Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench at Ahmedabad

REGIONAL BENCH-COURT NO. 3

CUSTOMS Appeal No. 10914 of 2021 - DB

(Arising out of OIA-MUN-CUSTM-000-APP-064-21-22 dated 29/06/2021 passed by Commissioner of CUSTOMS-AHMEDABAD)

KIRAN MINERALS **........Appellant**
37 Friends Colony Gayatrinagar Ajmer Road
Beawar, Rajasthan

VERSUS

C.C.-MUNDRA **......Respondent**
Office of the Principal Commissionerate of Customs,
Port User Buld. Custom House Mundra, Mundra
Kutch, Gujarat- 370421

WITH

CUSTOMS Appeal No. 10915 of 2021–DB

(Arising out of OIA-MUN-CUSTM-000-APP-065-21-22 dated 29/06/2021 passed by Commissioner of CUSTOMS-AHMEDABAD)

IMG RESOURCES PVT LTD **........Appellant**
11/14 Behind Juma Masjid North Baypor Calicut
Kerala

VERSUS

C.C.-MUNDRA **......Respondent**
Office of the Principal Commissionerate of Customs,
Port User Buld. Custom House Mundra, Mundra
Kutch, Gujarat- 370421

APPEARANCE:
Shri Vikas Mehta, Consultant for the Appellant
Shri Anoop Kumar Mudvel, Superintendent (AR) for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. RAJU

Final Order No. 10543-10544/2024

DATE OF HEARING: 06.11.2023
DATE OF DECISION: 06.03.2024

RAMESH NAIR

The facts as briefly stated leading to the present appeals are that the Appellant M/s Kiran Minerals had filed shipping bill No. 2507560 dated 05.03.2019 for clearance of goods declared as 'Abrasive Mesh' classified under CTH 2513 20 90 whereas the Department has classified it under CTH 2513 20 30 as 'Natural Garnet' which is restricted for export under terms of DGFT Notification No. 26/2015 – 30 dated 21.08.2018. The Learned Commissioner (Appeals) has upheld the findings of the adjudicating authority and confirmed the reclassification of the goods vide impugned Order –in–Appeal No. MUN/CUSTM/000/APP-064-21-22 dated 29.06.2021.

Hence the present Appeals.

02. Shri Vikas Mehta, Learned Consultant appearing on behalf of the Appellant has stated that the lower authorities have erred in classifying the goods as 'Natural Garnet' under CTH 2513 20 30. He submits that the properties of almandine in terms of available literature does not correspond to the characteristics of the goods of the Appellant and that the Chemical Examiner has relied only on basic properties of almandine to classify the same as natural Garnet(Almandine in the form of Iron Aluminium Silicate). He further submits that the request of Appellant to retest the remanent sample lying in the custody of the department has not been paid heed to by the lower authorities nor were they provided with an opportunity to cross – examine the Chemical Examiner based on which the Show Cause Notice has been issued to them. He submits that the lower authorities have not considered the submissions made by the Appellant and passed the impugned order violating the principles of natural justice in so far that the Appellant was neither provided copy of communication received from M/s IREL nor allowed to cross examine the Chemical Examiner.

03. Shri A.K. Mudvel, Learned Superintendent (AR) appearing on behalf of the Department reiterates the findings of the impugned orders.

04. We have carefully heard both sides and perused the records. We find that the issue in the present case is whether the goods exported are classifiable under CTH 2513 20 90 as 'Abrasive Mesh' as declared by the Appellant or under CTH 2513 20 30 as 'Natural Garnet' as assessed by the Department. We observe that the Learned Commissioner (Appeals) while deciding the classification of the disputed goods under heading 2513 20 30 has not given any finding as to why the Appellant was not given an opportunity to cross examine the Chemical Examiner so as to determine what are the properties of the goods of the Appellant that correspond to the said classification nor ascertained reasons as to why the communications of M/s. IREL as requested by the Appellant were not shared with them. We note that, the properties of the goods are technical

in nature and vital to be determined before ensuring appropriate classification whereas the findings of the Commissioner (Appeals) are silent on this vital aspect of the factual circumstances. This Tribunal draws support from the case of *Swadeshi Polytex Ltd. v. CCE, Meerut [2000 (122) E.L.T. 641 (S.C.*)]**,** wherein it was held that "*if the Adjudicating Authority intends to rely upon the statement of any such persons, the Adjudicating Authority should give an opportunity of cross examination to the appellant".*

05. In view of our above observation, we find that the lower authorities have not considered the submissions made by the Appellants in order to properly come to the conclusion for correct classification of goods in question. Hence in our considered view the matter needs to be remanded for re-consideration back to the adjudicating authority. We make it clear that no findings have been recorded on the merits and issues are left open. We set aside the impugned orders. Appeals are allowed by way of remand.

(Pronounced in the open court on 06.03.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Raksha