

	<b>OFFICE OF THE COMMISSIONER</b> <b>CUSTOM HOUSE, KANDLA</b> <b>NEAR BALAJI TEMPLE, NEW KANDLA</b> <b>Phone : 02836-271468/469 Fax: 02836-271467</b>	
<b>DIN- 20240571ML0000444C33</b>		
A	File No.	GEN/ADJ/ADC/917/2024-Adjn-O/o Commr-Cus-Kandla
B	Order-in-Original No.	KDL/ADC/DPB/04/2024-25
C	Passed by	Dev Prakash Bamanavat Additional Commissioner of Customs, Custom House, Kandla.
D	Date of Order	24.05.2024
E	Date of Issue	24.05.2024
F	SCN NO. & Date	Waiver of Show cause notice
G	Noticee / Party / Importer / Exporter	M/s Vishwaja Enterprises and others

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

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

2. यदि कोई व्यक्ति इस मूल आदेश से असंतुष्ट है तो वह सीमाशुल्क अपील नियमावली 1982 के नियम 3 के साथ पठित सीमाशुल्क अधिनियम 1962 की धारा 12 8A के अंतर्गत प्रपत्र सीए- 1-में चार प्रतियों में नीचे बताए गए पते पर अपील कर सकता है-

Any person aggrieved by this Order - in - Original may file an appeal under Section 128 A of Customs Act, 1962 read with Rule 3 of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -1 to:

“सीमाशुल्कआयुक्त (अपील),

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

“THE COMMISSIONER OF CUSTOMS (APPEALS),

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

3. 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.

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

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

(i) उक्त अपील की एक प्रति और

OIO No. KDL/ADC/DPB/04/2024-25 dated 24.05.2024  
DIN- 20240571ML0000444C33

A copy of the appeal, and

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

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

5. अपील 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.

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

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

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**BRIEF FACTS OF THE CASE:-**

Intelligence gathered by the Officer of Special Intelligence Investigation Branch (SIIB) of Custom House Kandla indicated that *Natural Garnet*, which is a restricted item for export, was being exported by some exporter in illegal manner by way of mis-declaring the same as *Ramming Mass* (RITC Code 38160000). Acting upon the intelligence, inquiries were initiated by the SIIB, which revealed that under Shipping Bills 6727474 dated 12.01.2024 & 6722351 dated 12.01.2024 covered under Invoice No. VE-032-33/2023-24 dtd. 12.01.2024 was filed by M/s Vishwaja Enterprises (IEC: CSFPG4956E) at A-601, Sirvi Plaza, Sector-2, Plot No. 25, Karanjade, Panvel-410206 (hereinafter referred to as Vishwaja Enterprise) through the Customs Broker M/s. Leo forwarders. Acting upon the intelligence, the Shipping Bill were scrutinized on EDI system and it was found that the Shipping Bill No. 6727474 was submitted on 12.01.2024 and was examined on 16.01.2024 and subsequently LEO was granted on 16.01.2024. Further, the consignment in the said shipping bill was having permission of Self Sealing from the competent authority. The said export was under Letter of Undertaking bond (ARN No. AD270523007034K dated 08.05.2023) without payment. Whereas, the other Shipping Bill No. 6722351 was submitted on 12.01.2024 and was examined on 16.01.2024 and subsequently LEO was granted on 16.01.2024. Further, the consignment in the said shipping bill was having permission of Self Sealing from the competent authority. The said export was under Letter of Undertaking bond (ARN No. AD270523007034K dated 08.05.2023) without payment of duty.

1. The details of the consignment covered vide under Shipping Bills 6727474 dated 12.01.2024 & 6722351 dated 12.01.2024 filed by Vishwaja Enterprise is as follows;

TABLE-A

Sl. No.	SB no and Date	Containers No.
1.	6727474 dated 12.01.2024	CLHU2127059 TTNU1757620 FSCU3889009 DFOU2042940 PCIU2956696 PCIU2500540
2	6722351 dated 12.01.2024	TCKU1376713 GLDU3381853 FCIU3447610 TWLU3007650 GLDU3028065

	TCKU1894939
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Further, the location of the cargo was traced and it was found that the said containerized cargo, under Shipping Bill No 6727474 & No. 6722351 dated 12.01.2024, has been port in and is currently stacked in Kandla International Container terminal. Accordingly, letter F.No. CUS/SIB/INT/60/2024 dated 17.01.2024 was issued to the Deputy / Assistant Commissioner (DE/ R&l, DP), under intimation to the Kandla International Container Terminal, M/s A. V. Joshi and M/s CWC, both CFS, for holding the cargo against Shipping Bill No 6727474 & No. 6722351 dated 12.01.2024.

2. Subsequently, the letter was written directing the exporter to arrange for examination of the consignment and be present with necessary documents along with intimation to the Custom House agent of the Exporter to be present at the time of examination with necessary documents. Thereafter, the exporter vide letter dated 22.01.2024 and 25.01.2024 requested for movement of containers from Kandla International Containers Terminal to Central warehousing Corporation for examination of the Cargo. In pursuant to the request of the exporter i.e. M/s Vishwaja Enterprises, the officers from SIIB section vide letter dated 06.02.2024 allowed the movement of containers from Kandla International Containers Terminal to Central Warehousing Corporation.
3. Thereafter, the examination of 12 containers were conducted at Central Warehousing Corporation, CFS vide Panchnama dated. 08-09/02/2024 wherein it was found that the said cargo contains some granules of dark pink color which was not as per the description of the shipping bill wherein it was mentioned that the said goods are of description i.e. Ramming mass (HSN 38160000) based on the description from open source and finds out that the ramming mass is of various color other than the dark pink color Granules as found in the said bag of the container.
4. Representative samples were drawn from the containers mentioned at Table A vide Panchnama dated. 08-09/02/2024 and sent for testing to M/s.IREL (India) Limited, Research Centre, Beach Road, Kollam, Kerala – 690001 vide letter dated 20.02.2024.
5. Subsequently, searches were conducted at the registered premises of M/s Vishwaja Enterprise and Customs House Agent i.e. M/s Leo Forwarders. The exporter i.e. M/s Vishwaja Enterprises has obtained self-sealing permission from the Customs House Kandla for the premises situated at Godown 1A, Plot No 74, Sector-11, Gandhidham, Kachchh, Gujarat-370020. The brief of the panchnama proceedings drawn at the above-mentioned premises is as under;

- **Panchanama dated 10/02/2024 drawn in respect of M/s Vishwaja Enterprises (IEC: CSFPG4956E) at A-601, Sirvi Plaza, Sector-2, Plot No. 25, Karanjade, Panvel-410206**

The said registered premises of M/s Vishwaja Enterprises was the residential premises of its proprietor and Smt. Nitadevi Sampat Gole, proprietor of M/s Vishwaja Enterprises, resides with three members residing i.e. She alongwith her husband Shri. Sampat Shripati Gole and her one daughter. Certain documents were recovered from the premises under the reasonable belief that it may be useful for further enquiry.

- **Panchnama dated 10.02.2024 Drawn at Plot No 445, 1st floor, Sector No. 1A, Nr. Andhra Bank, Nr. Oslo Circle, Gandhidham, Kandla, Kachchh-370201**

The officers enquired about Leo Forwarderz from Shri Yuvrajsinh Zala to which he replies that he has taken the license of M/s Leo Forwarderz under his name. Shri Yuvrajsinh Zala further informs that M/s Leo Forwarderz, being Custom House agent, mainly works on Kandla port and Shri Yuvrajsinh Zala is the authorized person in the same. Shri Yuvrajsinh Zala further informs the officers that for Kandla Port, Shri Hemant Joshi who is a close friend and has family terms with him has requested to use his license for import and export purpose. The officers showed a copy of the authority letter dated NIL issued to Shri Hemant Joshi and Shri Divyesh Kharecha for the custom formality at kandla port to handle the cargo. Shri Yuvrajsinh Zala then perused the authority letter and informed the officers that the said authority letter has not been issued by him but by his employee Shri Infaque Anwar who is a G Card Holder (Custom Broker License No. CHN/R-03/2009). The officers in front of we panchas then enquire Shri Yuvrajsinh Zala regarding export done by M/s Vishwaja Enterprises in which M/s Leo Forwarderz is the Custom House Agent as mentioned in the Shipping Bills (Shipping Bill No. 6727474 dated 12.01.2024 and Shipping Bill No. 6722351 dated 12.01.2024). Shri Yuvrajsinh Zala informs the officers that he has no knowledge of any firm named M/s Vishwaja Enterprises and all work related to M/s Vishwaja Enterprises was being handled by Shri Hemant Joshi only.

- **Panchnama dated 10.02.2024 drawn at Godown 1A, Plot No 74, Sector-11, Gandhidham, Kachchh, Gujarat-370020.**

The said premises was the premises which was registered for self sealing permission. The said premises was never on lease by M/s Vishwaja Enterprise. The said premises belongs to M/s Asean Box Corporation and was given on rent to M/s Asean Green Solutions since 24.02.2023.

7. The test result of the sample sent to M/s IREL was received by this office vide letter dated 27.03.2024 and based on the sample analysis, the test results are as under

Sr.No.	Test Memo Number	Sample Reference Number	Test Result
1	423/08.02.2024	IRERC-28A/24	96.4% Garnet
2	424/08.02.2024	IRERC-28B/24	96.9% Garnet
3	425/08.02.2024	IRERC-28C/24	97.7% Garnet
4	426/08.02.2024	IRERC-28D/24	95.8% Garnet
5	427/08.02.2024	IRERC-28E/24	96.8% Garnet
6	428/08.02.2024	IRERC-28F/24	96.8% Garnet
7	429/08.02.2024	IRERC-28G/24	94.4% Garnet
8	430/08.02.2024	IRERC-28H/24	95.8% Garnet
9	431/08.02.2024	IRERC-28I/24	96.7% Garnet
10	432/08.02.2024	IRERC-28J/24	96.4% Garnet
11	433/08.02.2024	IRERC-28K/24	95.3% Garnet
12	434/08.02.2024	IRERC-28L/24	96.3% Garnet

8. The Natural Garnet were placed under seizure vide seizure memo dated. 03.04.2024 which were available in the Twelve containers mentioned at Table A and copy handed over to Shri Karthik J Marla, Authorised Person of M/s.Vishwaja Enterprise.

9. The exporter declared the goods as Ramming Mass (RITC Code 38160000). Whereas, it appears that the Central Govt had in his capacity as Additional Secretary to the Government of India had from F. No. 01/91/171/22/AM 19/EC issued an Order vide Notification No 26/2015-20 dated 21.08.2018 on behalf of the Central Government under the provisions of Section 3 of the Foreign Trade (Development and Regulation) Act, 1992 Hereinafter referred to as "the FTDR Act, 1992") to amend the Export Policy of "Beach Sand Minerals" in Chapter 26 of Schedule 2 of ITC (HS) Classification of Export and Import items. The Relevant Para, 2, 3 and 4 of the said notification are reproduced here under:-

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

*"Note: 1. Export of Rare Earth compounds classified as Beach Sand Minerals (BSM), namely ilmenite, Rutile. Leucoxene (Titanium bearing mineral), Zircon, Garnet, Sillimanite and Monazite (Uranium and Thorium)], shall be regulated in terms of Sl. No 98A of Chapter 26 Schedule 2 of ITC(HS) Classification.*

2. Other minerals under code 2617 are freely exportable, except those which have been notified as prescribed substances and controlled under Atomic Energy Act, 1962";
3. A new entry at SI No. 98A is inserted in Chapter 26 of Schedule 2 of ITC (HS)

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

*Effect of this Notification:*

*Export of Beach Sand Minerals have been brought under STE and shall be canalized through Indian Rare Earths Limited (IREL). Beach sand minerals, permitted anjwheterin the export policy, will now be regulated in terms of policy under SI. No. 984 of Chapter 26 of Schedule 2 Export Policy."*

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

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

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

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

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

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

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

*Section 50(2): The exporter of any goods, while presenting a shipping bill or bill of export, shall make and subscribe to a declaration as to the truth of its contents*

*Section 50(3): The exporter who presents a shipping bill or bill of export under this section shall ensure the following, namely: —*

- (a) the accuracy and completeness of the information given therein;*
- (b) the authenticity and validity of any document supporting it; and*
- (c) compliance with the restriction or prohibition, if any, relating to the goods under this Act or under any other law for the time being in force.*

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

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

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

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

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

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

*(a)*

*(b)*

*(c) -*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4)...

(5)....

(6)

(7)

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

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

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

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

On the importation into, or exportation out of, any customs ports of any goods, whether liable to duty or not, the owner of such goods shall in the Bill of Entry or the Shipping Bill or any other documents prescribed under the Customs Act, 1962 (52 of 1962), state the value, quality and description of such goods to the best of his knowledge and belief and in case of exportation of goods, certify that the quality and specification of the goods as stated in those documents, are in

accordance with the terms of the export contract entered into with the buyer or consignee in pursuance of which the goods are being exported and shall subscribe a declaration of the truth of such statement at the foot of such Bill of Entry or Shipping Bill or any other documents.

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

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

(2) No person shall employ any corrupt or fraudulent practice for the purposes of obtaining any licence or importing or exporting any goods.

**17. Confiscation and redemption.-**

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

(a) ..

(b) ..

(c) any condition imposed under the Policy with regard to the sale or disposal of such goods or materials, has been, is being, or is attempted to be, contravened, shall together with any package, covering or receptacle in which such goods are found, be liable to be confiscated by the Adjudicating Authority, and where such goods or materials are so mixed with any other goods or materials that they cannot be readily separated, such other goods or materials shall also be liable to be so confiscated :

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

(2)...

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

Para 2.01,

*Exports and Imports — 'Free unless regulated*

(a) *Exports and Imports shall be 'Free' except when regulated by way of 'prohibition', 'restriction' or 'exclusive trading through State Trading*

*Enterprises (STEs)' as laid down in Indian Trade Classification (Harmonised System) [ITC (HS)] of Exports and Imports.*

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

*Para 2.02 (c)*

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

*Para 2.20 State Trading Enterprises (STEs)*

*(a) State Trading Enterprises (STEs) are governmental and non-governmental enterprises, including marketing boards, which deal with goods for export and /or import. Any good, import or export of which is governed through exclusive or special privilege granted to State Trading Enterprise (STE), may be imported or exported by the concerned STE as per conditions specified in ITC (HS). The list of STEs notified by DGFT is in Appendix-2J.*

*(b) Such STE(s) shall make any such purchases or sales involving imports or exports solely in accordance with commercial considerations, including price, quality, availability, marketability, transportation and other conditions of purchase or sale in a non-discriminatory manner and shall afford enterprises of other countries adequate opportunity, in accordance with customary business practices, to compete for participation in such purchases or sales.*

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

10.1. From the above, it is evident that with effect from 21.08.2018 and pursuant to issue of aforesaid Notification No. 26/2015-20 dated 21.08.2018 by the Central Government, the export of Beach Sand Minerals and particularly the Natural Garnet falling under CTH No. 25132030 has been brought under the regime of State Trading Enterprises (STEs) and M/s. Indian Rare Earth Ltd. (Hereinafter referred to as "M/s. IREL") were notified as canalizing agency in this respect. No private person has been permitted to export Natural Garnet falling under CTH No. 25132030.

10.2 Consequent to issue of aforesaid Notification dated 21.08.2018, M/s. IREL being canalizing agency placed on their website the SOP for export of Natural Garnet etc. Beach Sand Minerals by the producers/sellers, who were desirous to export the Beach Sand Minerals.

11. Summary of Investigation

11.1 During investigation summons dated 04.04.2024 (CBIC DIN-20240471ML000000F525) was issued to the Exporter, M/s. Vishwaja Enterprise and Shri Karthik J Marla appeared as per summons on 04.04.2024 as an authorized representative of owner of Vishwaja Enterprise wherein he inter alia stated that:

- M/s Vishwaja Enterprise was incorporated in the year 2022. Smt. Nitadevi Sampat Gole is the proprietor of the said firm. He had applied for the GST registration and Import Export Code of the said firm. Smt. Nitadevi Sampat Gole does not have the knowledge of business or handling the operation of the said firm. She is a housewife. She is the wife of Shri Sampat Shripati Gole who is also his partner in fruit business. He knows Shri Sampat Shripati Gole from last 3 years and they are into business of trading of fruits in domestic market. Thereafter, they used the firm M/s Vishwaja Enterprise for export purpose.
- He knows Shri Sampat Shripati Gole and he was financially not strong. As he needed money so he offered Shri Karthik J Marla his wife's firm for export purpose in lieu of Money. Shri Karthik J Marla used to transfer around 50000/- monthly by way of transfer in the account of Shri Sampat S Gole.
- M/s Vishwaja Enterprise is engaged in export of Minerals such as Ramming Mass and others.
- That he used to export Ramming Mass to Qatar. For that, he used to procure Ramming Mass from M/s Dharti mines and Minerals. This is his first time, he procured Garnet from M/s Dharti mines and minerals, Mumbai as his client in Qatar asked him to export Red Color Ramming mass. He used to make payment from the account of M/s Vishwaja Enterprise. He further stated that M/s Dharti mines and minerals procured from Shree Shyam Impex, Bhilwada, Rajasthan. The material comes from Bhilwada to Gandhidham. He used to do cross stuffing from their trucks to Containers hired by him.
- The said godown situated at Godown 1A, Plot No 74, Sector-11, Gandhidham, Kachchh, Gujarat-370020 was not hired by Shri Karthik J Marla. For the sake of Self Sealing application, he had arranged NOC letter and EIECtricity Bill from M/s Asean Box Corporation. Shri Karthik J Marla had never used the Godown situated at Godown 1A, Plot No 74, Sector-11, Gandhidham, Kachchh, Gujarat-370020 for M/s Vishwaja Enterprise.
- Shri Karthik J Marla had taken self-sealing permission in order to avoid Examination of the Cargo by the Customs Authority.

- He had booked Containers from M/s Y K Global Shipping and Logistics, Kandla.
- That he used to export Ramming Mass to Qatar. This is his first time, he procured Garnet from M/s Dharti mines and minerals, Mumbai as his client in Qatar asked him to export Red Color Ramming mass. He used to do cross stuffing from their trucks to Containers hired by him. He had never used the Godown situated at Godown 1A, Plot No 74, Sector-11, Gandhidham, Kachchh, Gujarat-370020 for M/s Vishwaja Enterprise. He had taken self sealing permission in order to avoid Examination of the Cargo by the Customs Authority.
- He had perused the Panchnama dated 10.02.2024 drawn at Godown 1A, Plot No 74, Sector-11, Gandhidham, Kachchh, Gujarat-370020 and agreed to all the contents of the said panchnama dated 10.02.2024 and further agreed that the said premises was never taken on rent by him or by M/s Vishwaja Enterprise.
- That he used to do cross stuffing from their trucks to Containers hired by me at GIDC area by parking the trucks in a vacant plot.
- That he stated that he used to export Ramming Mass majorly to PTC WLL, Doha, Qatar. This is the first time garnet has been exported to PTC WLL, Doha, Qatar. He would like to submit that he used to Export Ramming Mass to the said party. Thereafter, the party asked for Red Color Ramming Mass and therefore, he exported Garnet to this party under the said Shipping Bills.
- That he perused the Test Reports dated 27.03.2024 and agrees that test samples from the said cargo under Shipping Bills 6727474 dated 12.01.2024 & 6722351 dated 12.01.2024 contains Garnet.
- That he perused the Seizure memo dated 03.04.2024 and accepted that the said cargo contains Garnet classifiable under CTH 25132030 which are restricted as per Notification 26/2015-20 dated 21.08.2018.
- That he perused the panchnama dated 10.02.2024 drawn at Plot No 445, 1<sup>st</sup> Floor, Sector No1A, Nr. Andhra Bank, Nr. Oslo Circle, Gandhidham. The said premises is the business premises belongs to M/s Leo Forwarders. Shri Hemant Joshi was my Customs House Agent and he managed everything related to exports. He used to file shipping bill for M/s Vishwaja Enterprise from M/s Leo Forwarders.
- That he perused the Panchnama dated 10.02.2024 drawn at A-601, Sirvi Plaza, Plot No 25, Sector 2, Karanjade, Navi Mumbai, Raigad. This is the residential premises of Smt Nitadevi Sampat Gole, Proprietor and IEC Holder of M/s Vishwaja Enterprises. She along with her husband Shri Sampat S Gole resides with her family. He further submitted that Shri

Sampat S Gole and he were into the business of Fruits trading in domestic market. After they incurred loss in that business, they started this firm. Shri Sampat S Gole allows to start the export business under the said firm in lieu of money. He used to pay him amount against using the said firm.

- That he perused the Bank statement of M/s Vishwaja Enterprises for the period from 01.11.2023 to 31.01.2024 and confirmed that all the transactions were made and handled by him.
- That he used to handle all the transactions of M/s Vishwaja Enterprises. All the payments were made by him through Net Banking. The credentials of the net banking account of the said Bank Account is with him.
- That he used to transfer money on monthly basis as and when required by Shri Sampat S Gole in his account from the account of M/s Vishwaja Enterprises.
- That they both i.e. Shri Sampat S Gole and proprietor of M/s Vishwaja Enterprise, Smt Nitadevi Sampat Gole were aware that the firm is being used for export purpose.
- That he was not aware of the fact that Export of Garnet is restricted. He accepted that Garnet classifiable under CTH 25132030 is restricted as per Notification 26/2015-20 dated 21.08.2018 and is liable for confiscation.
- That he further agreed that the Valuation of the Garnet ranges from 200 to 270 USD PMT depending upon the size and quality of the garnet. The Garnet which he was exporting is of mesh size 80 which is of low grade and export price of the same is around 200 USD PMT.

11.2 During the panchnama proceedings dated 10.02.2024 which was already discussed in para 6 above, the statement of the Proprietor of M/s Vishwaja Enterprise, Smt Nitadevi Sampat Gole, was also recorded under section 108 of the Customs Act 1962 wherein she stated that

- She don't handle any work related to the IEC. The operations are looked after by her husband's friend Shri. Kartik J. Marla who is located in Kandla, Gujarat and handles the work from there only.
- That they have been informed by Shri. Kartik J. Marla that their shipment under S/B No. 6727474 and 6722351 both dated 12.01.2024 have been held by SIIB of Kandla Customs, and is related to export of some minerals.
- They were previously engaged in business of export and domestic sales of fruits. They incurred heavy loss in the business. Meanwhile, Shri. Kartik J. Marla contacted them and informed them that he will help

them financially. They only had to start a new firm and a fresh IEC. The operations will be handled by him, in lieu of which he would help them financially.

- That they had furnished one letter on their firm's letterhead to Kandla Customs, to handle their day to day operations to Shri. Kartik J. Marla. Apart from that they had also given around 10 signed blank cheques to him in the month of November, 2023.
- That since the incorporation of the firm Shri. Karthik J. Marla has transferred amounts in her husband's account.

11.3 Further, on being shown the said statement of Smt Nitadevi Sampat Gole, Proprietor and IEC Holder of M/s Vishwaja Enterprises, A-601, Sirvi Plaza, Sector-2, Plot No. 25, Karanjade, Panvel-410206 recorded on 10.02.2024 wherein she has stated the facts as discussed in para 11.2, Shri Karthik J Marla agrees to the said facts and stated that Shri Sampat S Gole and he were into the business of Fruits trading in domestic market. After they incurred loss in that business, they started this firm. Shri Sampat S Gole allows to start the export business under the said firm in lieu of money and he used to pay him amount against using the said firm. Further, Smt Nitadevi Sampat Gole has given him the Notarized Authority Letter duly signed by herself authorizing him to be person representing M/s Vishwaja Enterprises.

11.4 Further, during investigation summons dated 09.04.2024 (CBIC DIN-20240471ML0000888C54) was issued to Shri Hemant Joshi wherein he inter alia stated that

- as a freelancer, he is into the business of assisting in export-import of goods since last 20 years. Further, since last one year only, he is attached with the M/s Leo Forwarders as Operations Assistant.
- Shri Kartik J. Marla from M/s Vishwaja Enterprises approached him somewhere around August 2023 regarding export of Ramming Mass and requested him to provide CHA facilities for exporting his goods.
- That he filed the shipping bills of M/s Vishwaja Enterprises as per the documents provided by Shri Kartik Marla.
- That the containers are booked by M/s Vishwaja Enterprises only. They provided him the documents only for customs formalities and clearance.
- The godown at above mentioned address was shown to him by Shri Kartik J. Marla and it was empty at that time. Further, during stuffing of the goods, he was not present at the godown premises.
- That they did not take the self-sealing permission, as self-sealing permission was taken by M/s Vishwaja Enterprises only.

- That he was not aware of the facts that the said premises i.e. Godown situated at Godown 1A, Plot No 74, Sector-11, Gandhidham, Kachchh, Gujarat-370020 was not with the Exporter.
- That he has seen the reports and states that he had no idea about the export of garnet or any other material as he did not open the seal of the containers. He was informed by M/s Vishwaja Enterprises that they are exporting Ramming Mass only and asked to prepare documents accordingly.
- That he has seen the Panchnama drawn at the premises of M/s Leo Forwarders. He further, stated that Shri Yuvrajsinh is his close friend and he sits there at the office of M/s Leo Forwarders. That he works on commission basis. Shri Karthik used to give the cash payment as Rs.1500 per container for paper work and filing of documents. He used to hand over the same to him whenever he visited Gandhidham periodically. No other person was involved with him from M/s Leo Forwarders.
- That he was not aware of the facts that export under Shipping Bills 6727474 dated 12.01.2024 & 6722351 dated 12.01.2024 contained Garnet, which is a restricted item, and the same has been misdeclared as Ramming Mass. Further, he is aware about the restriction on export of garnet, but he is not aware about the misdeclaration of cargo by M/s Vishwaja Enterprises.

11.5 Further, during investigation summons dated 10.04.2024 (CBIC DIN-20240471ML0000778507) was issued to M/s Leo Forwarders, on whose behalf Shri Yuvraj Sinh Zala appeared, wherein he interalia stated that

- He is the authorized Signatory of M/s Leo Forwarders since last 02 years and look after the documentation relating to export-import work of different clients.
- He do not know personally any person from M/s Vishwaja Enterprises. All the work related to M/s Vishwaja Enterprises was handled by Shri Hemant Joshi, who is his close friend. They provided him Permission for filing shipping bills of self-sealing containers as a freelancer agent. Shri Hemant Joshi is not on the payroll of M/s Leo Forwarders.
- The containers were booked by M/s Vishwaja Enterprises only. They provided the documents to Shri Hemant Joshi only for customs formalities and clearance, as told to him by Shri Hemant Joshi.
- The godown situated at Godown 1A, Plot No 74, Sector-11, Gandhidham, Kachchh, Gujarat – 370020 was shown to Shri Hemant Joshi by Shri Kartik J. Marla, as informed by Shri Hemant Joshi.
- The self-sealing permission was taken by M/s Vishwaja Enterprises only.

- He perused the Panchnama dated 10.02.2024 drawn at Godown 1A, Plot No 74, Sector-11, Gandhidham, Kachchh, Gujarat-370020 and as a token of proof, he put his dated signature on it. Further, he stated that he had no idea about the present status of godown as he had never visited the godown.
- He had seen the original Test report dated 27.03.2024 received from M/s IREL and states that he had no idea about the export of garnet or any other material. He was informed by Shri Hemant Joshi that M/s Vishwaja Enterprises were exporting Ramming Mass only.
- They did not receive any payment from M/s Vishwaja Enterprises or from Shri Hemant Joshi. Shri Hemant Joshi only dealt with M/s Vishwaja Enterprises.

## 12. Confiscation of export goods: -

12.1. Vide Notification No. 47/2015-20, dtd.31.01.2018 the Central Government notified the Indian Trade Classification (Harmonized System) of Export Items, 2018 under Section 5 of the FTDR Act, 1992 read with Para 2.01 of the Foreign Trade Policy 2015-2020.

12.2. Later on, vide Order/Notification No. 26/2015-2020 dated 21.08.2018 issued by the Central Government under Section 3 of the FTDR Act, 1992, added entry at Sr. No. 98A in the Schedule 2 of the ITC (HS). In effect, the export of Beach Sand Minerals notified in the said entry No. 98A were brought under STE and they were canalized through M/s. IREL.

In the Notification No. 26/2015-2020, it was specified at Para No. 4 thereof by the Central Government that the Beach Sand Minerals, permitted anywhere in the export policy, would be regulated in terms of the Policy under at Sr. No. 98A of Chapter' 26 of Schedule 2 Export Policy. The specific entry under Custom Tariff Item 25132030 refers to Garnet. The Notification No. 26/2015-20 adds the condition in export policy that goods, with Item Description Beach Sand Minerals as listed viz. ilmenite, Rutile, Garnet, Monazite, Zircon etc. will be exported by State Trading Enterprises only and the Policy Condition mentions the export will be through Indian Rare Earth Ltd (IREL) only. Thus, the goods tested by CRCL, New Delhi have been found to be natural garnet hence classifiable under Custom Tariff Item 25132030 specifically. The specific mineral "Garnet" is also mentioned under column "Item description" in DGFT Notification 26/2015-2020 dated 21.08.2018.

The word Beach Sand Mineral has to be taken as generic term and not specifically only those minerals mined on beach. The natural garnet is found both on beach and inland. It cannot be the aim of policy makers to have the policy prohibition only for ilmenite, Rutile, Garnet, Zircon etc. which is found

on beach sand and not inland. The Custom Tariff Item 25132030 is specifically mentioned in the Notification ibid and this Tariff Item also does not differentiate between garnet found on Beach Sand and Mineral inland in India. Thus the beach sand mineral is to be read only an indicative class of goods/ Generic class of goods. It cannot be an 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.

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

12.4. In the instant case, the Test Reports of IREL (India) Limited, Research Centre, Beach Road, Kollam, Kerala - 690001 clearly show that the subject goods pertaining to the Shipping Bills 6727474 dated 12.01.2024 & 6722351 dated 12.01.2024 attempted to be exported by M/s. Vishwaja Enterprises are natural garnet. The statement dated 04.04.2024 of Shri Karthik J Marla, appeared as per summons on 04.04.2024, was recorded under Section 108 of the Customs Act, 1962 wherein he inter alia stated that the goods attempted to be exported by them is garnet. It is evident that even after having known that the goods were Garnet, Shri Karthik J Marla 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 "Ramming Mass" and they had declared the classification of the subject goods covered under the said Shipping Bills under Custom Tariff Item 38160000, whereas there exists specific heading 25132030 for "natural garnet". Hence, the classification of their export goods outlet to have been made under Custom Tariff Item 25132030 instead have declared classification under CTH 38160000. When specific description is ascertained on the basis of test report, the contention of the exporter to classify the Natural Garnet under 38160000 which is for 'Others' category is totally incorrect, irrelevant, inconsistent and deliberate act of mis-declaration with respect to the description and classification of the export goods, which is in violation of the provisions of Section 50 of the Customs Act, 1962, From the facts discussed in foregoing paras, it appears that by adopting Modus Operandi of mis-declaration of the goods, the said exporter attempted to export the subject consignment. They appear to have deliberately mis-declared the goods before Customs Authorities and thereby has contravened the provisions of the Section 50 and 51 of the Customs Act, 1962 as well as Section 11 of the Customs Act, 1962 in light of their contravention of the provisions of Section 11 of the Foreign Trade (Development and Regulation) Act, 1992, Rule 11 & 14 of the Foreign Trade (Regulation) Rules, 1993, Para 2.01, 2.02 and 2.20 of the Foreign Trade Policy

2015-20, in as much as they had intentionally mis-declared and mis-classified the goods under export with sole aim to circumvent the restrictions imposed against its export in terms of Notification No. 26/2015-20, dtd.21.08.2018 issued under Section 3 of the FTDR Act, 1992. Therefore, the seized goods as mentioned in above paras appear to be treated as "Prohibited goods" as defined under Section 2(33) of the Customs Act, 1962 and "Smuggled goods" as defined under Section 2(39) of the Customs Act, 1962. The export goods of M/s.Vishwaja Enterprise seized on 21.09.2023 at Kandla are liable for confiscation under Section 113 (d) and 113 (i) of the Customs Act, 1962.

13. From the facts discussed above, it appears that Shri Karthik J Marla, who had obtained the Import Export Code from Smt Nitadevi Sampat Gole, Proprietor and IEC Holder of M/s Vishwaja Enterprises and was paying Rs 50,000/- monthly, the beneficial owner in this case is Shri Karthik J Marla, as Shri Karthik J Marla paid off for using the IEC, Shri Karthik J Marla with the intent to export Natural Garnet mis-declared the goods in the 12 Containers under 2 Shipping Bills for the Invoice No. VE-032-33/2023-24 dtd. 12.01.2024 to Shri Hemant Joshi for filing Shipping Bill, representative of the Customs Broker M/s Leo Forwarders.

13.1 Meanwhile, Shri Karthik J Marla booked 12 containers for shipment from M/s. Y K Global Shipping and Logistics for shipment to Doha-Qatar under 2 Shipping Bills for the Invoice No. VE-032-33/2023-24 dtd. 12.01.2024 addressed to M/s. PTC WLL Doha, Qatar wherein goods were described as Ramming Mass.

13.2 Shri Hemant Joshi, representative of Customs Broker M/s. Leo Forwarders filed the Shipping Bill on the basis of the exports documents available with them. The Shipping Bill No. 6727474 was submitted on 12.01.2024 and was examined on 16.01.2024 and subsequently LEO was granted on 16.01.2024. Further, the consignment in the said shipping bill was having permission of Self Sealing from the competent authority. The said export was under Letter of Undertaking bond (ARN No. AD270523007034K dated 08.05.2023) without payment. Whereas, the other Shipping Bill No. 6722351 was submitted on 12.01.2024 and was examined on 16.01.2024 and subsequently LEO was granted on 16.01.2024. Further, the consignment in the said shipping bill was having permission of Self Sealing from the competent authority. The said export was under Letter of Undertaking bond (ARN No. AD270523007034K dated 08.05.2023) without payment. All the 12 Containers were gate in and were placed in Kandla International Container Terminal. After that, the shipment was put on hold by SIIB Section, Custom House, Kandla. Examination was conducted by the officers of SIIB Kandla at Central Warehousing Corporation under Panchnama proceedings on dated 08-

09.02.2024 and samples were taken wherein it was found that Vishwaja Enterprise had placed with them 12 containers of Natural Garnet which had arrived at Kandla International Container Terminal for export to Doha, Qatar. It has also came to notice that Shri Karthik J Marla had taken self-sealing permission from Custom House Kandla at their warehouse having address at Godown 1A, Plot No 74, Sector-11, Gandhidham, Kachchh, Gujarat-370020, the officers of SIIB Kandla Custom House had also searched the godown premise under Panchnama dated. 10.02.2024. The reports from IREL were perused by the authorized representative Shri Karthik J Marla on 04.04.2024. On the basis of the Test Report and confession statement of Shri Karthik J Marla, the Natural Garnet weighing 336 MTS (28 MTS\* 12 Containers ) valued at Rs. 51,28,200 /- were placed under seizure on 04.04.2024. For seizure of the goods weighing 336 MTS available at Central Warehousing Corporation, CFS.

13.3 Shri Karthik J Marla have requested for waiver of Show Cause Notice and Personal Hearing against the said proceedings vide letter dated 04.04.2024 as the goods are pending for clearance since long and the cargo is decaying in the form of crust which will eventually cause huge loss to the exporter. Further, they stated that they are ready to pay the fine and penalty as applicable under law.

13.4 Further, M/s IREL vide letter dated 14.02.2024 submitted the export/domestic price of different types of Garnet under canalisation which is as under;

Mesh Size	16/32 Mesh	20/40 mesh	20/60 mesh	30/60 mesh	80 mesh
Export Price (FOB,USD/PMT)	220-276	238-276	230-276	230-255	200
Domestic Price (Rs/MT)	17,759- 22,215	18,861- 22,204	18,227- 21,942	18,378- 20,463	16,123

In the present case, Shri Karthik J Marla, during the recording of his statement, submitted that the said cargo contains Garnet of Mesh size of 80 which amounts to export price of 200 USD PMT (FOB). But, in the said test report dated 27.03.2024 received from M/s IREL, the mesh size of the Garnet is not clearly mentioned. Therefore, the valuation of the Cargo may be considered at higher side i.e. 276 USD/ PMT (FOB). In view of the above the revised value of the Cargo would be Rs 76,50,720/- (336MT \* 276 USD \* 82.50 (exchange rate as on 12.01.2024))

14. Section 7 of the Foreign Trade (D&R) Act 1992 provides:

"Importer-exporter Code Number.

7. No person shall make any import or export except under an Importer exporter Code Number granted by the Director General or the officer authorised by the Director General in this behalf, in accordance with the procedure specified in this behalf by the Director General. "

14.1 It can be inferred from above, that IEC is mandatory for import and IEC holder himself can import/export from that particular IEC.

14.2 Further, it is trite that when a law requires a thing to be done in a particular manner, it has to be done in that particular manner and recourse to any other manner is necessarily forbidden.

15.1 The exporter was well aware about the actual facts of the case, it appears that M/s. Vishwaja Enterprise, 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. Vishwaja Enterprise have rendered the subject goods covered under S/B No. 6727474 and 6722351 both dated 12.01.2024 liable for confiscation under Section 113 (d) and 113(i) of Customs Act, 1962. Therefore, M/s. Vishwaja Enterprise through its beneficiary Shri Karthik J Marla have rendered themselves liable for penalty under Section 114 (i) & 114AA of the Customs Act, 1962.

15.2 M/s Vishwaja Enterprise has knowingly submitted false and incorrect declaration in the invoice and S/B No. 6727474 and 6722351 both dated 12.01.2024 submitted before Customs authorities. The exporter has thereby rendered themselves liable for penalty under Section 114 and 114AA of the Customs Act, 1962.

15.3 Smt Nitadevi Sampat Gole, Proprietor and IEC Holder of M/s Vishwaja Enterprises had allowed to use the IEC to Shri Karthik J Marla for an amount of Rs. 50,000/- per month. As Smt Nitadevi Sampat Gole, Proprietor and IEC Holder of M/s Vishwaja Enterprises had failed to fulfil her responsibility under section 50 of the Customs Act, 1962 regarding verification truth and accuracy in declaration filed on his name. So, she is liable for penalty under Section 114 and 114AA of the Customs Act, 1962.

15.4 Further, Shri Hemant Joshi, representative of Customs Broker M/s. Leo Forwarders has handled the work related to M/s Leo Forwarders and filed the

Shipping Bill on the basis of the exports documents available with them without verifying the authencity of the proprietor of M/s Vishwaja Enterprise. Shri Hemant Joshi in his statement dated 09.04.2024 has submitted that he had no idea that the said cargo contained Natural Garnet as he was only responsible for filing of the shipping Bills on behalf of M/s Vishwaja Enterprise. Further, the beneficial owner Shri Karthik J Marla, with the intent to export Natural Garnet, mis-declared the goods in the 12 Containers under 2 Shipping Bills for the Invoice No. VE-032-33/2023-24 dtd. 12.01.2024, had submitted documents to Shri Hemant Joshi for filing Shipping Bill, representative of the Customs Broker M/s Leo Forwarders. The Premises declared in the self-ceiling permission was actually managed by Shri Karthik J Marla who in his statement had stated that the said premises was shown on rent just to obtain the self-ceiling permission. The letter for cancellation of the Self Ceiling Permission has been issued to the concerned section accordingly. Further, Shri Yuvraj Sinh Zala, the authorized Signatory of M/s Leo Forwarders since last 02 years, has submitted that he do not know personally any person from M/s Vishwaja Enterprises. All the work related to M/s Vishwaja Enterprises was handled by Shri Hemant Joshi, who is his close friend. They provided him Permission for filing shipping bills of self-sealing containers as a freelancer agent. He further submitted that the said Containers and Godown for Self Ceiling were booked and managed by Shri Karthik J Marla. Shri Karthik J Marla also in his statement has acceded that the said containers and godown were booked by him only. As per regulations 10 (n) of CBLR 2018 which states that *a Custom Broker Should verify correctness of Importer Exporter Code (IEC) number, Goods and Services Tax Identification Number (GSTIN), identity of his client and functioning of his client at the declared address by using reliable, independent, authentic documents, data or information.* Further, M/s Leo Forwarders, in relation to export of Consignment, has abets Shri Karthik J Marla, who with the intent to export Natural Garnet, mis-declared the goods in the 12 Containers under 2 Shipping Bills and such goods were liable to confiscation under section 113. In view of the above, the Customs House Agent i.e. M/s Leo Forwarders has abetted or facilitated, may be deliberate or negligent, an illegal attempted export of prohibited goods i.e. Garnet. M/s Vishwaja Enterprise have unsuccessfully attempted to export Natural Garnet in contravention of the above provisions of the Customs Act, 1962 read with the Foreign Trade Policy 2023. The documents including shipping bill for the above attempted export of Natural Garnet were filed by M/s. Leo Forwarders, and Shri Hemant Joshi is the Representative of M/s. Leo forwarders, Custom House Agent. The allegation against the CHA herein is that the CHA has abetted in the illegal export of Natural garnet by accepting the consignment on the basis of documents produced by M/s. Vishwaja Enterprise. Therefore, they

are liable for penalty under Section 114 (i) and 114AA of the Customs Act, 1962.

In light of the above and on the basis of evidences collected during investigation by SIIB Custom House Kandla, there appears a case to allege against M/s. Vishwaja Enterprise, represented by Smt Nitadevi Sampat Gole, Proprietor and IEC Holder of M/s Vishwaja Enterprises and its beneficiary Shri Karthik J Marla, under the provisions of the Customs Act, 1962.

16. In view of the above, the Investigation report proposed the following:-

16.1. Therefore, M/s Vishwaja Enterprises may be called upon to show cause as to why;

- i. Penalty under section 114 (i) and 114AA of The Customs Act, 1962 should not be imposed upon them.
- ii. Goods valued at Rs. 76,50,720/- should not be held liable for confiscation under section 113(d) & (i) of The Customs Act, 1962.

16.2 Shri Karthik J Marla, with the intent to export Natural Garnet had intentionally mis-declared and mis-classified the goods under export with sole aim to circumvent the restrictions imposed against its export in terms of Notification No. 26/2015-20, dtd.21.08.2018 issued under Section 3 of the FTDR Act, 1992, was the main beneficiary of the said cargo. Therefore, Shri Karthik J Marla may be called upon to show cause as to why:

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

16.3 Further, Smt Nitadevi Sampat Gole, Proprietor and IEC Holder of M/s Vishwaja Enterprises may be called upon as to why:

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

16.4 The documents including shipping bill for the above attempted export of Natural Garnet were filed by M/s. Leo Forwarders, and Shri Hemant Joshi was the Representative of M/s. Leo forwarders, Custom House Agent. Therefore, M/s Leo Forwarders and Shri Hemant Joshi, Representative of M/s Leo Forwarders were called upon to show cause as to why:

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

17. All the noticees vide their letters dated 20.05.2024 requested for waiver of Show cause notice and personal hearing. Further the exporter i.e. M/s. Vishwaja Enterprises vide letter dated 20.05.2024 requested for permission of Back to Town of their cargo.

18. In the instant matter, the issue pertains to Section 124 of the Customs Act. As per first proviso to Section 124 of the Customs Act, 1962 the show cause notice and personal hearing may be considered oral at the request of the person concerned. Therefore, in light of the said provision, all the noticees are allowed waiver of Show cause notice.

#### **Discussion and Findings:-**

19. I have gone through the Investigation report, submission and all the documents available on record.

20. I find that Intelligence was gathered by the Officer of Special Intelligence Investigation Branch (SIIB) of Custom House Kandla that **Natural Garnet**, which is a restricted item for export, was being exported by some exporter in illegal manner by way of mis-declaring the same as **Ramming Mass** (RITC Code 38160000). Acting upon the intelligence, inquiries were initiated by the SIIB, which revealed that under Shipping Bills 6727474 dated 12.01.2024 & 6722351 dated 12.01.2024 covered under Invoice No. VE-032-33/2023-24 dtd. 12.01.2024 was filed by M/s Vishwaja Enterprises (IEC- CSFPG4956E) at A-601, Sirvi Plaza, Sector-2, Plot No. 25, Karanjade, Panvel-410206 (hereinafter referred to as Vishwaja Enterprise) through the Customs Broker M/s. Leo forwarders. Acting upon the intelligence, the Shipping Bills were scrutinized on EDI system and it was found that the Shipping Bill No.6727474 was submitted on 12.01.2024 and was examined on 16.01.2024 and subsequently LEO was granted on 16.01.2024. Further, the consignment in the said shipping bill was having permission of Self Sealing from the competent authority. The said export was under Letter of Undertaking bond (ARN No. AD270523007034K dated 08.05.2023) without payment. Whereas, the other Shipping Bill No. 6722351 was submitted on 12.01.2024 and was examined on 16.01.2024 and subsequently LEO was granted on 16.01.2024. Further, the consignment in the said shipping bill was having permission of Self Sealing from the competent authority. The said export was under Letter of Undertaking bond (ARN No. AD270523007034K dated 08.05.2023) without payment of duty.

21. The details of the consignment covered vide under Shipping Bills 6727474 dated 12.01.2024 & 6722351 dated 12.01.2024 filed by Vishwaja Enterprise are as follows;

Sl. No.	SB no and Date	Containers No.
1.	6727474 dated 12.01.2024	CLHU2127059 TTNU1757620 FSCU3889009 DFOU2042940 PCIU2956696 PCIU2500540

2	6722351 dated 12.01.2024	TCKU1376713 GLDU3381853 FCIU3447610 TWLU3007650 GLDU3028065 TCKU1894939
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22. On examination of 12 containers at Central Warehousing Corporation, CFS vide Panchnama dated 08-09/02/2024, it was found that the said cargo contained some granules of dark pink color which was not as per the description of the shipping bill wherein it was mentioned that the said goods were of description i.e. Ramming mass (HSN 38160000). The ramming mass is of various color other than the dark pink color Granules as found in the said bag of the container.

23. Representative samples were drawn from the containers mentioned at Table A vide Panchnama dated. 08-09/02/2024 and sent for testing to M/s. IREL (India) Limited, Research Centre, Beach Road, Kollam, Kerala – 690001 vide letter dated 20.02.2024.

24. I find that the test result of the sample sent to M/s IREL was received by this office vide letter dated 27.03.2024 and based on the sample analysis, the test results are as under:-

Sr.No.	Test Memo Number	Sample Reference Number	Test Result
1	423/08.02.2024	IRERC-28A/24	96.4% Garnet
2	424/08.02.2024	IRERC-28B/24	96.9% Garnet
3	425/08.02.2024	IRERC-28C/24	97.7% Garnet
4	426/08.02.2024	IRERC-28D/24	95.8% Garnet
5	427/08.02.2024	IRERC-28E/24	96.8% Garnet
6	428/08.02.2024	IRERC-28F/24	96.8% Garnet
7	429/08.02.2024	IRERC-28G/24	94.4% Garnet
8	430/08.02.2024	IRERC-28H/24	95.8% Garnet
9	431/08.02.2024	IRERC-28I/24	96.7% Garnet
10	432/08.02.2024	IRERC-28J/24	96.4% Garnet
11	433/08.02.2024	IRERC-28K/24	95.3% Garnet
12	434/08.02.2024	IRERC-28L/24	96.3% Garnet

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

26. The Natural Garnet were placed under seizure vide seizure memo dated. 03.04.2024 which were available in the twelve containers.

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

28. I find that Smt. Nitadevi Sampat Gole, being the proprietor of M/s. Vishwaja Enterprise (wife of Shri Sampat Shripati Gole) allowed Shri Karthik J Marla to use their IEC for the purpose of import and export in exchange of Rs. 50,000/-.

29. I find that Shri Karthik J Marla in his statement dated 04.04.2024 admitted that the said cargo contained "Garnet" classifiable under CTH 25132030 which are restricted as per Notification 26/2015-20 dated 21.08.2018.

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

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

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

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

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

##### **M/s. Vishwaja Enterprises, Smt. Nitadevi Sampat Gole (Proprietor of M/s. Vishwaja Enterprises) and Shri Karthik J Marla:-**

33.1 I find that M/s Vishwaja Enterprise is engaged in export of Minerals such as Ramming Mass and others. It was incorporated in the year 2022. Smt. Nitadevi Sampat Gole is the proprietor of the said firm. Smt. Nitadevi Sampat Gole did not have the knowledge of business or handling the operation of the said firm. She is the wife of Shri Sampat Shripati Gole. Shri Sampat Shripati Gole knew Shri Karthik J Marla from last 3 years and they were into business

of trading of fruits in domestic market. Shri Sampat Shripati Gole was not financially strong. As he needed money so he offered Shri Karthik J Marla his wife's firm for export purpose in lieu of Money. Shri Karthik J Marla used to transfer around 50000/- monthly by way of transfer in the account of Shri Sampat S Gole.

33.1 Smt. Nitadevi Sampat in her statement dated 10.02.2024 admitted that she has been informed by Shri. Kartik J. Marla that their shipment under S/B No. 6727474 and 6722351 both dated 12.01.2024 was held by SIIB of Kandla Customs, and was related to export of some minerals.

I find that M/s.Vishwaja Enterprise, the exporter was well aware about the actual facts of the case, they have deliberately mis-declared the subject goods with respect to material particulars such as description and classification and attempted to illegally export the same even when they were not having the canalization certificate from M/s. Indian Rare Earth Limited (IREL) as required in terms of Notification No. 26/2015-20 dated 21.08.2020 issued by DFGT. By the act of commission and omission of mis-declaring the subject goods export of which was restricted and attempting to export illegally the same, M/s.Vishwaja Enterprise have rendered the subject goods covered under S/B No. 6727474 and 6722351 both dated 12.01.2024 liable for confiscation under Section 113 (d) and 113(i) of Customs Act, 1962. Therefore, M/s. Vishwaja Enterprise have rendered themselves liable for penalty under Section 114 (i) & 114AA of the Customs Act, 1962.

I find that Smt Nitadevi Sampat Gole, Proprietor and IEC Holder of M/s Vishwaja Enterprises had allowed to use the IEC to Shri Karthik J Marla for an amount of Rs. 50,000/- per month. As Smt Nitadevi Sampat Gole, Proprietor and IEC Holder of M/s Vishwaja Enterprises had failed to fulfil her responsibility under section 50 of the Customs Act, 1962 regarding verification truth and accuracy in declaration filed on his name. This act has rendered her liable for penal action under Sections 114(i) and 114AA of the Customs Act, 1962.

33.2 Shri Karthik J Marla, being beneficiary of M/s. Vishwaja Enterprises, was handling all the import and exports. He was fully aware of the description, nature, classification and restriction/prohibition of the export goods. He perused the Bank statement of M/s Vishwaja Enterprises for the period from 01.11.2023 to 31.01.2024 and confirmed that all the transactions were made and handled by him. He used to handle all the transactions of M/s. Vishwaja Enterprises. All the payments were made by him through Net Banking. The credentials of the net banking account of the said Bank Account were with him.

33.3 I further find that Shri Karthik J Marla had taken self-sealing permission in order to avoid Examination of the Cargo by the Customs Authority. On perusal of the Seizure memo dated 03.04.2024 he accepted that the said cargo contained Garnet classifiable under CTH 25132030 which were restricted as per Notification 26/2015-20 dated 21.08.2018.

33.4 I find that Shri Karthik J Marla, being the beneficiary, allegedly got involved in the export of restricted goods by mis-declaring the same in order to evade restriction imposed by the government vide Notification mentioned supra. This act on his part has rendered the goods valued at Rs. 76,50,720/- liable for confiscation under Section 113(d) and 113(i) of the Customs Act, 1962. For this act, I hold that Shri Karthik J Marla is liable for penal action under Section 114(i) of the Customs Act, 1962.

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

**M/s. Leo Forwarders and Shri Hemant Joshi, representative of M/s. Leo Forwarders:-**

34. I find that Shri Hemant Joshi, representative of Customs Broker M/s. Leo Forwarders has handled the work related to M/s Leo Forwarders and filed the Shipping Bill on the basis of the exports documents available with them without verifying the authenticity of the proprietor of M/s Vishwaja Enterprise. Shri Hemant Joshi in his statement dated 09.04.2024 has submitted that he had no idea that the said cargo contained Natural Garnet as he was only responsible for filing of the shipping Bills on behalf of M/s Vishwaja Enterprise. Further, the beneficial owner Shri Karthik J Marla, with the intent to export Natural Garnet, mis-declared the goods in the 12 Containers under 2 Shipping Bills for the Invoice No. VE-032-33/2023-24 dtd. 12.01.2024, had submitted documents to Shri Hemant Joshi for filing Shipping Bill, representative of the Customs Broker M/s Leo Forwarders. The Premises declared in the self-ceiling permission was actually managed by Shri Karthik J Marla who in his statement had stated that the said premises was shown on rent just to obtain the self-ceiling permission. The letter for cancellation of the Self Ceiling Permission has been issued to the concerned section accordingly. Further, Shri Yuvraj Sinh Zala, the authorized Signatory of M/s Leo Forwarders since last 02 years, has submitted that he did not know personally any person from M/s Vishwaja Enterprises. All the work related to M/s Vishwaja Enterprises was handled by Shri Hemant Joshi, who was his close friend. They provided him Permission for filing shipping bills of self-sealing containers as a freelancer

agent. He further submitted that the said Containers and Godown for Self Ceiling were booked and managed by Shri Karthik J Marla. Shri Karthik J Marla also in his statement has acceded that the said containers and godown were booked by him only. As per regulations 10 (n) of CBLR 2018 which states that *a Custom Broker Should verify correctness of Importer Exporter Code (IEC) number, Goods and Services Tax Identification Number (GSTIN), identity of his client and functioning of his client at the declared address by using reliable, independent, authentic documents, data or information.* Further, M/s Leo Forwarders, in relation to export of Consignment, has abetted Shri Karthik J Marla, who with the intent to export Natural Garnet, mis-declared the goods in the 12 Containers under 2 Shipping Bills and such goods were liable to confiscation under section 113. In view of the above, the Customs House Agent i.e. M/s Leo Forwarders has abetted or facilitated an illegal attempted export of prohibited goods i.e. Garnet. M/s Vishwaja Enterprise have attempted to export Natural Garnet in contravention of the above provisions of the Customs Act, 1962 read with the Foreign Trade Policy 2023. The documents including shipping bill for the above attempted export of Natural Garnet were filed by M/s. Leo Forwarders, and Shri Hemant Joshi was the Representative of M/s. Leo forwarders, Custom House Agent. The allegation against the CHA herein was that the CHA has abetted in the illegal export of Natural garnet by accepting the consignment on the basis of documents produced by M/s. Vishwaja Enterprise. Therefore, they are liable for penalty under Section 114 (i) and 114AA of the Customs Act, 1962.

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

**A. Order in respect of M/s. Vishwaja Enterprise and Smt. Nitadevi Sampat Gole:-**

(i) I reject the description and classification of the goods declared by them in Shipping Bills No. 6727474 dated 12.01.2024 and 6722351 dated 12.01.2024 having goods in 12 containers and order to re-classify the same as Natural Garnet classifiable under CTH 25132030.

(ii) I order to confiscate the goods valued at Rs. 76,50,720/- under Section 113(d) and 113(i) of the Customs Act, 1962.

However, I give them an option to pay a redemption fine of Rs. 1,50,000/- (Rupees One Lakh fifty Thousand only) to redeem the goods, contained in 12 containers, of Shipping Bills No. 6727474 dated 12.01.2024 and 6722351 dated 12.01.2024 for the purpose of Back to town only.

(iii) I impose penalty of Rs. 40,000/- (Rupees Forty Thousand only) on M/s. Vishwaja Enterprises under Section 114(i) of the Customs Act, 1962.

- (iv) I impose penalty of Rs. 20,000/- (Rupees Twenty Thousand only) on M/s. Vishwaja Enterprises under Section 114AA of the Customs Act, 1962.
- (v) I impose penalty of Rs. 20,000/- (Rupees Twenty Thousand only) upon Smt. Nitadevi Sampat Gole under Section 114(i) of the Customs Act, 1962.
- (vi) I impose penalty of Rs. 20,000/- (Rupees Twenty Thousand only) upon Smt. Nitadevi Sampat Gole under Section 114AA of the Customs Act, 1962.
- (vii) I allow Back to Town of cargo contained in 12 containers attempted to be exported vide Shipping Bills No. 6727474 dated 12.01.2024 and 6722351 dated 12.01.2024 subject to the payment of redemption fine and penalties confirmed above.

**B. Order in respect of Shri Kathik J Marla:-**

- (i) I impose penalty of Rs. 1,00,000/- (Rupees One Lakh only) upon Shri Kathik J Marla under Section 114(i) of the Customs Act, 1962.
- (ii) I impose penalty of Rs. 1,00,000/- (Rupees One Lakh only) upon Shri Kathik J Marla under Section 114AA of the Customs Act, 1962.

**C. Order in respect of M/s. Leo Forwarders and Shri Hemant Joshi:-**

- (i) I impose penalty of Rs. 20,000/- (Rupees Twenty Thousand only) upon M/s. Leo Forwarders under Section 114(i) of the Customs Act, 1962.
- (ii) I impose penalty of Rs. 20,000/- (Rupees Twenty Thousand only) upon M/s. Leo Forwarders under Section 114AA of the Customs Act, 1962.
- (iii) I impose penalty of Rs. 10,000/- (Rupees Ten Thousand only) upon Shri Hemant Joshi under Section 114(i) of the Customs Act, 1962.
- (iv) I impose penalty of Rs. 10,000/- (Rupees Ten Thousand only) upon Shri Hemant Joshi under Section 114AA of the Customs Act, 1962.

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

**(Dev Prakash Bamanavat)**

Additional Commissioner

F.No. GEN/ADJ/ADC/917/2024-Adjn-O/o Commr-Cus-Kandla

DIN- 20240571ML0000444C33

To,

- (i) M/s Vishwaja Enterprises, (IEC- CSFPG4956E) at A-601, Sirvi Plaza, Sector-2, Plot No. 25, Karanjade, Panvel-410206.
- (ii) Shri Karthik J Marla.
- (iii) Smt Nitadevi Sampat Gole, M/s Vishwaja Enterprises.
- (iv) M/s. Leo forwarders, Custom House Agent.
- (v) Shri Hemant Joshi, M/s. Leo forwarders, Custom House Agent.

Copy to:-

OIO No. KDL/ADC/DPB/04/2024-25 dated 24.05.2024  
DIN- 20240571ML0000444C33

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