShriSantoshAggarwal had played a pivotal role in the deliberate mis-declaration of the goods to be exported and had indulged in a well-planned conspiracy with a malafide intention to export Garnet illegally by fraud, collusion, willfulmis-statement, suppression of facts knowing very well that it would amount to violations as discussed above. It further appears that he has knowingly suppressed material facts regarding description and classification of the subject product and mis-declared &mis-classified the same as 'Industrial Salt' under CTH 25010010. Therefore, in view of the above, ShriSantoshAggarwal is liable for penalty under Section 114 and 114AA of the Customs Act, 1962.

16.3 Further, ShriSapanKhemchandani, representative of Customs Broker M/s. Madhav Workland has handled the work related to M/s Madhav Workland and filed the Shipping Bill on the basis of the exports documents available with them without verifying the authenticity of M/s Maa Chemfood Pvt. Ltd. ShriSapanKhemchandani in his statement dated 12.07.2024 has submitted that he had no idea that the said cargo contained Natural Garnet as he was only responsible for filing of the shipping Bills on behalf of M/s Maa Chemfood Pvt. Ltd. Further, M/s MaaChem Food, with the intent to export Natural Garnet, mis-declared the goods in the 12 Containers under shipping bill No. 9638683 dated 04.05.2024, Shipping Bill No. 9583225 dated 03.05.2024 and Shipping Bill No. 9638105 dated 04.05.2024, had submitted documents to ShriSapan Khemchandani for filing Shipping Bill, representative of the Customs Broker M/s Madhav Workland. The Premises for self sealing declared in the shipping bill No. 9638683 dated 04.05.2024, Shipping Bill No. 9583225 dated 03.05.2024 and Shipping Bill No. 9638105 dated 04.05.2024 was actually not used for self sealing purpose in respect of the said consignment and was shown just to evade customs examination. The letter for cancellation of the Self Ceiling Permission has been issued to the concerned section accordingly. Further, Shri Sapan Khemchandani submitted that the said Containers and premises for Self Ceiling were booked and managed by M/s Maa Chem Food Pvt. Ltd. Shri Santosh Aggarwal also in his statement has acceded that the said containers and premises were booked and managed by M/s Maa Chem Food Pvt. Ltd only. As per regulations 10 (n) of CBLR 2018 which states that *a Custom Broker Should verify correctness of Importer Exporter Code (IEC) number, Goods and Services Tax Identification Number (GSTIN), identity of his client and functioning of his client at the declared address by using reliable, independent, authentic documents, data or information.* Further, M/s Madhav Workland, in relation to export of Consignment, has abets M/s Maa Chem Food Pvt Ltd, who with the intent to export Natural Garnet, mis-

declared the goods in the 12 Containers under shipping bill No. 9638683 dated 04.05.2024, Shipping Bill No. 9583225 dated 03.05.2024 and Shipping Bill No. 9638105 dated 04.05.2024 and such goods were liable to confiscation under section 113. In view of the above, the Customs House Agent i.e. M/s Madhav Workland has abetted or facilitated, may be deliberate or negligent, an illegal attempted export of prohibited goods i.e. Garnet. M/s Maa Chemfood Pvt. Ltd have unsuccessfully attempted to export Natural Garnet in contravention of the above provisions of the Customs Act, 1962 read with the Foreign Trade Policy 2023. The documents including shipping bill for the above attempted export of Natural Garnet were filed by M/s. Madhav Workland, and Shri Sapan Khemchandani is the Representative of M/s. Madhav Workland, Custom House Agent. The allegation against the CHA herein is that the CHA has abetted in the illegal export of Natural garnet by accepting the consignment on the basis of documents produced by M/s. Maa Chemfood Pvt. Ltd. Therefore, they are liable for penalty under Section 114 (i) and 114AA of the Customs Act, 1962.

17.1 In light of the above and on the basis of evidences collected during investigation by SIIB Custom House Kandla, there appeared a case to allege against M/s. Maa Chemfood Pvt. Ltd, and its beneficiary Shri Santosh Aggarwal, Director of M/s Maa Chemfood Pvt Ltd, under the provisions of the Customs Act, 1962. Therefore, M/s Maa Chemfood Pvt Ltd has rendered themselves liable for penal action under section 114 of the Customs Act 1962. In view of the above, M/s Maa Chemfood Pvt. Ltd may be called upon as to why-

- i. Goods valued at Rs. 76,59,996/- should not be confiscation under section 113(d) & (i) of The Customs Act, 1962.
- ii. Penalty under section 114 (i) and 114AA of The Customs Act, 1962 should not be imposed.

17.2 Shri Santosh Aggarwal, Authorised Signatory and Director of M/s Maa Chemfood Pvt. Ltd, with the intent to export Natural Garnet 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, was the main beneficiary of the said cargo. Therefore, Shri Santosh Aggarwal, Authorised Signatory and Director of M/s Maa Chemfood Pvt. Ltd. is hereby called upon as to why-

- i. Penalty under section 114 (i) and 114AA of The Customs Act, 1962 should not be imposed.

17.3 The documents including shipping bill for the above attempted export of Natural Garnet were filed by M/s. Madhav Workland, and

ShriSapanKhemchandani is the Representative of M/s. Madhav Workland, Custom House Agent. Therefore, M/s Madhav Workland and ShriSapanKhemchandani, Representative of M/s Madhav Workland are hereby called upon as to why-

- i. Penalty under section 114 (i) and 114AA of the Customs Act, 1962 should not be imposed upon.

**Waiver Of SCN and PH:-**

18. M/s. MaaChemfood& its Director ShriSantoshAgarwal vide letter dated 09.07.2024 requested for waiver of Show cause notice and personal hearing. Further, M/s. Madhav Workland and ShriSapanKhemchandani vide letter dated 25.07.2024 requested for waiver of Show cause notice and personal hearing.

Further the exporter i.e. M/s. Maa Chemfood Pvt. Ltd. vide letter dated 09.07.2024 requested for permission of Back to Town of their cargo.

19. 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, all the noticees are allowed waiver of Show cause notice and the matter is taken up for adjudication.

**Discussion and Findings:-**

20. I have gone through the Investigation report, waiver request letter and all the documents available on record.

21. I find that Intelligence gathered by the Officer of Special Intelligence Investigation Branch (SIIB) of Custom House Kandla indicated that Natural Garnet, which is a restricted item for export, was being exported by some exporter in illegal manner by way of mis-declaring the same as Industrial Salt (RITC Code 25010010). Acting upon the intelligence, inquiries were initiated by the SIIB, which revealed that under shipping bill No. 9638683 dated 04.05.2024, Shipping Bill No. 9583225 dated 03.05.2024 and Shipping Bill No. 9638105 dated 04.05.2024 was filed by M/s Maa Chemfood Pvt. Ltd (IEC: 1312017988) situated at Satyam, Opp. Hotel Haveli, Bhilwara-311001(hereinafter referred to as Maa Chemfood Pvt. Ltd) through the Customs Broker M/s.Madhav Workland. Acting upon the intelligence, the Shipping Bill were scrutinized on EDI system and it was found that the shipping bill No. 9638683 dated 04.05.2024, Shipping Bill No. 9583225 dated 03.05.2024 and Shipping Bill No. 9638105 dated 04.05.2024 were submitted on 03.05.2024 (Shipping Bill No. 9583225) & 04.05.2024 (Shipping Bill No. 9638105 & 9638683) and was examined on

06.05.2024 and subsequently LEO was granted on 06.05.2024. Further, the consignment in the said shipping bill was having permission of Self Sealing from the competent authority.

22. I find that the details of the consignment covered vide under shipping bill No. 9638683 dated 04.05.2024, Shipping Bill No. 9583225 dated 03.05.2024 and Shipping Bill No. 9638105 dated 04.05.2024 filed by M/s Maa Chemfood Pvt. Ltd is as follows;

TABLE-A

<b>Sr.No.</b>	<b>Shipping Bill No and Date</b>	<b>Container No.</b>
<b>1</b>	<b>9638683 dated 04.05.2024</b>	<b>HDMU2538569</b>
<b>2</b>		<b>APZU3515945</b>
<b>3</b>		<b>ARXU8072105</b>
<b>4</b>	<b>9638105 dated 04.05.2024</b>	<b>HLXU3101613</b>
<b>5</b>		<b>FCIU3293160</b>
<b>6</b>		<b>GATU0386870</b>
<b>7</b>		<b>TDTU7831670</b>
<b>8</b>		<b>YMLU3321883</b>
<b>9</b>		<b>TGHU0182598</b>
<b>10</b>	<b>9583225 dated 03.05.2024</b>	<b>CRSU1204659</b>
<b>11</b>		<b>CLHU3379380</b>
<b>12</b>		<b>WWWU2613291</b>

Further, the location of the cargo was traced and it was found that the said 12 containerized cargo, under shipping bill No. 9638683 dated 04.05.2024, Shipping Bill No. 9583225 dated 03.05.2024 and Shipping Bill No. 9638105 dated 04.05.2024, have been port in and are currently stacked in Kandla International Container terminal. Accordingly, letter F.No. CUS/SIIB/HOC/59/2024 dated 10.05.2024 was issued to the Deputy / Assistant Commissioner (DE), under intimation to the Kandla International Container Terminal, for holding the cargo against shipping bill No. 9638683 dated 04.05.2024, Shipping Bill No. 9583225 dated 03.05.2024 and Shipping Bill No. 9638105 dated 04.05.2024.

23. On examination of 12 containers, under shipping bill No. 9638683 dated 04.05.2024, Shipping Bill No. 9583225 dated 03.05.2024 and Shipping Bill No. 9638105 dated 04.05.2024, conducted at A V Joshi, CFS vide Panchnama dated. 03.06.2024, it was found that the said cargo

contained some reddish Brown colour small crystal type material which did not appear to be Industrial Salt as declared in the shipping bill wherein it was mentioned that the said goods are of description i.e. Industrial Salt (HSN 25010010). Representative samples were drawn from the containers mentioned at Table A vide Panchnama dated. 03.06.2024 and sent for testing to M/s.IREL (India) Limited, Research Centre, Beach Road, Kollam, Kerala – 690001 vide letter F.No. CUS/SIIB/HOC/59/2024 dated 05.06.2024.

24. I find the test result of the sample sent to M/s IREL are as under-

Sr.No.	Test Memo Number	Sample Reference Number	Test Result
1	103/08.02.2024	IRERC-101A/24	97.5% Garnet
2	104/08.02.2024	IRERC-101B/24	98.6% Garnet
3	105/08.02.2024	IRERC-101C/24	87.7% Garnet
4	106/08.02.2024	IRERC-101D/24	97.3% Garnet
5	107/08.02.2024	IRERC-101E/24	97.4% Garnet
6	108/08.02.2024	IRERC-101F/24	99.0% Garnet
7	109/08.02.2024	IRERC-101G/24	97.7% Garnet
8	110/08.02.2024	IRERC-101H/24	98.5% Garnet
9	111/08.02.2024	IRERC-101I/24	96.1% Garnet
10	112/08.02.2024	IRERC-101J/24	96.9% Garnet
11	113/08.02.2024	IRERC-101K/24	97.1% Garnet
12	114/08.02.2024	IRERC-101L/24	95.8% Garnet

25. I find that the exporter has never challenged the test result reproduced above.

26. The Natural Garnet, in 12 containerized cargo under shipping bill No. 9638683 dated 04.05.2024, Shipping Bill No. 9583225 dated 03.05.2024 and Shipping Bill No. 9638105 dated 04.05.2024, were placed under seizure vide seizure memo dated 09.07.2024.

27. In terms of the Notification No.26/2015-20 dated 21.08.2018, export of Garnet classifiable under CTH 25132030 has been brought under **State Trading Enterprise and the same could only be canalized through Indian Rare Earth Ltd. (IREL).**

28. I find that Shri Santosh Aggarwal, authorised person of M/s Maa Chemfood Pvt. Ltd in his statement dated 08.07.2024 admitted that the said

cargo contained "Garnet" classifiable under CTH 25132030, the export of which is restricted as per Notification 26/2015-20 dated 21.08.2018.

29. I find that Shri Sapan Khemchandani, authorised representative of M/s Madhav Workland in his statement dated 12.07.2024 deposed that he was not aware about the mis-declaration as he was only responsible for filing of Shipping Bills based on the documents submitted by M/s MaaChem Food Pvt Ltd

30. In view of the above, it is amply clear that the export goods i.e. Natural Garnet were mis-declared in terms of its description by declaring the same as Ramming Mass in contravention of the restriction/prohibition imposed as per the Notification No.26/2015-20 dated 21.08.2018 mentioned above.

#### **CONFISCATION OF GOODS:-**

31. It is apparent that the Shri Santosh Aggarwal, authorised person of M/s Maa Chemfood Pvt Ltd has mis-declared the description and CTH of the export goods. Further the goods were restricted in nature and were allowed to be exported by state trading enterprises only through Indian Rare Earth Ltd. (IREL) as discussed in the foregoing paras. Such acts on their part have rendered their goods liable for confiscation under the provisions of Section 113(d) and 113(i) of the Customs Act, 1962. Further, in this regard, I rely on the judgement of CC Mumbai Vs Multimetal Ltd-2002(Tri-Mumbai) wherein the Hon'ble Tribunal held that when mis-declaration is established, goods are liable for confiscation irrespective of whether there was malafide or not. This judgement of Hon'ble Tribunal has been upheld in Apex court in 2003 (ELT A309 (SC)).

32. I find that the exporter has requested for permission for Back to Town (BTT) of the said cargo. Accordingly, redemption fine is to be imposed under Section 125 of the Customs Act, 1962 while keeping in mind the principle of wiping out of margin of profit.

#### **33. Penalties under Section 114(i) and 114AA of the Customs Act, 1962.**

**M/s. M/s MaaChemfood Pvt Ltd, ShriSantoshAggarwal, authorised person of M/s MaaChemfood Pvt Ltd, M/s Madhav Workland and ShriSapanKhemchandani, authorised representative of M/s Madhav Workland:-**

33.1 I find that M/s. Maa Chemfood Pvt. Ltd., the exporter was well aware about the actual facts of the case, they have 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 restricted and attempting to export illegally the same, M/s. Maa Chemfood Pvt. Ltd have rendered the subject goods covered under S/B No. 6727474 and 6722351 both dated 12.01.2024 liable for confiscation under Section 113 (d) and 113(i) of Customs Act, 1962. Therefore, M/s. Maa Chemfood Pvt. Ltd have rendered themselves liable for penalty under Section 114 (i) & 114AA of the Customs Act, 1962.

33.2 Shri Santosh Aggarwal, authorised person of M/s Maa Chemfood Pvt Ltd, was handling all the import and exports. He was fully aware of the description, nature, classification and restriction/prohibition of the export goods. He had taken self-sealing permission in order to avoid Examination of the Cargo by the Customs Authority. On perusal of the Seizure memo dated 03.04.2024 he accepted that the said cargo contained Garnet classifiable under CTH 25132030 which were restricted as per Notification 26/2015-20 dated 21.08.2018.

33.4 I find that Shri Santosh Aggarwal, being the beneficiary, allegedly got involved in the export of restricted goods by mis-declaring the same in order to evade restriction imposed by the government vide Notification mentioned supra. This act on his part has rendered the goods valued at Rs. 76,59,996/- liable for confiscation under Section 113(d) and 113(i) of the Customs Act, 1962. For this act, I hold that Shri Santosh Aggarwal is liable for penal action under Section 114(i) of the Customs Act, 1962.

33.5 I further find that Shri Santosh Aggarwal has intentionally and wilfully mis-declared the goods in order to evade the restriction/prohibition imposed by the government on "Natural Garnet" rendering himself liable for penal action under Section 114AA of the Customs Act, 1962.

**M/s Madhav Workland and ShriSapanKhemchandani, authorised representative of M/s Madhav Workland:-**

34. I find that Shri Sapan Khemchandani, representative of Customs Broker M/s Madhav Workland has handled the work related to M/s Madhav Workland and filed the Shipping Bill on the basis of the exports documents available with them without verifying the authenticity of the proprietor of M/s Maa Chemfood Pvt. Ltd. ShriSapanKhemchandani in his statement dated 12.07.2024 has submitted that he had no idea that the said cargo contained Natural Garnet as he was only responsible for filing of the shipping Bills on behalf of M/s Maa Chemfood Pvt. Ltd.. As per regulations 10 (n) of CBLR 2018 which states that *a Custom Broker Should verify correctness of Importer Exporter Code (IEC) number, Goods and Services Tax Identification Number (GSTIN), identity of his client and functioning of his client at the declared address by using reliable, independent, authentic documents, data or information.* M/s Maa Chemfood Pvt. Ltd. have attempted to export Natural Garnet in contravention of the above provisions of the Customs Act, 1962 read with the Foreign Trade Policy 2023. The documents including shipping bill for the above attempted export of Natural Garnet were filed by M/s Madhav Workland and ShriSapanKhemchandani, authorised representative of M/s Madhav Workland. The allegation against the CHA herein was that the CHA has abetted in the illegal export of Natural garnet by accepting the consignment on the basis of documents produced by M/s. M/s Maa Chemfood Pvt. Ltd. Therefore, they are liable for penalty under Section 114 (i) and 114AA of the Customs Act, 1962.

35. In view of the above discussion and findings, I hereby pass the following order:-

**A. Order in respect of M/s. Maa Chemfood Pvt. Ltd.:-**

(i) I reject the description and classification of the goods declared by them in Shipping Bills No. 9638683, 9638105 both dated 04.05.2024 & Shipping Bills No. 9583225 dated 03.05.2024 having goods in 12 containers and order to re-classify the same as Natural Garnet classifiable under CTH 25132030.

(ii) I order to confiscate the goods valued at Rs. 76,59,996/- under Section 113(d) and 113(i) of the Customs Act, 1962.

However, I give them an option to pay a redemption fine of Rs. 7,60,000/- (Rupees Seven Lakh Sixty Thousand only) to redeem the goods, contained in 12 containers, of Shipping Bills No. 9638683, 9638105 both dated 04.05.2024 & Shipping Bills No. 9583225 dated 03.05.2024 for the purpose of Back to town only.

(iii) I impose penalty of Rs. 75,000/- (Rupees Seventy five thousand only) on M/s. Maa Chemfood Pvt. Ltd. under Section 114(i) of the Customs Act, 1962.

(iv) I impose penalty of Rs. 75,000/- (Rupees Seventy Five thousand only) on M/s. Maa Chemfood Pvt. Ltd. under Section 114AA of the Customs Act, 1962.

(v) I allow Back to Town of cargo contained in 12 containers attempted to be exported vide Shipping Bills No. 6727474 dated 12.01.2024 and 6722351 dated 12.01.2024 subject to the payment of redemption fine and penalties confirmed above.

**B. Order in respect of Shri Santosh Aggarwal, authorised person of M/s MaaChemfood Pvt Ltd:-**

(i) I impose penalty of Rs. 75,000/- (Rupees Seventy five thousand only) upon Shri Santosh Aggarwal Section 114(i) of the Customs Act, 1962.

(ii) I impose penalty of Rs. 75,000/- (Rupees Seventy five thousand only) upon Shri Santosh Aggarwal under Section 114AA of the Customs Act, 1962.

**C. M/s Madhav Workland and ShriSapanKhemchandani, authorised representative of M/s Madhav Workland:-**

(i) I impose penalty of Rs. 25,000/- (Rupees Twenty Five Thousand only) upon M/s Madhav Workland under Section 114(i) of the Customs Act, 1962.

(ii) I impose penalty of Rs. 25,000/- (Rupees Twenty Five Thousand only) upon M/s Madhav Workland under Section 114AA of the Customs Act, 1962.

- (iii) I impose penalty of Rs. 25,000/- (Rupees Twenty Five Thousand only) upon Shri Sapan Khemchandani under Section 114(i) of the Customs Act, 1962.
- (iv) I impose penalty of Rs. 25,000/- (Rupees Twenty Five Thousand only) upon Shri Sapan Khemchandani under Section 114AA of the Customs Act, 1962.

36. This order is issued without prejudice to any other action that may be taken against the SEZ unit 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/1420/2024-Adjn-O/o Commr-Cus-Kandla

DIN- 20240871ML000000C1EF

To,

- (i) M/s Maa ChemfoodPvt. Ltd (IEC: 1312017988) situated at Satyam, Opp. Hotel Haveli, Bhilwara-311001.
- (ii) Shri Santosh Aggarwal.
- (iii) M/s Madhav Workland, Custom House Agent.
- (iv) Shri Sapan Khemchandani M/s Madhav Workland, Custom House Agent.

Copy to:-

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