	<p>सीमा शुल्क निवारक के आयुक्त का कार्यालय), सीमा शुल्क भवन, जामनगर- राजकोट हाइवे, विक्टोरिया ब्रिज के पास, जामनगर (गुजरात) – 361 001</p>	
	<p>Office of the Commissioner of Customs (Preventive), 'Seema Shulk Bhavan', Jamnagar – Rajkot Highway, Near Victoria Bridge, Jamnagar (Gujarat) – 361 001 Email: commr-custjmr@nic.in; adj-custjmr@nic.in</p>	
DIN – 20250771MM00004934C9		
1.	फाइल क्रमांक/ File Number	F. No. VIII/10-21/ADC/O&A/19-20
2.	मूल आदेश क्रमांक/ Order-in-Original No.	05/ Additional Commissioner/ 2025-26
3.	द्वारा पारित/ passed by	एन. श्रुजन कुमार/N. Srujan Kumar
		अपर आयुक्त/ Additional Commissioner,
		सीमा शुल्क, निवारक/Customs (Preventive)
		जामनगर/ Jamnagar.
4.	Date of Order /आदेश दिनांक	02.07.2025
	Date of issue / आदेश जारी किया	03.07.2025
5.	कारण बताओ नोटिस क्रमांक एवं दिनांक Show Cause Notice Number & Date	VIII/10-21/ADC/O&A/2019-2020 dated 13.12.2019
6.	नोटिसी का नाम/ Name of Noticee	M/s. R.K. Asia Resources, No. 13-7-17/Golden Opulence, Poonamallee High Road, Chennai (Tamil Nadu)-600 056
01.	इस आदेश की मूल प्रति संबन्धित व्यक्ति को निशुल्क प्रदान की जाती है। The original copy of this order is provided free of cost to the person concerned.	
02.	इस मूल आदेश से व्यथित कोई भी व्यक्ति सीमा शुल्क अधिनियम, की धारा 1962 128A)(1)a सीमा शुल्क नियम (अपील), 1982 के नियम 3 के साथ पठित, के प्रावधानों के तहत, इस आदेश की प्राप्ति की तारीख से 60 दिन के भीतर फॉर्म सीए-1 में निम्नलिखित पते पर अपील दायर कर सकता है।फॉर्म सीए-1 में अपील का प्रपत्र, दो प्रतियों में दायर किया जाएगा और उसके साथ इस आदेश की समान संख्या में प्रतियाँ संलग्न की जाएंगी जिसके विरुद्ध अपील की गई है। जिनमें से कम से कम)एक प्रमाणित प्रति हो	
	आयुक्त (अपील) वी मंजिल 7, मृदुल टावर, टाइम्स ऑफ इंडिया के पीछे, आश्रम रोड, अहमदाबाद – 380 009	



	Any Person aggrieved by this Order-In-Original may file an appeal in Form CA-1, within sixty days from the date of receipt of this order, under the provisions of Section 128 of the Customs Act, 1962, read with Rule 3 of the Customs (Appeals) Rules, 1982 before the Commissioner (Appeals) at the above mentioned address. The form of appeal in Form No. CA.-1 shall be filed in duplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be a certified copy).
03.	अपील पर 5/- रुपये का कोर्ट फीस स्टाम्प लगा होना चाहिए। जैसा कि भारतीय स्टाम्प अधिनियम, 1989 के तहत प्रदान किया गया है, या राज्य विधान द्वारा संशोधित किया जा सकता है, जबकि इस अपील के साथ संलग्न आदेश की प्रति पर रुपये ) 0.50पचास पैसे केवल (का कोर्ट फीस स्टाम्प होना चाहिए। जैसा कि न्यायालय शुल्क अधिनियम, 1870 की अनुसूची -I, मद 6 के तहत निर्धारित किया गया है।
	The appeal should bear the Court Fee Stamp of Rs. 5/- as provided under the Indian Stamp Act, 1989, modified as may be, by the State Legislation, whereas the copy of the order attached with this appeal should bear a Court Fee Stamp of Rs. 0.50 (Fifty paise only) as prescribed under Schedule – I, Item 6 of the Court Fees Act, 1870.
04.	अपीलीय जापन के साथ शुल्क भुगतान /जुर्माना /अर्थ दंड का सबूत भी संलग्न करे अन्यथा सीमा शुल्क अधिनियम, ,1962 की धारा 128 के प्रावधानों का अनुपालन ना होने के कारण अपील को खारिज किया जा सकता है।
	Proof of payment of duty / fine / penalty should also be attached with the appeal memo, failing to which appeal is liable for rejection for non-compliance of the provisions of Section 128 of the Customs Act, 1962.
05.	अपील प्रस्तुत करते समय यह सुनिश्चित करे की सीमा शुल्क अपील)) नियम, 1982 नियम (प्रोसीजर) और सिस्टेट प्रक्रिया,के सभी नियमों का पूरा पालन हुआ है। 1982
	While submitting the Appeal, the Customs (Appeals) Rules, 1982, and the CESTAT (Procedure) Rules, 1982, should be adhered to in all respects.
06.	इस आदेश के खिलाफ आयुक्त (अपील), सीमा शुल्क, उत्पाद शुल्क और सेवा कर अपीलीय न्यायाधिकरण के समक्ष मांग की गई शुल्क के 7.5% के भुगतान पर होगी, जहाँ शुल्क या शुल्क और जुर्माना विवाद में है, या जुर्माना विवाद में है, या जुर्माना जहाँ जुर्माना है अकेले विवाद में है।
	An appeal, against this order shall lie before the Commissioner (Appeals), on payment of 7.5% of the duty demanded, where duty or duty and penalty are in dispute, or penalty are in dispute, or penalty, where penalty alone is in dispute.



**Brief facts of the case:**

The brief facts of the case are that **M/s. R. K. Asia Resources**, No. 13-7-17/ Golden Opulence, Poonamallee High Road, Chennai (Tamil Nadu) – 600 056 (hereinafter referred to as **“the Noticee”**) had filed the following Shipping Bill as detailed in the following Table-A with the Custom House, Gujarat Pipavav Port Limited, Pipavav, for the export of goods declared as **“Natural Abrasive Grain”** by classifying the same under Custom Tariff Heading No. 2513 2090 of the First Schedule to the Customs Tariff Act, 1975:

**TABLE – A**

Sr. No.	Shipping Bill		Description of goods	Quantity (In M. T.)	F.O.B Value in INR
	Number	Date			
1.	5468284	10.07.2019	Natural Abrasive Grain	100.00	18,30,545
<b>Total</b>				<b>100.00</b>	<b>18,30,545</b>

**1.1** Whereas, it appears that the above tabulated Shipping Bill has been finally assessed under the ‘Risk Management System’ under the provisions of Section 17(2) of the Customs Act, 1962.

**2.** Further, the representative samples of the goods intended to be exported vide the Shipping Bill as mentioned in the foregoing Table – A, were drawn and forwarded for ascertaining the nature of goods, to the Customs House Laboratory, Kandla, by the Custom House, Gujarat Pipavav Port Limited, Pipavav, vide the following Test Memo:

**TABLE – B**

Sr. No.	Shipping Bill		Test Memo	
	Number	Date	Number	Date
1.	5468284	10.07.2019	006	28.07.2019

**2.1** In view of the pending receipt of test results from the Customs House Laboratory, Kandla, the Noticee submitted a letter dated 07.08.2019 with reference to the Shipping Bill mentioned in the foregoing Table – A, before the Deputy Commissioner, Custom House, Gujarat Pipavav Port Limited, Pipavav, wherein they requested that:

- (i) since, testing taking time therefore they cannot adhere to with the shipment schedule agreed by them with their overseas buyers;
- (ii) that therefore they requested for permission to export the goods under test bond;
- (iii) that they declare and state that the goods exported by them are “Natural Abrasive Grain” as declared in shipping documents and not natural garnets;



- (iv) if it is found in contrary to what declared they shall be liable for action as per the provisions of the Customs Act, 1962.

2.2 Whereas, on the basis of the Test Bond dated 10.08.2019 executed by the Noticee with reference to Shipping Bill mentioned in the foregoing Table – A, the goods were allowed to be exported outside India, provisionally.

3. Whereas, it appears that the Chemical Examiner, Grade – I, Customs House Laboratory, Kandla, with reference to Test Memo, as mentioned in foregoing Table – B, reported as follows:

Sr. No.	Shipping Bill		Test Memo		Report	
	Number	Date	Number	Date	Number	Date
1.	5468284	10-07-2019	006	28-07-2019	262	14-08-2019
<p><i>The sample as received is in the form of reddish brown coarse gritty powder. It is mainly composed of silicates of Aluminium, Iron together with other oxide.</i></p> <p><i>Moisture Content = 0.10% by Wt.</i></p> <p><i>LOI = 0.56% by Wt.</i></p> <p><i>Al<sub>2</sub>O<sub>3</sub> content = 55.7% by Wt.</i></p> <p><i>Fe<sub>2</sub>O<sub>3</sub> content = 25.6% by Wt.</i></p> <p><i>Note:</i></p> <p><i>The exact identification of the sample could not be ascertained in this laboratory for want of testing facility i.e. crystallography. Such sample may be forwarded to any other recognised laboratory, where such facility is available for such type of samples.</i></p>						

3.1. Further, as the Chemical Examiner, Grade – I, Customs House Laboratory, Kandla, expressed his inability to test the sample for want of certain facilities, the samples were sent to the Central Revenues Control Laboratory, New Delhi, who reported their findings in respect of the samples pertaining to the said Shipping Bill, as tabulated hereunder:

Sr. No.	Shipping Bill		Test Memo		Report	
	Number	Date	Number	Date	Number	Date
01	5468284	10-07-2019	015	09-08-2019	CL-926	20-09-2019
<p><i>The sample is in the form of reddish brown coloured coarse powder. On the basis of Physical, Chemical and XRD analysis, sample is a natural garnet (Almandine – in the form of Iron Aluminium Silicate)</i></p> <p><i>Density = 4.411 (g/cm<sup>3</sup>)</i></p>						

4. From the foregoing reports of the Central Revenues Control Laboratory, New Delhi, the goods exported were “NATURAL GARNET” and not the one as declared by the Noticee, therefore, it appears that goods are found to be mis-declared as they are appropriately classifiable under the Customs Tariff Heading



No. 2513 2030 of the First Schedule to the Customs Tariff Act, 1975. The CTH No. 2513 reads as follows:

Tariff Item	Description of article	Unit
(1)	(2)	(3)
2513	<b>Pumice stone; emery; natural corundum, natural garnet and other natural abrasives, whether or not heat-treated</b>	
2513 10 00	-Pumice stone	Kg.
2513 20	- <i>Emery, natural corundum, natural garnet and other natural abrasives :</i>	
2513 20 10	--- Emery	Kg.
2513 20 20	--- Natural corundum	Kg.
2513 20 30	--- Natural garnet	Kg.
2513 20 90	--- Other	Kg

5. The Director General of Foreign Trade, New Delhi, vide their Notification No. 26/2015-2020 dated 21.08.2018 had inserted new entry at Sl. No. 98A in Chapter 26 of Schedule 2 of ITC (HS) Classification of Export & Import Items 2018, as follows:

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

6. Whereas, upon issuance of the aforesaid notification, it appears that consequent to issuance of Notification No. 26/2015-2020 dated 21.08.2018 Garnet classifiable under CTH 2513 2030 could only be exported by M/s. Indian Rare Earths Limited and no other entity.

7. Whereas, the above mentioned report of the Central Revenues Control Laboratory, New Delhi, was communicated to the Noticee by the Deputy



Commissioner, Custom House, Gujarat Pipavav Port Limited, Pipavav, vide letter F. No. VIII/26-14/PIP/Export/Query/2019-2020 dated 11.10.2019.

8. Whereas, it appears that the Noticee had conscious knowledge that the goods exported by them were nothing but 'Natural Garnet' and therefore, to avoid the restriction they have mis-declared the goods.

9. Whereas, it appears that Section 50(2) and 50(3) of the Customs Act, 1962, which places onus upon the exporter, reads as follows:

**Section 50. Entry of goods for exportation. -**

(1) .....

(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.*

9.1 Whereas, it appears that the Noticee by resorting to mis-declaration of the goods have failed to comply with the provisions of Section 50(2) and 50(3) of the Customs Act, 1962. It further appears that no evidence has been placed on record by the Noticee that they were authorised to export on behalf of M/s. Indian Rare Earths Limited.

10. Whereas, it appears that the export of the said goods is restricted and can only be done by M/s. Indian Rare Earths Limited and also it appears that no evidence has been produced by the Noticee that they are authorised on behalf of M/s. Indian Rare Earths Limited, to export the goods. However, the Noticee mis-declared the export goods and exported the same which was contrary to the prevailing Foreign Trade Policy. Therefore, it appears that the above act of the Noticee had rendered total 100 Metric Tonnes of 'Natural Garnet' having total FOB of Rs. 18,30,545/- liable for confiscation under Section 113(d) of the Customs Act, 1962.

11. Whereas, it further appears that while making entry under Section 50 of the Customs Act, 1962, the Noticee had not made correct declaration of the goods. Therefore, it appears that the 100 Metric Tonnes of 'Natural Garnet' having total



FOB of Rs. 18,30,545/- liable for confiscation under Section 113(i) of the Customs Act, 1962.

**11.1** Whereas, it appears that the Noticee by resorting to mis-declaration of the goods have rendered the goods liable for confiscation under Section 113(d) and 113 (i) of the Customs Act, 1962 and for rendering the goods liable for confiscation, the Noticee have also rendered themselves liable for penal action under Section 114 of the Customs Act, 1962.

**12.** The above observations lead to issuance of show cause notice from F. No. VIII/10-21/ADC/O&A/2019-20 dated 13.12.2019 to **M/s. R. K. Asia Resources**, No. 13-7-17/ Golden Opulence, Poonamallee High Road, Chennai (Tamil Nadu) – 600 056, wherein they were called upon to show cause as to why:

- (i) the goods covered under Shipping Bill No. 5468284 dated 10-07-2019 should not be re-assessed by classifying the exported goods from Tariff Heading No. 2513 20 90 of the First Schedule to the Customs Tariff Act, 1975 to Tariff Heading No. 2513 20 30 *ibid* under Section 17(4) of the Customs Act, 1962;
- (ii) the above 100 Metric Tonnes of Natural Garnet covered under Shipping Bill No. 5468284 dated 10-07-2019 having FOB of Rs. 18,30,545/- should not be confiscated under Section 113(d) of the Customs Act, 1962;
- (iii) the above 100 Metric Tonnes of Natural Garnet covered under Shipping Bill No. 5468284 dated 10-07-2019 having FOB of Rs. 18,30,545/- should not be confiscated under Section 113(i) of the Customs Act, 1962;
- (iv) penalty should not be imposed upon them under Section 114 of the Customs Act, 1962.

**13.** Thenafter, the above referred Show Cause Notice No. VIII/10-21/ADC/O&A/2019-20 dated 13.12.2019 has been decided vide Order-in-Original No.06/Additional Commissioner/21-22 dtd. 17.12.2021 by the Additional Commissioner, Customs(PLrev.),Jamnagar, by passing the following order :

- (i) Order the re-assessment of the Shipping Bill no. 5468284 dated 10.07.2019 by classifying the exported goods from Tariff Heading No. 2513 2090 to Tariff Heading No. 2513 20 30 of the First Schedule to the Customs Tariff Act, 1975, under section 17(4) of the Customs Act, 1962;
- (ii) Order the confiscation of the above 100 MT of Natural Garnet covered under Shipping Bill No. 5468284 dated 10.07.2019 having FOB of Rs. 18,30,545/- in terms of section 113(d) and 113(i) of the Customs Act, 1962. Since, the goods are not available for confiscation, being released under Bond, I impose redemption fine of Rs. 5,00,000/- (Rupees five lakh only) in terms of section 125 of the Customs Act, 1962;



- (iii) Impose the penalty of Rs. 20,00,000/- (Rupees twenty lakh only) on M/s R. K. Asia Resources, Chennai, under the provisions of Section 114(i) of the Customs Act, 1962;
- (iv) Order that the Bond furnished by M/s R. K. Asia Resources, Chennai, be enforced for recovery of fine and penalty imposed.

14. Being aggrieved with the above referred Order-in-Original No. 06/Additional Commissioner/21-22 dtd. 17.12.2021 by the Additional Commissioner, Customs(PLrev.),Jamnagar, the Noticee has preferred an appeal before the Commissioner(Appeals), Ahmedabad, who in turn has observed that the adjudicating authority had failed to deal with the contention of the Appellant that the test reports cited by the department does not conform to the specifications of 'OR' Coarse grade and 'OR Medium Grade, circulated by the canalizing agency, i.e. IREL vide letter No. IREL/CAN/MUM/2018-19 dated 28.12.2018 that were obtained by the Noticee under RTIA. Hence, the Adjudicating Authority has passed the impugned order in violation of principles of natural justice in as much as he has not recorded his findings on the discrepancies pointed out by the Noticee in the Test Report of CRCL, New Delhi. Therefore, the Commissioner(Appeals) has set aside the Order-in-Original, in question, and allow the appeal by way of remand to the Adjudicating Authority.

**Defence Submission:**

15. The Noticee vide their letter ref. no. Nil dated 24.11.2024 has filed their explanation in response to the said Order-in-Appeal (Remand matter) passed by the Commissioner (Appeals), Ahmedabad; wherein they contended that IREL, the canalising agency specified by DGFT in the Notification No. 26/2015-2020 dated 21.08.2018 have circulated specifications of Garnet [Garnet 'or' coarse grade and "OR" Medium Garnet) to Customs (Custom House, Mundra) under letter No. IREL/CAN/MUM/2018-19 dated 28.12.2018, involving following parameters: (i) Guaranteed Garnet (ii) Typical Mineralogical Analysis (iii) Sieve Analysis (iv) Specific Gravity (v) Bulk Density.

16. They have further stated that the above specifications were tendered on behalf of the Noticee in the earlier round of adjudication under letter dated 23.11.2021 (after receiving the same from Custom House, Mundra under their letter F. No. VIII/RTI-51/CHM/20-21 dated 18.01.2021 in response to an application filed by them).

17. The Noticee has further submitted that following technical literature was supplied to them by this good office vide letter F.No.VIII/10-21/ADC/O&A/2019-20 dated 20.10.2021:

- (i) Ullman's Encyclopaedia of Industrial Chemistry. Fifth, Completely Revised Edition. Volume A1.



- (ii) Kith-Othmer Encyclopaedia of Chemical Technology. Third Edition Volume 1.
- (iii) Geology.com.

18. The Noticee has also placed on record Dana's Textbook of Mineralogy to augment clarity about the term 'garnet', since it was not clarified in the notification issued by DGFT.

19. The Noticee has further stated that the crux of the broad comparison of the aforesaid technical literature would inform that:

- (i) Garnet has a fixed composition of Alumina, Iron Oxide and Silicate. Mere presence of these substances is not sufficient to name any item as garnet.
- (ii) The additional parameters are (a) hardness and (b) density.

20. The Noticee has further stated that, it may be appreciated from the written submission tendered on 18.11.2024 during personal hearing that, there is a huge variation in the density reported by CRCL, Delhi and that specified by the Canalising Agency, i.e. IREL. They further stated that the huge variation is also noticed in the percentage of Alumina, Iron Oxide and Silica reported by the departmental laboratory at Kandla and Dana's textbook of mineralogy. The Noticee has further stated that, the report issued by CRCL, Delhi that is specifically relied in the show cause notice is silent about the composition, specific gravity and hardness, giving an impression that the sample was not tested with regard to these critical parameters. Further, CRCL, New Delhi has merely reported that the sample is in the form of reddish brown coloured coarse powder and on the basis of physical, chemical and XRD analysis, sample is a 'natural garnet' (Almandine- in the form of Aluminium Silicate). No details of any analysis are available on record and made known to the Noticee

21. The Noticee with above submission has requested to call upon the record sheets detailing vital details like (a) tests carried out (ii) readings noted (iii) conditions of testing (iv) instruments used (v) reference material based on which the laboratory opined that sample is natural garnet, etc. from Custom House Laboratory at Kandla as well as CRCL, Delhi and ascertain, for the cause of fair and just adjudication, the details of tests carried out by both these laboratories. They have also requested to supply a copy of the above record sheets to them for making further submissions, in the interest of natural justice.

22. The Noticee has filed their further submission vide e-mail dated 22.02.2025, in which, they inter alia stated, that the goods exported by the Noticee was not garnet. They have further stated that the sole evidence to allege that



the goods are garnet is test report bearing lab No. CL-926-EXP dated 20.09.2019 of Chemical Examiner-II, CRCL, New Delhi. As per the report - the sample is

- reddish brown coloured coarse powder
- physical, chemical & XRD analysis was carried out
- density of the sample is 4.411

23. They have further stated that the report does not contain readings obtained during the physical, chemical and XRD analysis. As against this, the department has provided the following parameters of garnet to the Noticee.

23.1 Custom House, Mundra supplied a letter bearing Ref. No. IREL/CAN/MUM/2018-10 dated 28.12.2018, inter alia containing following parameters of garnet:

- (a) 'OR' coarse grade - 97% (Min) garnet content
- (b) 'OR' medium grade - 94% (Min) garnet content
- (c) both grades have specific gravity of 4.11 and bulk density of 2.32 to 2.40
- (d) both grades have specific mineralogical analysis.
- (d) both grades have specific sieve analysis

23.2 Further, Deputy Commissioner, Customs (P), Jamnagar, under letter F. No. VIII/10-21/ADC/O&A/2019-20 dated 02.11.2021 supplied following technical literature about garnet:

- (a) Ullmann's Encyclopedia of Industrial Chemistry.
- (b) Kirk-Othmer's Encyclopedia of Chemical Technology
- (c) Geology.com

24. Further, the Noticee has submitted that a comparison between the test result of CRCL with the technical literature supplied by the department would reveal following discrepancies:

- (i) There is no information regarding "guaranteed garnet content", specific gravity and particle size in the test reports of CRCL.
- (ii) The density reported by CRCL, New Delhi is 4.411 g/cm<sup>3</sup> as against the 2.32 to 2.40 t/m<sup>3</sup> given in the specifications of natural garnet supplied by IREL to Customs.
- (iii) The % of Al<sub>2</sub>O<sub>3</sub> (Alumina), Fe<sub>2</sub>O<sub>3</sub> (Iron Oxide) and SiO<sub>2</sub> (Silica) as per Custom House, Kandla laboratory report (to whom sample was first sent) is 55.7%, 25.6% and "not tested, not reported" as against 20.5%, 43.3% and 36.2% mentioned in Dana's Textbook of Mineralogy.
- (iv) The CRCL report does not even mention Fe<sub>2</sub>O<sub>3</sub> (Iron Oxide).
- (v) According to Geology.com provided to M/s. R.K.Asia by your good office under letter F. No. VIII/10-21/ADC/O&A/2019-20 dated 20.10.2021, specific gravity must be 4.20 and hardness must be 7-7.5% on Mohs' scale. As against this, the CRCL report is silent.



25. Further, the Noticee had made a specific request at para 3 of their submission dated 24.11.2024 for consideration, which is as follows:

*"In view of above facts, your Honour may like to call upon the record sheets detailing vital details like (a) tests carried out (ii) readings noted (iii) conditions of testing (iv) instruments used (v) reference material based on which the laboratory opined that sample is natural garnet, etc. from Custom House laboratory at Kandla as well as CRCL, Delhi and ascertain, for the case of fair and just adjudication, the details of tests carried out by both these laboratories."*

26. They have further stated that, in the facts and circumstances, where there is huge variation between % of Alumina and Iron Oxide and non-testing of Silica by Custom House laboratory, Kandla and complete non-mention of any % and absence of Iron Oxide in the report issued by CRCL, New Delhi, it is duly established that the goods exported by the Noticee was not Garnet. On this basis, they have requested to drop the proceedings initiated against them.

27. The Noticee has further submitted that the entire notice is based on test results. It is a settled law that without cross-examination of chemists who performed the tests, the test results cannot be relied on. Reliance is placed on the following decisions:

- (a) Essar Oil Ltd. v/s Commr. of Cus. (Preventive), Jamnagar, 2015 (326) ELT 310 (tri-Ahmd)
- (b) Ultra Fine Fillers (P) Ltd. v/s Commissioner of Central Excise, Jaipur-II, 2004 (167) ELT 331 (Tri.-Del.)

28. Lastly, the Noticee has requested vide his above referred submission to permit cross-examination of the Chemical Examiner (s) whose reports are cited in the notice.

### **PERSONAL HEARING**

29. Personal hearing in the matter was held on 29.05.2025. Shri Vikas Mehta, Consultant, duly authorised by the Noticee had appeared for Personal Hearing virtually through webex. He re-iterated the submissions made vide their e-mail dated 22.02.2025 and also requested to decide the case based on merits.

### **Discussion and Findings:**

30. I have carefully gone through the facts of the case, Order-in-Appeal No.AHD-CUSTM-000-APP-137-23-24 dated 19.12.2023 passed by the Commissioner (Appeals), Ahmedabad who has set aside the Order-in-Original, in



question, and allow the appeal by way of remand to the Adjudicating Authority, Show Cause Notice, written submissions dated 18.11.2024, 24.11.24 and further submission made vide email dated 22.02.2025 and the records of the personal hearing held on 29.05.2025. I find that, the issues to be decided in the instant case are as follows:

- (i) Whether the goods exported vide Shipping Bill No.5466284 dated 10.09.2019 was Natural Garnet or otherwise and, if the same was Natural Garnet, whether they are liable for confiscation under Section 113 of the Customs Act, 1962 or otherwise;
- (ii) Whether the penalty of Rs. 20,00,000/- (Rupees twenty lakh only) imposed on the Noticee under the provisions of Section 114(i) of the Customs Act, 1962, is imposable or otherwise.

**31.** I notice that Appellate Authority vide para 5.4 had made following observations:

*".....I find that the adjudicating authority had failed to deal with the contention of the Appellant that the test reports cited by the department does not conform to the specification of "OR" Coarse grade and "OR Medium Grade circulated by the canalizing agency, i.e. IREL vide letter No. IREL/CAN/MUM/2018-19 dated 28.12.2018 that was obtained by the Appellant under RTIA. Hence, the adjudicating authority has passed the impugned order in violation of principles of natural justice in as much as he has not recorded his findings on the discrepancies pointed out by the Appellant in the Test Report of CRCL, New Delhi. Therefore, the impugned order is not legally sustainable on this count and is liable to be set aside. Moreover, the appeals were sent to the adjudicating authority for his comments on the grounds raised in the appeal, but there has been no response."*

**32.** With the observations, the Appellate Authority setting aside the impugned OIO has allowed the appeal by way of remand to the adjudicating authority for passing fresh order after considering submissions made by the Appellant in the present appeal on record. The Adjudicating authority shall examine the available facts, documents, submissions and issue a speaking order afresh following principle of natural justice and legal provisions

**33.** In this regard, I noticed that, DGFT vide Notification No. 26/2015-2020 dated 21.08.2018 has restricted the export of Garnet classifiable under CTH 2310 2030, that the same could only be exported by M/s. Indian Rare Earth Limited (IREL) and no other entity.



(To be Published in the Gazette of India Extraordinary Part-II, Section - 3, Sub-Section (ii))  
Government of India

Ministry of Commerce & Industry  
Department of Commerce  
Directorate General of Foreign Trade  
Udyog Bhawan

Notification No. 26/2015-2020  
New Delhi, Dated : 21 August, 2018

Subject: Export policy of Beach Sand Minerals (BSM) in Chapter 26 of Schedule 2 of ITC(HS) Classification of Export and Import Items 2018 - regarding.

S.O.(E) In exercise of the powers conferred by Section 3 of the Foreign Trade (Development & Regulation) Act, 1992 (No.22 of 1992), read with paragraph 1.02 and 2.01 of the Foreign Trade Policy (FTP), 2015-2020, as amended from time to time, the Central Government hereby, with immediate effect, makes amendment in export policy of 'Beach Sand Minerals' in Chapter 26 of Schedule 2 of ITC(HS) Classification of Export and Import Items.

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

"NOTE:

1. Export of Rare Earth compounds classified as Beach Sand Minerals (BSM) , namely [Ilmenite, Rutile, Leucoxene(Titanium bearing mineral), Zircon, Garnet, Sillimanite and Monazite (Uranium and Thorium)], shall be regulated in terms of Sl. No. 98A of Chapter 26 Schedule 2 of ITC(HS) Classification.
2. Other minerals under code 2617 are freely exportable, except those which have been notified as prescribed substances and controlled under Atomic Energy Act, 1962".

3. A new entry at Sl. No. 98A is inserted in Chapter 26 of Schedule 2 of ITC (HS) Classification of Export & Import Items 2018 as follows:

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

4. **Effect of this Notification:**

Export of Beach Sand Minerals have been brought under STE and shall be canalized through Indian Rare Earths Limited (IREL). Beach sand minerals, permitted anywhere in the export policy, will now be regulated in terms of policy under at Sl. No. 98A of Chapter 26 of Schedule 2 Export Policy.

(Atok Vardhan Chaturvedi)  
Director General of Foreign Trade  
Ex-officio Additional Secretary, Government of India  
E-mail: dgft@nic.in

(Issued from F.No.01/91/171/22/AM19/EC)

34. I further observed that, M/s. Indian Rare Earth Limited (IREL) vide their letter dated 28.12.2018 addressed to the Principal Commissioner, Customs House, Mundra has mentioned as follows:

*"As you are aware that Indian Rare Earths Limited (IREL) has been designated as State Trading Enterprise (STE) for canalization on export of Beach sand Mineral (BSM) – Ilmenite, Rutile, Leucoxene (Titanium bearing minerals under HSN 2614 0010, 2614 0020, 2614 0031, 2614 0039, 2614 0090), Zircon (HSN 2615 1000), Monazite (under HSN 2612 1000, 2612 2000), Sillimanite (under HSN 2508 5031, 2508 5032, 2508 5039) and Garnet (HSN 2513 2030) as per DGFT Notification dated 21.08.2018 on*



the export policy on BSM in Chapter 26 of Schedule 2 of ITC (HS) classification of export and import items, 2018.

However, we have been receiving complaint that during past couple of months some export shipments of Garnet have been executed under different ITC (HS) code like 2513 2090 (Natural Abrasives/Others) and the related codes to circumvent canalization. It is, therefore, suggested that items being exported in other heading under series of ITC(HS) code 2513 may be tested by doing the mineralogical analysis to curb this practice.

In this regard, for sake of clarity we have enclosed our typical specifications of 'OR Coarse Grade (-30+60) Garnet' and 'OR medium Garnet' for your kind perusal and guidance Any product with predominant content of Garnet in the export consignment needs to be classified as Garnet under ITC (HS) Code 25132030."

35. I had also gone through the clarification given by the Under Secretary (PSU), Government of India, Department of Atomic Energy, Mumbai, vide their letter ref. no. 3010/44/2019-PSU/6392 dated 02.06.2021, addressed to the department, as follows:

".....

2. In this context, it is once again stated that as per DGFT Notification dated 21.08.2018 about canalization of the export Beach Sand Minerals (BSM), different Tariff Item HS Code including Garnet (HS Code 2513 2030) is covered. **The HS Code of Garnet is independent of its source or origin/ mode of occurrence (i.e. whether obtained from beach sand or hard rock terrain) and therefore, export of Garnet comes under the purview of the above DGFT Notification dated 21.08.2018.**

3. In view of the above, Monazite Test Certificate (MTC) and canalization through M/s IREL (India) Ltd. in respect of Garnet (HS Code 2513 2030) irrespective of source of origin/ mode of occurrence are the pre-requisites for export...."

35.1 Accordingly, the contention of noticee that their goods are not sourced from beach sand, hence, cannot be termed as Beach Sand Minerals is not acceptable.

36. I further observe that, CRCL, Kandla in its report dated 14.08.2019 reported that,

*"the sample as received is in the form of reddish brown gretty coarse powder. It is mainly composed of silicates of Aluminium, Iron together with other oxide.*



*Moisture = 0-10% , LOI – 0.56% by wt ---,  $Al_2O_3$  content = 55.7% by wt,  $Fe_2O_3$  content – 25.6% by wt"*

*The exact identification of the sample would not be ascertained in the laboratory for want of testing facility (i.e. crystallography). Such sample may be forwarded to any other recognized laboratory where such facility is available for such type of sample."*

37. I observe from the above report of CRCL Kandla that there is clear presence of  $Al_2O_3$  and  $Fe_2O_3$  in the sample tested. However, as CRCL-Kandla was not having the facility of crystallography to test the samples, it is therefore, Customs House – Pipavav vide Test Memo No. EXP-015 dated 09.08.2019 sent sample for testing to CRCL New Delhi.

38. Further, during the testing of the aforesaid sample, CRCL-New Delhi in its report dated 20.09.2019 has reported that, *"the sample is in the form of reddish brown coloured coarse powder. On the basis of physical, chemical & XRD analysis, sample is a Natural Garnet (Almandine-in the form of Iron Aluminum Silicate). Density =  $4.411(g/cm^3)$ "*

39. I observe that, the Noticee vide letter dated 24.11.2024 asked to call upon the record sheets detailing test report like (a) tests carried out (ii) readings noted (iii) conditions of testing (iv) instruments used (v) reference material based on which the laboratory opined that sample is natural garnet, etc. from Custom House laboratory at Kandla as well as CRCL, Delhi and ascertain, for the case of fair and just adjudication, the details of tests carried out by both these laboratories. In this regard, I observe that, CRCL, New Delhi, had arrived to their conclusion that the sample is 'natural garnet' by carrying out various physical, chemical and XRD analysis. I find that the XRD Analysis is known as X-Ray Diffraction analysis, which is a technique used in material science to determine the crystallographic structure of a material. XRD analysis is used to identify the crystalline phases present in a material and thereby reveal chemical composition information. Thus, I am of the considered view that the test conducted through XRD Analysis gives the perfect information of the material, though the separate percentage of each element have not been reported by the CRCL, New Delhi, as only the nature of the sample was asked to be determined. Hence the noticee's request to call for above documents from CRCL, New Delhi is rejected, as they are not needed to decide the case in hand and will only delay the adjudication proceedings.

40. I further observe that, as per literature available at <https://en.wikipedia.org/wiki/Garnet> :

'Garnets' are a group of silicate minerals that have been used since the Bronze Age as gemstones and abrasives. Garnet minerals, while sharing similar physical and crystallographic properties, exhibit a wide range of



chemical compositions, defining distinct species. These species fall into two primary solid solution series: the pyrospite series (pyrope, almandine, spessartine), with the general formula  $[\text{Mg, Fe, Mn}]_3 \text{Al}_2(\text{SiO}_4)_3$ ; and the ugrandite series (uvarovite, grossular, andradite), with the general formula  $\text{Ca}_3[\text{Cr, Al, Fe}]_2(\text{SiO}_4)_3$ . Notable varieties of grossular include hessonite and tsavorite.

Garnet species are found in every colour, with reddish shades most common. Blue garnets are the rarest and were first reported in the 1990s. Garnet species' light transmission properties can range from the gemstone-quality transparent specimens to the opaque varieties used for industrial purposes as abrasives. The mineral's lustre is categorized as vitreous (glass-like) or resinous (amber-like).

Garnets are nesosilicates having the general formula  $\text{X}_3\text{Y}_2(\text{SiO}_4)_3$ . The X site is usually occupied by divalent cations ( $\text{Ca, Mg, Fe, Mn}^{2+}$ ) and the Y site by trivalent cations ( $\text{Al, Fe, Cr}^{3+}$ ) in an octahedral/tetrahedral framework with  $[\text{SiO}_4]^{4-}$  occupying the tetrahedral. Because the chemical composition of garnet varies, the atomic bonds in some species are stronger than in others. As a result, this mineral group shows a range of hardness on the Mohs scale of about 6.0 to 7.5. The harder species like almandine are often used for abrasive purposes.

### Almandine

Almandine, sometimes incorrectly called almandite, is the modern gem known as carbuncle. The term "carbuncle" is derived from the Latin meaning "live coal" or burning charcoal. The name Almandine is a corruption of Alabanda, a region in Asia Minor where these stones were cut in ancient times. Chemically, almandine is an iron-aluminium garnet with the formula  $\text{Fe}_3\text{Al}_2(\text{SiO}_4)_3$ ; the deep red transparent stones are often called precious garnet and are used as gemstones (being the most common of the gem garnets). Almandine occurs in metamorphic rocks like mica schists, associated with minerals such as staurolite, kyanite, andalusite, and others. Almandine has nicknames of Oriental garnet, almandine ruby, and carbuncle.

### Industrial uses:

Garnet sand is a good abrasive, and a common replacement for silica sand in abrasive blasting operations. Alluvial garnet grains which are rounder are more suitable for such blasting treatments. Mixed with very high pressure water, garnet is used to cut steel and other materials in water jets. For water jet cutting, garnet extracted from hard rock is suitable since it is more angular in form, therefore more efficient in cutting. Garnet paper is favored



by cabinetmakers for finishing bare wood. Garnet sand is also used for water filtration media.

As an abrasive, garnet can be broadly divided into two categories; blasting grade and water jet grade. The garnet, as it is mined and collected, is crushed to finer grains; all pieces which are larger than 60 mesh (250 micrometers) are normally used for sand blasting. The pieces between 60 mesh (250 micrometers) and 200 mesh (74 micrometers) are normally used for water jet cutting. The remaining garnet pieces that are finer than 200 mesh (74 micrometers) are used for glass polishing and lapping. Regardless of the application, the larger grain sizes are used for faster work and the smaller ones are used for finer finishes. There are different kinds of abrasive garnets which can be divided based on their origin. The largest source of abrasive garnet today is garnet-rich beach sand which is quite abundant on Indian and Australian coasts and the main producers today are Australia and India.

This material is particularly popular due to its consistent supplies, huge quantities and clean material. The common problems with this material are the presence of ilmenite and chloride compounds. Since the material has been naturally crushed and ground on the beaches for past centuries, the material is normally available in fine sizes only. Most of the garnet at the Tuticorin beach in south India is 80 mesh, and ranges from 56 mesh to 100 mesh size.

River garnet is particularly abundant in Australia. The river sand garnet occurs as a placer deposit. Rock garnet is perhaps the garnet type used for the longest period of time. This type of garnet is produced in America, China and western India. These crystals are crushed in mills and then purified by wind blowing, magnetic separation, sieving and, if required, washing. Being freshly crushed, this garnet has the sharpest edges and therefore performs far better than other kinds of garnet. Both the river and the beach garnet suffer from the tumbling effect of hundreds of thousands of years which rounds off the edges. Gore Mountain Garnet from Warren County, New York, USA, is a significant source of rock garnet for use as an industrial abrasive.

41. From the aforesaid literature, it can be concluded that, Garnet can be of different types and Almandine is an iron-aluminium garnet with the formula  $\text{Fe}_3\text{Al}_2(\text{SiO}_4)_3$ . I observe that, CRCL Kandla while testing the sample has specifically established that, there was content of  $\text{Al}_2\text{O}_3 = 55.7\%$  by wt and  $\text{Fe}_2\text{O}_3 = 25.6\%$  by wt.

42. I further observe that, at the time of second testing of samples by another CRCL i.e. CRCL, New Delhi, specifically reported that, *"the sample is in the form of reddish brown coloured coarse powder. On the basis of physical,*



*chemical & XRD analysis, sample is a Natural Garnet (Almandine-in the form of Iron Aluminum Silicate) "*

43. I find that, once the goods are established as *Natural Garnet (Almandine-in the form of Iron Aluminum Silicate) "* by CRCL, which is competent to analyse the goods, the DGFT's Restrictions, as per the Notification No. 26/2015-2020 dated 21.08.2018 get attracted, irrespective of whether they are of Coarse Grade or Medium Grade. Accordingly, the IREL letter dated 28.12.2018 (supra) will not have any bearing in present proceedings. Further, the absence of information pertaining to the percentage of each element in the composition of Garnet will not have any effect and will not change the description or classification of goods, as the goods are already established as Natural Garnet. I also note that the test report of CRCL, Kandla mentioned percentage of  $Al_2O_3$  content as 55.7% by weight and  $Fe_2O_3$  content as 25.6% by weight and CRCL, Delhi's Test Report clearly mentioned that the consignment contains Iron, Aluminium and Silicate. Hence, I find that CRCL report is sufficient and conclusive to prove that the export consignment is 'Natural Garnet'. Hence, I reject the request of the Noticee to re-test the sample for want of separate percentage of their element contents.

44. The Noticee has sought cross-examination of the Chemical Examiner of CRCL to prove their point although it has been specifically mentioned in the test report that the sample is Natural Garnet, specifically Almandine. Thus, asking for cross-examination of the Chemical Examiner on the part of the Noticee is nothing but dilatory tactics being adopted by the Noticee to delay the adjudication proceedings and the same need to be rejected as ruled by the Hon'ble High Court of Madras in the matter of M/s. Vishal Lubetech Corpn. Versus Additional Commissioner of Customs, Coimbatore [2016(342) E.L.T. 201 (Mad.)], wherein they ruled as below:

*"The person, whom they seek to cross examine, is an officer/Government servant, working as a Chemical Examiner in the Central Revenue's Control Laboratory under the control of the Department of Revenue, Ministry of Finance, Government of India. The said officer is not a witness to the proceedings. No statement has been recorded by the Department from such an officer either prior to the issuance of show cause notice or thereafter. Thus, the duty exercised by the Chemical Examiner of the Central Laboratory is in effect discharging a statutory duty and therefore, he is not a witness to the proceedings. The petitioner seeks to take advantage of certain observations made by the test report to state that it is inconsistent with the other averments made therein. It is not in dispute that no statement was recorded from the Officer, who submitted the report. In other words, there is no "examination in chief", for permitting cross-examination. At best, the report can be taken as it is and the petitioner has to contest his case based on the findings recorded in the report. The petitioner requested an opportunity to cross examine the Officer, who submitted a report. This was*



*considered by the respondent and an order was passed on 29-1-2016, rejecting such a request. Accordingly, the petitioners will not be entitled to canvass the issue regarding their right to cross-examine the Chemical Examiner of the Central Revenue's Control Laboratory."*

In the instant case, statement of the Chemical Examiner has not been recorded as witness. Also there is no examination-in-chief of the Chemical Examiner.

45. Moreover, in the matter of M/s. Krishnaram Dyeing & Finishing Works versus Commissioner of the Central Excise & Customs, Surat [2007(209) E.L.T.410(Tri.Mumbai)], the CESTAT ruled, *"the question of cross-examination without examination-in-chief is not legally sustainable."*

46. Accordingly, cross-examination of the Chemical Examiner as sought by the Noticee is not liable to be permitted and I decline the request for such cross-examination.

47. I observe that the Customs Tariff Heading (CTH) 2513 20 30 of the First Schedule to the Customs Tariff Act, 1975 is pertaining to "Natural Garnet", whereas, Customs Tariff Heading (CTH) 2513 2090 pertains to the item description "Other" meant for "other natural abrasives". The export policy for the Customs Tariff Heading (CTH) 2513 2090 pertaining to the item description "Other" is 'Free'. Further, in order to ascertain the exact nature of said exported goods, the representative samples from the Shipping Bill as listed in the foregoing Table – A, was drawn by the Custom House, Gujarat Pipavav Port Limited, Pipavav, and was sent to the Central Revenues Control Laboratory (In brief – CRCL), New Delhi, as the Customs Laboratory, Kandla was not having the necessary facility to test such samples.

48. I observe that the CRCL, New Delhi, vide their reports dated 20.09.2019, submitted the lab testing result in respect of the sample pertaining to the shipping bill as mentioned in the foregoing Table – A. As per the said report, sample was ascertained to be a "Natural Garnet" i.e. Almandine in the form of Iron Aluminium silicate, which was in the form of reddish brown coloured coarse powder. The said result in respect of said samples were arrived by the CRCL, after conducting physical, chemical and XRD analysis, which was also communicated to the Noticee by the Customs House, Gujarat Pipavav Port Limited, Pipavav vide letter F. No. VIII/26-14/PIP/Export Query/2019-20/2287 dated 11.10.2019.

49. I observe that that vide DGFT Notification No. 26/2015-2020 dated 21.08.2018, export of Beach Sand Minerals (in brief – BSM) having ilmenite, Rutile, Leucoxene (Titanium Bearing Mineral) Zircon, **Garnet**, Sillimanite and Monazite (Uranium and Thorium) have been placed under restricted category, as



vide the said notification they were brought under STE (State Trading Enterprise) and can be exported only through the canalizing agency IREL (Indian Rare Earths Limited). I also observe that as the exported goods contain Garnet, the same falls under the restricted category, I further find that in the present case neither the goods were exported through IREL nor under any authorization for export from IREL. The said Notification also specifies the CTH of Garnet as 2513 20 30. For the sake of brevity, the ITC (HS) for Chapter 25 reads as under:

<b>2513</b>	<b>-</b>	<b>Pumice stones: emery; natural corundum, natural garnet and other natural abrasives, whether or not heat-treated</b>
<b>2513010 00</b>	<b>-</b>	<b>Plumice stone</b>
<b>2513 20</b>	<b>-</b>	<b>Emery, natural, corundum, natural garnet and other natural abrasives :</b>
<b>2513 20 10</b>	<b>-</b>	<b>Emery</b>
<b>2513 20 20</b>	<b>-</b>	<b>Natural Corundum</b>
<b>2513 20 30</b>	<b>-</b>	<b>Natural garnet</b>
<b>2513 20 90</b>	<b>-</b>	<b>Other</b>

50. I observe that the Notification No. 26/2015-2020 dated 21.08.2018 adds entry Serial no. 98A in Schedule 2 of ITC (HS). The specific entry under Customs Tariff item 25132030 refers to Garnet. The said notification 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, as the goods tested by the CRCL, New Delhi has been found to be Natural Garnet, hence, the same are correctly classifiable under CTH 2513 2030 specifically.

51. Thus, in view of the above discussions and findings, I find that it is undisputed that the goods are 'Natural Garnet' classifiable under CTH 2513 2030, the tariff item which specifically specifies the item as 'Natural Garnet'. I am therefore of the considered opinion that, when specific description is ascertained on physical, chemical and XRD analysis, the contention of the Noticee to classify the Garnet under CTH 2513 2090 under description "Other" is without rationale and illegitimate. Thus, I hold that having ascertained the correct description as "Natural Garnet" on physical, chemical and XRD analysis, the exported goods logically and legally needs to be classified under CTH 2513 2030 as 'Natural Garnet'.



52. The Noticee has taken plea to the effect that as their goods cannot be considered to be natural garnet, consequently, the goods entered for export under Shipping Bill No. 5468284 dated 10.07.2019 are not liable for confiscation under section 113(d) and 113(i) of the Customs Act, 1962 and the Noticee is also not liable to penalty under section 114 of the Customs Act, 1962.

53. In this context, I find that Section 2(33) of the Customs Act, 1962, defines the '*Prohibited Goods*' means *any goods, the import or export of which is subjected to any prohibition under Custom Act, 1962 or any other law for the time being in force but does not include any such goods in respect of which the condition subject to which goods are permitted to be imported or exported have been complied with.* This *ipso facto* means goods in respect of which conditions subject to which goods are permitted to be exported are not complied will come under purview of 'prohibited goods'. It is undisputed that goods in question, on physical, chemical and XRD testing are found to be 'Natural Garnet' by CRCL New Delhi and hence, classifiable under CTH 2513 2030. The policy condition imposed under Notification No. 26/2015-2020 dated 21.08.2018 states that, such garnet will be allowed to be exported only through IREL, which is a State Trading Enterprise. Since, this condition which has statutorily imposed under Import-Export Policy 2015-2020 issued in terms of Section 3 of the Foreign Trade (Development & Regulation) Act, 1992 and the same has not been complied with while its export i.e. garnet are to be exported through M/s IREL has not been followed in the instant case, hence, the subject 100 MT (as per foregoing Table – A) of garnet classifiable under CTH 2513 2030 are 'Prohibited Goods' as defined under Section 2(33) of the Customs Act, 1962.

54. Accordingly, I hold that impugned consignment of garnet is subjected to canalization of export only through STE i.e. IREL and hence, does qualify to be prohibited goods. These prohibited goods are consequently liable for confiscation under section 113(d) of the Customs Act, 1962. I also hold that the goods have been purposefully by intent and design described as Abrasive Grains, to circumvent export policy restriction. The actual, correct and truthful description 'Garnet' has been wilfully suppressed. For this mis-declaration of description made in the Shipping Bill with a purpose to circumvent the Export Policy Provisions (DGFT Notification No. 26/2015-2020 dated 21.08.2018), the impugned total 100 MT of Garnet covered under the shipping bill as detailed in foregoing Table – A, is liable for confiscation under Section 113(i) of the Customs Act, 1962 for mis-declaration of description of export goods.

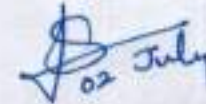
55. I also hold that for their acts and omission to render the goods liable for confiscation under Section 113(d) and 113(i) of the Customs Act, 1962, the Noticee exporter i.e. M/s R. K. Asia Resources, is also liable for penalty under Section 114(i) of the Customs Act, 1962.



56. In view of the above discussions and findings, I pass the following order:

**ORDER**

- (i) I order the re-assessment of the Shipping Bill no. 5468284 dated 10.07.2019 by classifying the exported goods from Tariff Heading No. 2513 2090 to Tariff Heading No. 2513 20 30 of the First Schedule to the Customs Tariff Act, 1975, under section 17(4) of the Customs Act, 1962;
- (ii) I order the confiscation of the above 100 MT of Natural Garnet covered under Shipping Bill No. 5468284 dated 10.07.2019 having FOB of Rs. 18,30,545/- in terms of section 113(d) and 113(i) of the Customs Act, 1962. Since, the goods are not available for confiscation, being released under Bond, I impose redemption fine of Rs. 5,00,000/- (Rupees five lakh only) in terms of Section 125 of the Customs Act, 1962;
- (iii) I impose the penalty of Rs. 20,00,000/- (Rupees twenty lakh only) on M/s R. K. Asia Resources, Chennai, under the provisions of Section 114(i) of the Customs Act, 1962;
- (iv) I order that the Bond furnished by M/s R. K. Asia Resources, Chennai, be enforced for recovery of fine and penalty imposed.



(N. Srujan Kumar)  
Additional Commissioner

DIN- 20250771MM00004934C9  
F. No. VIII/10-21/ADC/O&A/2019-20  
Date: 02.07.2025

**Copy by Email/ Speed Post:**

To  
M/s. R. K. Asia Resources,  
No. 13-7-17/Golden Opulence,  
Poonamallee High Road,  
Chennai (Tamil Nadu) – 600 056.

**Copy to:**

- (i) The Principal Commissioner, Customs, Preventive, Jamnagar.
- (ii) The Deputy/ Assistant Commissioner, RRA, Hqrs., Customs, Preventive, Jamnagar.
- (iii) The Deputy/ Assistant Commissioner, Custom House, Gujarat Pipavav Port Limited, Pipavav.
- (iv) The Superintendent, System/TRC(STF) Cell, Customs, Preventive, Jamnagar.
- (v) Guard File.