

	<b>OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS, CUSTOM HOUSE: MUNDRA, KUTCH MUNDRA PORT &amp; SPL ECONOMIC ZONE, MUNDRA-370421 Phone No.02838-271165/66/67/68 FAX.No.02838-271169/62</b>	
A. File No.	:	CUS/ASS/MISC/1307/2024-EA-O/o Pr-Commr-Cus-Mundra
B. Order-in- Original No.	:	MCH/ADC/MK/247/2024-25 dated 04-01-2025
C. Passed by	:	Mukesh Kumari, Additional Commissioner of Customs, Customs House, AP & SEZ, Mundra
D. Date of order /Date of issue	:	25-01-2025 / 25-01-2025
E. Show Cause Notice No. & Date	:	SCN and PH Waiver
F. Noticee(s)/Party/Exporter	:	M/s Progressive Enterprises, Balepuni Post Office, 2, 2-237 1, S/O Babu Moolya, Hoohakuva Kallu, HO, Karnataka
G. DIN	:	20250171MO000000A178

- 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 पत्ते 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 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-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 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 ऊँटि/ 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 माग 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 Progressive Enterprises (IEC No. AZAPM5629G), (hereinafter referred to as “Exporter for sake of brevity), having its registered office at Balepuni Post Office, 2, 2-237 1, S/O Babu Moolya, Hoochakuva Kallu, HO, Karnataka resorted to mis-declaration in terms of description and classification of goods covered by Shipping Bills No. 1624185 dated 12.06.2024, 1687959 dated 14.06.2024 and 1598571 dated 11.06.2024 (hereinafter referred to as “said shipping bills”. The goods to be exported vide the said shipping bills were declared as “Quartz Powder [RITC-25061020]”, however, the goods were found to be natural garnet as per the mineralogical analysis report provided by M/s. IREL (India) Ltd.

2. M/s Freight Link Logistics, Custom Broker had filed Shipping Bills nos. 1624185 dated 12.06.2024, 1687959 dated 14.06.2024 and 1598571 dated 11.06.2024 (**RUD-1**) under Self-Sealing and the said export cargo was sought to be exported to Jebel Ali. Details of the Shipping Bills filed are as follows: -

**Table-A**

<b>Shipping Bill No. and Date</b>	1624185 dated 12.06.2024	1687959 dated 14.06.2024	1598571 dated 11.06.2024
<b>CHA Details</b>	M/s Freight Link Logistics		
<b>Exporter Details</b>	M/s Progressive Enterprises, Balepuni Post Office, 2, 2-237 1, S/O Babu Moolya, Hoochakuva Kallu, HO, Karnataka. [GSTN: 29AZAPM5629G1Z7]		
<b>Consignee Details</b>	To the Order of, Jebel Ali		

<b>Cargo Declared</b>	Quartz Powder [25061020]		
<b>Invoice Details</b>	PE-23/2024-25 DATED 10.06.2024	PE-24/2024-25 DATED 12.06.2024	PE-22/2024-25 DATED 10.06.2024
<b>Gross and Net Weight of Cargo</b>	281000 KGS and 280000 KGS	84300 KGS and 84000 KGS	281000 KGS and 280000 KGS
<b>No of Containers</b>	10 [GLDU3804214, IALU2271385, LGEU1742430, UEUTU2109461, IALU2251007, CBHU3497130, IALU2260544, GLDU3066960, KKTU7905457 & IALU2269027] all 20 Feet.	03 [PCIU1363886, PCIU1363567 & PCIU1212658] all 20 Feet.	10 [TTNU1653306, TTNU1898443, CRXU3043468, SEGU1691170, TCLU2734280, CNSU2040418, CRXU3127790, CRXU3086135, CRXU3053620 & GLDU3415022] all 20 Feet.
<b>Test Memo Number &amp; Date, generated for Test Purpose/ Sampling</b>	212 dated 05.07.2024	213 05.07.2024 dated	213 dated 05.07.2024

3. As per instructions, the examination of cargo covered under the above mentioned 03 Shipping Bills was conducted by the Docks Examination Section under the Supervision of Dy. Commissioner (Docks Examination), Custom House, Mundra. Thereafter, the samples were drawn vide Test Memo Nos. 212, 213 and 214 all dated 05.07.2024 respectively, at MICT CFS and were sent to IREL(India) Limited, Kollam, Kerala for testing.

4. Vide letter dated 31.07.2024, M/s.IREL (India) Limited provided mineralogical analysis report in respect of the samples sent to them vide test memo nos. 212 dated 05.07.2024, 213 dated 05.07.2024 and 213 dated 05.07.2024: -

**Table-B**

<b>Sr. No.</b>	<b>SB No. and dated</b>	<b>Sample Test Memo No.</b>	<b>Test Report No.</b>	<b>Garnet %</b>
01	1624185 dated 12.06.2024	212 dated 5.07.2024	ML-3523 dated 31.07.2024	98.6%
02	1687959 dated 14.06.2024	213 dated 05.07.2024	ML-3525 dated 31.07.2024	98.5%
03	1598571 dated 11.06.2024	214 dated 05.07.2024	ML-3527 dated 31.07.2024	98.8%

5. As the goods were found to be natural garnet as per the mineralogical analysis report provided by M/s. IREL (India) Ltd., the same were placed under seizure vide seizure memo dated. 14.10.2024 (**RUD-2**) which were available in the twenty-three containers as detailed at Table-A and the same were handed over for safe custody to representative of MICT CFS vide Supratnama dated 14.10.2024. This investigation pertains to Garnet found in 23 containers as detailed at Table-A only and attempted to be exported vide Shipping Bill nos. 1624185 dated 12.06.2024, 1687959 dated 14.06.2024 and 1598571 dated 11.06.2024.

### Classification of the goods:

6.1. The exporter declared the goods as Quartz Powder [RITC-25061020]. However, the goods attempted to be exported by the exporter are “Garnet” as per the mineralogical analysis report sent by M/s. IREL (India) Ltd. vide their letter dated 31.07.2024. Whereas, 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 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 follows: -*

S. No.	Tariff Item HS Code	Unit	Item Description	Export Policy	Policy Condition
98A	2508 5031	Kg.	Beach Sand	STE (State Trading Enterprise)	Export Through Indian Rare Earths Limited (IREL)
	2508 5032		Minerals [ilmenite.		
	2508 5039				
	2612 1000		Rutile, Leucoxene		
	2612 2000				
	2614 0010				
	2614 0020		(Titanium		

2614 0031	<i>bearing mineral),</i>	
2614 0039	<i>Zircon,</i>	
2614 0090	<i>Garnet Sillimanite</i>	
26151000	<i>and Monazite</i>	
2513 2030	<i>(Uranium and</i>	
	<i>Thorium)]</i>	

**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.”*

**6.2** 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 Quartz Powder [RITC-25061020] to avoid the restriction, however, as is evident from the mineralogical analysis report received from M/s. IREL (India) Ltd., the goods are Garnet classifiable under CTH 25132030 and restricted in nature 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.

**6.3** 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.

**7. Valuation of the goods**

**7.1** The exporter had classified the goods as “Quartz Powder” falling under CTH 25061020. However, after the receipt of test results, the goods were found to be “Garnet” falling under CTH. Accordingly, it appears that the goods attempted to be exported by the exporter are appropriately classifiable under the CTH- 25132030 instead of CTH-25061020 declared by the exporter. Based on investigations conducted in the matter, it appears that the exporter has mis-declared the goods attempted to be exported in terms of classification

and value. Therefore, it appears 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 shipping bills filed by them. Accordingly, the value declared by the exporter appears 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 14.06.2024, wherein, FOB value has been declared as Rs.21,476/- per MT. Accordingly, the value of the goods attempted to be exported by the exporter comes to Rs. 1,38,30,544/-.

## **8. Provisions of Law :**

### **8.1 Definitions given in Section 2 of the Customs Act, 1962**

*(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 ;*

### **8.2 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.*

### **8.3 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;

**8.4 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;*

**8.5 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.]*

**8.6 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<sup>1</sup> [four lakh rupees].*

**8.7 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 importation 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 imported 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.

#### **8.8 Section 3 of the Foreign Trade (Development and Regulation) Act, 1992 Act, 1992**

3. Powers to make provisions relating to imports 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 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.

#### **8.9 Section 11 of the FTDR Act, 1992:**

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.*

#### **8.10 Rules 11, 14 and 17 of the Foreign Trade (Regulation) Rules, 1993:**

*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 or goods or materials for export or goods or materials connected with import 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, import 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 the 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) .....

## 8.11 Relevant provisions of the Foreign Trade Policy 2023

### Para 2.01, Policy regarding import /Exports of goods

- (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 (Harmonized System) [ITC (HS)] of Exports and Imports. 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 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 as per its ITC (HS). Schedule 1 of ITC (HS) lays down the Import 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 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).*
- (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.*

## 8.12 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 importation or in its absence another destination country of importation 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.

**8.13** 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 No. 25132030 has been restricted and the same can be exported through notified State Trading Enterprises (STEs), 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 No. 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.

**9.** During investigation summons was issued to the Exporter M/s. Progressive Enterprises (hereinafter referred to as "the exporter" for sake of brevity), however, no-one appeared. Further, vide letter dated 05.11.2024, test reports ML-3523 dated 31.07.2024, ML-3525 dated 31.07.2024 and ML-3527 dated 31.07.2024 received from M/s. IREL (**RUD-3**) were sent to them for their perusal and they were requested to inform as to whether they are in agreement with the test reports. The exporter vide their letter dated 09.11.2024 (**RUD-4**) informed that they accept test reports/test results received from IREL and they do not want any show cause notice or personal hearing in this regard. They further requested to decide the case on merits.

## **10 Confiscation of export goods: -**

**10.1** 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.

**10.2** 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.

**10.3** The goods were sent for testing to M/s. IREL and as per their report ML-3523 dated 31.07.2024, ML-3525 dated 31.07.2024 and ML-3527 dated 31.07.2024, the goods are found to be natural garnet and are 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. 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.

**10.4** 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. 1624185 dated 12.06.2024, 1687959 dated 14.06.2024 and 1598571 dated 11.06.2024 attempted to be exported by the exporter M/s. Progressive Enterprises. It appears that even after having knowledge that the goods were Garnet, the exporter 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 "Quartz Powder" and they had declared the classification of the subject goods covered under the said Shipping Bills under Custom Tariff Item 25061020, 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 25061020. When specific description is ascertained on the basis of test report, the contention of the exporter to classify the Natural Garnet under 25061020 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.

**10.5** From the facts discussed in foregoing paras, it appears 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. Progressive Enterprises seized on 14.10.2024 at Mundra are liable for confiscation under Section 113 (d), 113(h) and 113 (i) of the Customs Act, 1962.

**10.6** From the facts and circumstances of the case, it appears 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 restricted and attempting to export illegally the same, M/s. Progressive Enterprises have rendered the subject goods covered under Shipping Bill Nos. 1624185 dated 12.06.2024, 1687959 dated 14.06.2024 and 1598571 dated 11.06.2024 liable for confiscation under Section 113 (d), 113(h) and 113(i) of Customs Act, 1962. Therefore, M/s. Progressive Enterprises have rendered themselves liable for penalty under Section 114 (i) of the Customs Act, 1962.

**10.7** It appears that the exporter has knowingly submitted false and incorrect declaration in the invoice and Shipping Bill Nos. 1624185 dated 12.06.2024, 1687959 dated 14.06.2024 and 1598571 dated 11.06.2024 submitted before Customs authorities. The exporter has thereby rendered themselves liable for penalty under Section 114 AA of the Customs Act, 1962.

**10.8** From the facts discussed above, it emerges that Shri Rajeeva Moolya, Proprietor of M/s. Progressive Enterprises 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.

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

- a. The goods attempted to be exported, i.e. 644 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;

- b. The exporter M/s Progressive Enterprises (IEC AZAPM5629G) liable to penalty Section 114(i) and Section 114AA of the Customs Act, 1962;
- c. Shri Rajeeva Moolya, Proprietor of M/s. Progressive Enterprises, is liable to penalty under Section 117 of the Customs Act, 1962.

**12.** In the said Investigation Report, it has been mentioned that the exporter vide their letter dated 09.11.2024 has already accepted that the goods to be exported are garnet and they accept test reports/test results received from IREL and they do not want any show cause notice or personal hearing in this regard. They further requested to decide the case on merits.

**13. Discussion and Finding: -**

**13.1** Before proceeding to decide the case, I find it pertinent to mention that the exporter, M/s. Progressive Enterprises, vide their letter dated 09.11.2024 submitted that they accept test reports/test results received from IREL and they do not want any show cause notice or personal hearing in this regard and requested to decide the case on merits. 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.

**13.2** I have carefully gone through the fact of the case and Investigation Report. I find that following main issues are involved in the Investigation Report, which are required to be decided as under:

- i. Whether the description as well as CTH of the goods to be exported vide Shipping Bill Nos. 1624185 dated 12.06.2024, 1687959 dated 14.06.2024 and 1598571 dated 11.06.2024 i.e. “Quartz Powder” /CTH 25061020 are liable to be rejected and as the goods are found to be ‘Natural Garnet’, hence are required to be classified under CTH 25132030.
- ii. Whether the declared assessable/FOB value of the goods to be exported vide Shipping Bill Nos. 1624185 dated 12.06.2024, 1687959 dated 14.06.2024 and 1598571 dated 11.06.2024, having FOB Value Rs.1,02,57,268/- is liable to be rejected and the goods are required to be re-assessed at the assessable value of Rs. 1,38,30,544/-.
- iii. Whether the “Restricted” goods i.e. “Garnet” having total quantity i.e. 644 MTs attempted to be exported vide Shipping Bill Nos. 1624185 dated 12.06.2024, 1687959 dated 14.06.2024 and 1598571 dated 11.06.2024, mis-declared as “Quartz Powder [RITC-25061020]” instead of correct description i.e. “Garnet”, seized vide seizure memo dated 14.10.2024, being in contravention of Section 50 of the Customs Act are liable for confiscation under Section 113(d), Section 113(h) and Section 113(i) of the Customs Act, 1962.

- iv. Whether Penalty on the exporter, viz., M/s Progressive Enterprises, holding IEC No. AZAPM5629G, who attempted to export restricted goods under Self-sealing, is imposable under Section 114(i) of the Customs Act, 1962.
- v. Whether Penalty on the exporter, viz., M/s Progressive Enterprises, holding IEC No. AZAPM5629G, who attempted to export restricted goods under Self-sealing, is imposable under Section 114(AA) of the Customs Act, 1962.
- vi. Whether Penalty on Shri Rajeev Moolya, Proprietor of M/s Progressive Enterprises, is liable to penalty imposable under Section 117 of the Customs Act, 1962.

**13.3** Before deciding the above issue, I would like to recapitulate the facts and events brought out in the investigation report which led for the case coming before me for decision that have also been narrated in the foregoing paragraphs as:

**13.3.1** On examination of cargo covered under the 03 Shipping Bill Nos. 1624185 dated 12.06.2024, 1687959 dated 14.06.2024 and 1598571 dated 11.06.2024, samples were drawn as per Test Memo Nos. 212, 213 and 214, all dated 05.07.2024 at MICT CFS. These samples were sent to IREL(India) Limited, Kollam, Kerala and confirmed vide test report issued by IREL, Kolam, as “Natural Garner”, which is a restricted item for export, was being exported by M/s Progressive Enterprises in illegal manner by way of mis-declaring the same as “Quartz Powder [RITC-25061020]”.

**TABLE A1**

S/B No. & Dt.	Invoice No. & Dt	Quantity	Total Nos. of Container
1624185 12.06.2024	dated 10.06.2024	PE-23/2024-25 DATED 280000 KGS	10
1687959 14.06.2024	dated 12.06.2024	PE-24/2024-25 DATED 84000 KGS	03
1598571 11.06.2024	dated 10.06.2024	PE-22/2024-25 DATED 280000 KGS	10

**13.3.2** On further investigation, the goods were found to be natural garnet, as the same were confirmed by the M/s. IREL report and the same were placed under seizure vide seizure memo dated. 14.10.2024, which were available in the twenty-three containers as detailed at Table-A1, which were attempted to be exported vide Shipping Bill nos. 1624185 dated 12.06.2024, 1687959 dated 14.06.2024 and 1598571 dated 11.06.2024.

**13.4** Notification No.26/2015-20 dated 21.08.2018 restricted export of Garnet classifiable under CTH 25132030 and could only be exported through Indian Rare Earth Ltd. (IREL). In the instant case, the exporter by filing Shipping Bill nos. 1624185 dated 12.06.2024, 1687959 dated 14.06.2024 and 1598571 dated 11.06.2024 tried to export total 644 MTs natural Garnet by way of mis-declaring the same as ‘Quartz Powder’ to avoid the restriction whereas Garnet is rightly classifiable under CTH 25132030 and restricted in nature. Thus, non-compliance of the existing DGFT Policy makes the goods restricted in nature. Hence,

there is a proposal in the Investigation Report for confiscation of goods under Section 113(d), 113 (h) & 113(i) of the Customs Act, 1962. Consequently, the Exporter, M/s. Progressive Enterprises also appeared liable for penalty under Section 114(i) of the Customs Act, 1962.

**13.5 Valuation of the impugned goods i.e. “Natural Garnet”:** Accordingly, it is found that, M/s IREL (India) Limited is the only authorized agency to export the impugned goods ‘Natural Garnet’. Hence, it appears that, the declared assessable value (Rs.1,02,57,268/-) of the impugned goods is liable to be rejected in view of Rule 8 of the Customs Valuation (Determination of Value of Export Goods) Rules, 2007. Whereas, it is found from the data available in the ICES, the shipping bill filed by M/s. IREL (India) Limited has exported ‘Garnet’, wherein, FOB value has been declared as Rs. 21,476/- per MT. Accordingly, the value of the goods attempted to be exported by the exporter comes to Rs. 1,38,30,544/-.

**13.6** I further find from the facts of the case as brought out in the investigation report that the Exporter, viz. M/s Progressive Enterprises has attempted to export “Garnet” in twenty-three containers by resorting to mis-declaration as “Quartz Powder” under RITC Code 25061020, to avoid the Restriction. Further during the investigation and based on IREL Test reports, 23 containers having goods as Garnet were seized under Section 110 of the Customs Act, 1962. In this regard, confiscation of goods attempted to be improperly exported is covered under section 113 of the Customs Act, 1962 and prohibited goods are liable for confiscation under section 113(d) of the Customs Act, 1962, which stipulates that:

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*(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;*

Further, section 2(33) of the Customs Act, 1962 defines prohibited goods as follows:

**2(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;

Further, section 2(19) of the Customs Act, 1962 defines export goods as follows:

**2(19) "export goods"** means any goods which are to be taken out of India to a place outside India;

**13.7** On a plain reading of section 113(d) of the Customs Act, 1962, it is observed that there are two limbs of this section, under the provisions of which goods can be confiscated. The first limb of the section deals with the goods which are attempted to be exported and second limb of the section deals with the goods which are brought within the limits of any customs area, for the purpose of being exported. Section envisages that liability to confiscation would arise when either the goods are attempted to be exported improperly or are brought within the limits of any customs area for the purpose of being exported, contrary to prohibition imposed by or under the Customs Act or any other law for the time being in force. On a conjoint reading of section 2(19) and section 113(d), I find that any goods which are to be taken out of India to a place outside India will incur the liability to confiscation under section 113(d), if the goods are attempted to be exported contrary to prohibition imposed by or under the Customs Act or any other law for the time being in force. I find it pertinent to mention that the liability to confiscation would arise immediately at that point of time when the goods are sought to be exported contrary to any prohibition or restriction and this liability would not get eliminated even if the goods that were to be taken out of India to a place outside India eventually are not taken out of India to a place outside India.

**13.8** There is no denying to the fact that the Notification No. 26/2015-20 dated 21.08.2018 restrict export of Garnet classifiable under CTH 25132030 and could only be exported through Indian Rae Earth Ltd. (IREL). In the instant case the exporter by filing Shipping Bill nos. 1624185 dated 12.06.2024, 1687959 dated 14.06.2024 and 1598571 dated 11.06.2024 tried to export total 644 MTs natural garnet having total value of Rs. 1,38,30,544/- by the way of mis-declaring the same as 'Quartz Powder [RITC-25061020]' to avoid the restriction whereas Garnet are rightly classifiable under CTH 25132030 and restricted in nature. Thus non-compliance of the existing DGFT Policy makes the goods restricted in nature. Hence, the said goods become liable for confiscation under Section 113(d), 113(h) & 113(i) of the Customs Act, 1962 and the Exporter by their act of commission and omission have also rendered themselves liable for penalty under Section 114(i) of the Customs Act, 1962.

**13.9** As regard the Penalty under section 114AA of Customs Act, 1962 on Exporter, M/s Progressive Enterprises is concerned, ongoing through the facts of the case, I find that the Exporter had knowingly submitted and signed false and incorrect declaration in the invoice and Shipping Bill nos. 1624185 dated 12.06.2024, 1687959 dated 14.06.2024 and 1598571 dated 11.06.2024 and rendered themselves penalty under Section 114AA of the Customs Act, 1962.

**13.10** As regard the penalty under Section 117 of the Customs Act, 1962 on the Proprietor

of M/s Progressive Enterprises, from the facts discussed above, it emerges that Shri Rajeev Moolya, Proprietor of M/s. Progressive Enterprises had failed to fulfil his responsibility under Section 50 of the Customs Act, 1962 regarding verification of truth and accuracy in declaration filed in the invoice and Shipping Bills filed, I hold him liable for penalty under Section 117 of the Customs Act, 1962.

**14.** In view of the forgoing discussions and findings, I pass the following order:

### **ORDER**

- i. I hereby order to reject the description as well as classification of the goods to be exported vide Shipping Bill nos. 1624185 dated 12.06.2024, 1687959 dated 14.06.2024 and 1598571 dated 11.06.2024 i.e. "Quartz Powder" /CTH 25061020 and order to be re-classified the goods under CTH 25132030 as 'Natural Garnet';
- ii. I order to reject the declared assessable/FOB value of the goods to be exported vide Shipping Bill nos. 1624185 dated 12.06.2024, 1687959 dated 14.06.2024 and 1598571 dated 11.06.2024 i.e. Rs.1,02,57,268/- and order to be re-assessed the value at Rs. 1,38,30,544/-;
- iii. I hereby order to confiscate the goods viz "Natural Garnet" having quantity of Wt. 644 MTs and having re-assessed FOB Value of the goods as Rs. 1,38,30,544/- (Rupees One Crore Thirty-Eight Lakhs Eighty Thirty Thousand Five Hundred Forty-Four only) vide Shipping Bill nos. 1624185 dated 12.06.2024, 1687959 dated 14.06.2024 and 1598571 dated 11.06.2024, 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 impose Redemption Fine of Rs.14, 00,000/- (Rupees Fourteen Lakhs Only) of the re-assessed FOB Value in lieu of Confiscation under Section 113(d), 113(h) & 113(i) of the Customs Act, 1962 to redeem the goods only for the purpose of Back to Town (BTT);
- iv. I impose penalty of Rs.7,00,000/- (Rupees Seven Lakhs Only) on the exporter, viz., M/s. Progressive Enterprises, holding IEC No. AZVPK9841P under Section 114(i) of the Customs Act, 1962.
- v. I impose penalty of Rs. 5,00,000/- (Rupees Five Lakhs Only) on the exporter, viz., M/s. Progressive Enterprises, holding IEC No. AZVPK9841P under Section 114AA of the Customs Act, 1962.
- vi. I impose penalty of Rs. 2,00,000/- (Rupees Two Lakhs Only) on Shri Rajeev Moolya, the Proprietor of M/s Progressive Enterprises, holding IEC No. AZVPK9841P under Section 117 of the Customs Act, 1962 for the contravention as mentioned in para 13.10 above.

**15.** 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/1307/2024-EA

Date : 25-01-2025

**BY SPEED POST**

To,  
M/s Progressive Enterprises,  
Balepuni Post Office, 2, 2-237 1,  
S/O Babu Moolya, Hoohakuva Kallu,  
HO, Karnataka-574153.

Copy to:-

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