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

REGIONAL BENCH-COURT NO. 1

Customs Appeal No. 10178 of 2024- DB

(Arising out of Order in Appeal No. JMN-CUSTM-000-APP-190-23-24 dated 21/12/2023 passed by the Commissioner of Customs (Appeals)- Ahmedabad)

TIRUPATI ENTERPRISES **.....Appellant**
B-201, Cristal Plaza, New Link Road,
Andheri West, Mumbai,
Maharashtra- 400053

VERSUS

Commissioner of Customs (P)- Jamnagar **.....Respondent**
Seema Shulka Bhawan,
Jamnagar-Rajkot Highway,
Near Victoria Bridge,
Jamnagar, Gujarat- 361001

APPEARANCE:
Shri Alok Agarwal & Shri Prachit Mahajan, Advocate(s) for the Appellant
Shri Sanjay Kumar, Superintendent (AR) for the Respondent

CORAM:
HON'BLE MEMBER (JUDICIAL), MR. SOMESH ARORA
HON'BLE MEMBER (TECHNICAL), MR. SATENDRA VIKRAM SINGH

Final Order No. 10561/2025

DATE OF HEARING: 03.07.2025
DATE OF DECISION: 15.07.2025

SOMESH ARORA

The Appellant had filed following Shipping Bills for the export of goods declared as 'Natural Abrasive Grain and "Abrasive" by classifying the same under Customs Tariff Heading No. 25132090 of the First Schedule to the Customs Tariff Act, 1975.

Sr. No.	Shipping Bill		Description of Goods	Quantity (in M.T.)	F.O.B. Value (in INR)
	Number	Date			
1	5694470	20.07.2019	Natural Abrasive Grain	28.00	5,16,420
2	5698246	20.07.2019	Abrasive	84.00	12,70,665
3	5695631	20.07.2019	Natural Abrasive Grain	56.00	11,60,722
4	6142174	08.08.2019	Abrasive	42.00	5,86,697
5	6142550	08.08.2019	Abrasive	42.00	5,86,697
Total				**252.00**	**41,21,201**

1.1 Out of the total five Shipping Bills as detailed above, the Shipping Bills appearing at Sr. No. 1 to 3 were finally assessed under 'Risk Management System' under the provisions of Section 17 (2) of the Customs Act, 1962 and those appearing at Sr. No. 4 and 5 were assessed provisionally under the provisions of Section 17 (3) of the Customs Act, 1962. The representative

samples of the goods intended to be exported vide Shipping Bill mentioned in Table-I were drawn and forwarded to the Customs House Laboratory, Kandla by the Custom, Pipavav for ascertaining the nature of goods. In view of the pending receipt of the test result from the Customs House Laboratory, Kandla, the Appellant requested for permission to export the goods under bond. Accordingly, the goods were allowed to be exported outside India, provisionally.

1.2 As the Chemical Examiner-1, Customs House Laboratory, Kandla expressed his inability to test the sample for want of certain facilities, the samples were sent to the Central Revenue Control Laboratory, New Delhi, who reported their findings in respect of the samples pertaining to the said Shipping Bills as under:-

> *"The sample is in the form of reddish brown coloured coarse powder. On the basis of Physical, Chemical & XRD analysis, sample is natural garnet in the form of Iron (Almandine Aluminium Silicate)"*

They also informed that the Density of the goods was ranging from 4.327 to 4.393 (g/cm3).

1.3 In view of the reports of CRCL, New Delhi, the goods exported were considered by the department as “Natural Garnet” and not as “Natural Abrasive Grains" and "Natural Abrasive" as declared by the Appellant. It was alleged that the goods were mis-declared as they were appropriately classifiable under the Customs Tariff Heading No. 2513 2030 of the First Schedule to the Customs Tariff Act, 1975. The Directorate General of Foreign Trade, New Delhi (DGFT) vide Notification No. 26/2015-20 dated 21.08.2018 had inserted Sr. No. 98A in Chapter 26 of Schedule 2 of ITC (HS) Classification of Export and Import Items, 2018. As per said notification Garnet, classifiable under CTH 2513 2030, could only be exported by M/s. Indian Rare Earth Limited and no other entity. Therefore, as per the department, such exports were allowed only through canalised agency. Accordingly, a Show Cause Notice

under F. No. VIII/10-22/ADC/O&A/2019-20 dated 02.12.2019 was issued to the Appellant proposing for re-classification of exported goods, confiscation of the same, imposition of fine and penalty, which was confirmed by the Adjudicating Authority vide OIO 22.11.2021. The Adjudicating Authority imposed R.F. of Rs. 10 Lakh under Section 125 of the Customs Act, 1962 and penalty of Rs. 42 Lakh under Section 114(i) of the Customs Act, 1962.

1.4 Against said order, applicant had filed an appeal before the Commissioner (Appeal) who rejected their appeal vide impugned OIA dated 21.12.2023. Being aggrieved by the order of the Commissioner (Appeals), party has filed the present appeal.

2. The grounds of appeal taken by the appellant are as follows: -

2.1 The impugned Order-in-Original and Order-in-Appeal has travelled beyond the scope of SCN. Therefore, merits to be set aside:

It was submitted that the Adjudicating Authority/Appellate Authority has heavily placed reliance on Office Memorandum dated 25.02.2020/ 02.06.2021 issued by the Under Secretary (PSU), Department of Atomic Energy which are not part of SCN. This communication cannot be criteria for imposing restriction in view of following:-

a) SCN dated 02.12.2019 did not mention OM dated 25.02.2020 or 02.06.2021 nor reliance was placed on any communication made to Department of Atomic Energy. The same were neither available with the appellant nor part of SCN. Therefore, appellant cannot controvert the same in their reply. The Adjudicating Authority/Appellate Authority has therefore travelled beyond the scope of SCN by relying on aforesaid OM's which is illegal and contrary to law as held by Hon'ble Apex Court in the case of CCE, Nagpur v. Ballarpur Industries Lid reported in 2007 (215) ELT. 489 (SC), wherein it is held that show cause notice is the foundation in the matter of levy and recovery of duty, penalty and interest and if a particular Rule has not been

invoked in the show cause notice, it would not be open to the Commissioner to invoke that Rule. In accordance with the ratio of this judgment. Hon'ble Tribunal Delhi in the case of Commissioner of Central Excise, Delhi-1 Versus Sharp Menthol (India) Ltd. [2015 (328) E.L.T. 543 (Tri. - Del.)] held that if some allegations based on certain evidence have not been made in the show cause notice, the adjudicating authority or the appellate authority cannot travel beyond the show cause notice and decide the matter by taking into account those allegations which had not been mentioned in the show cause notice."

b) The OM dated 25.02.2020 under Para 5 states that export of garnet sand which is closely associated with monazite shall not be allowed. As per test report issued by Custom House lab and CRCL, New Delhi exported goods are silicates of Aluminium, iron together with other oxide (Almandine in the form of Aluminium Silicate) and no traces of Monazite is found, therefore restricting export of abrasive is incorrect.;

c) This communication has merely expressed a doubt that BSM can be exported in the guise of "Abrasive" which is a doubt only. In their case, the goods have been tested by CRCL and no trace of Monazite, Titanium, uranium and thorium' has been found. The relevant para of said OM is as under:

if the garnet consignment are allowed for export without any checks....there is possibility that exporters will try to export the BSM garnet as rock garnet.....

....as the product under reference is Garnet and there is apprehension of the route being adopted by unscrupulous exporters to export BSMs under this revised heading":

b) The said Office memorandum cannot be made applicable to cases beyond its scope. The OM cannot be equated with that of a restricting notification of DGFT but is required to be read within the limited scope of its context in which it was issued. The advisory communication in policy matters cannot be termed as legal direction until DGFT enforces the same. Hon'ble Supreme Court in

case of Commr. of C. EX. & S.T., Bangalore Versus Karnataka Soaps & Detergents Ltd. [017 (355) E.L.T. 161 (S.C.)] has held that *'The said circular cannot be made applicable to cases beyond its scope. The circular cannot be equated with that of an exemption notification but is required to be read within the limited scope of its context in which it was issued. The circular did not give exemption to products which are otherwise dutiable. The circular clarifying certain doubts cannot give effect of an exemption notification. Therefore, it cannot be said that the agarbathi compound manufactured by the respondent is covered under the aforesaid circular.*

c) The communication/ Office Memorandum dated 25.02.2020 issued by the Under Secretary (PSU), Government of India, Department of Atomic Energy, PSU Section, Mumbai, to the Directorate General of Foreign Trade Development Officer is not binding since DGFT in the light of said communication has taken no action and has not restricted these goods as advised by the subject memorandum or issued any clarification etc;

d) As per FTP/Handbook of Procedures, the power of restricting goods is vested in DGFT only. Hence, DGFT is the final authority. These goods remain under OGL for export till restricted by DGFT. Hon'ble Supreme Court in case of *Atul commodities pvt. Ltd. V/s Commissioner of Customs, Cochin [2009 (235) E.L.T. 385 (S.C.)] (Annexure-11) has held that 'Under para 2.3 of the FTP (2004-09), DGFT is empowered to interpret the Policy. If any doubt or question arises in respect of interpretation of any provision in FTP or in the matter of classification of any item in the ITC (HS) or in the Handbook, the said question or doubt shall be referred to the DGFT, whose decision thereon shall be final and binding.';*

Now since, OM dated 25.02.2020 issued by Department of Atomic Energy to DGFT merely raised a doubt, it has no legal sanctity until DGFT issues a Notification expressly restricting export of Abrasive'.

e) The goods are already exported and the appellant had also applied for canalising before IREL vide KYC Registration No. IRELOSTIRUPAT059.

Therefore, any action for previously cleared consignments is unwarranted especially when there is no express bar to export "Abrasive" originating from Rajasthan.

Therefore, reliance placed on the same for the purpose of classification of goods under Customs Act, 1962 is contrary to law.

2.2 The HSN of Chapter 2513 states that Other Natural abrasives include garnet. The Commissioner (Appeals) also under Para 16 of the Order-in-Appeal has stated that *harder species like almandine are often used for abrasive purpose*. The test report issued by CRCL also states that sample is a Almandine in the form of Aluminium Silicate. Therefore, exported goods has been correctly declared as 'Natural Abrasive Grain or abrasive' and hence allegation of mis-declaration is unsubstantiated.

2.3. The Exported goods i.e. 'Natural Abrasive Grain' are correctly classifiable under CTH 2513 20 90 and not under CTH 2513 20 30 as held by the Adjudicating/Appellate Authority in view of the following:

i) The appellant has exported *'Natural Abrasive Grain'* or Rock Garnet. There are of two type's garnet: (i) Rock Garnets, and (ii) Beach and River Garnets. The difference between the two types of garnets are as described below:

Characteristics	**Garnet (BSM)**	**Natural Abrasive Grain (Rock Garnet)**
Appearance	Free Flowing Fine Sand	Rock or Coarser Particle
Composition	Alluvial Garnet	Almandine Rocks
Color	Greyish Pink	Reddish Brown
Grain size	90 Micron to 1700 Micron	250 Micron to Greater than 6000 Micron
Availability	Natural Beach Sand	Mines or Upper Crust of Earth
Processing	separated from other derivatives of BSM by using their Gravity	Washing, Crushing, Magnetic and Blower separator, sieving
Radio Activity	Derivatives contain Monazite Element	Absence of Monazite Element
Found/occur	Kerala, Odisha and Tamil Nadu	Kerala, Odisha and Tamil Nadu
	IREL Material safety data sheet for Garnet is attached as Annexure-D and Indian	Third party test report of exported good 'abrasive' from Canada and India is

	Minerals Yearbook 2017 issued by Ministry of mines is attached as Annexure-D1	attached as Annexure-E and El and South India Beach Sand Manufacturer specs report issued by V.V. Mineral as E2.

ii) Beach garnet is one of the seven mineral sands viz. Ilmenite, leucoxene (brown Ilmenite), Rutile, Zircon, Sillimanite and Monazite. Since these minerals are always found together in the beach sands of coastal stretches of peninsular India, they are classified as associate minerals and they are often synonymous with the term 'Beach sand mineral' as entire production of these minerals in India is from beach sands occurring on the coast.

iii) The exported goods were procured from Rajasthan as may also be seen from procurement invoice, eway bill etc.

iv) Rock Garnet Abrasives have absence of heavy minerals such as Ilmenite and Monazite (Uranium and Thorium) components unlike Beach Garnet, and hence merit to be classified differently than Natural Garnet.

2.4. The Notification No. 26/2015-2020 dated 21/08/2018 seeks to regulate export of Beach Sand Minerals only since the said Notification clearly states that 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.

A plain reading of the Notification clearly indicates that for a product to be covered under the said Notification, it would have to be beach sand mineral (BSM) procured from sea or sea shores or recovered from processing of beach sands. Further, square brackets (as used in the Notification) are used to add information that explains the text it follows i.e. they are used to make a piece of text clearer. In the present case, the use of the square bracket has been made to enlist seven types of Beach Sand Minerals that were to be brought under the ambit of the said Notification. In other words, for the product to be

covered under the said Notification, it first has to qualify as a Beach Sand Mineral. Further, to fall under Zircon, Garnet, Sillimanite and Monazite, it must have trace of Uranium and Thorium). Thus, the said Notification applies only to Beach Garnets which are one of the seven minerals of Beach Sand Minerals and not to Rock garnets that are not even a Beach Sand Mineral.

2.5. CRCL vide letter dated 12.05.2020 has also informed that their lab is equipped with XRD as well as SEM-EDAX instruments for analysis and by using these instruments, it can be informed whether the sample is monazite or rutile. Therefore, the appellant vide letter dated 12.06.2020 requested for re-testing of the samples on other counts specifically whether sample contains monazite /Rutile, but re-testing request was not considered favourably for the reasons best known to the Adjudicating Authority.

3. Department summed up its submission in reply as follows:-

3.1 In the light of the test reports of the Central Revenue Control Laboratory New Delhi, the goods exported were held to be "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 at by the CRCL after conducting physical, chemical and XRD analysis. In view of the above, exported goods are not the Natural Abrasive Grain/ Natural Abrasive as declared by the Appellant. Therefore, these were appropriately classifiable under the Customs Tariff Heading No. 2513 2030.

3.2 Vide DGFT Notification No. 26/2015-2020 dated 21.08.2018 export of Beach Sand Mineral (in brief BSM) having Ilmenite, Rutile, Leucoxene (Titanium Bering mineral), Zircon, Garnet, Sillimanite and Monazite (Uranium and Thorium) have been placed under restricted category, as vide the said notification, these were brought under STE (State Trading Enterprise) and can be exported only through the canalizing agency IREL (Indian Rare Earth Limited). As the exported goods contain Garnet, the same falls under the

restricted category. Further, 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 2030.

3.3 The applicant vide their letter ref. No. nil dated 11.12.2019 submitted that prior to DGFT Notification, their material was being exported under HS Code 2513 2030 which is the same as beach garnet, as the product was analysed by its physical properties and its application. However, after the issue of notification, they started addressing it on the name of its application by carrying out XRD analysis. CRCL, New Delhi has also analysed the samples on the basis of physical, chemical, and XRD analysis and declared the material as 'Natural Garnet (Almandine in the form of Iron Aluminium Silicate). Thus, only after issuance of the said DGFT Notification and conducing XRD analysis, the applicant started addressing their material with different name i.e. either Natural Abrasive Grain or Abrasive under different CTH 2513 2090 instead 2513 2030 as they did earlier.

3.4 On the request of the applicant for revising the heading for their export goods, DGFT has asked for clarification from the Department of Atomic Energy who vide Office Memorandum' issued under P. No. PSU-3010/44/2019-PSU/2798 dated 25.02.2020 by the Under Secretary (PSU), Government of India, Department of Atomic Energy, PSU Section, Mumbai, informed that application of the Noticee to revise the heading of their export goods was suggested to not to be acceded to.

3.5 The specific mineral Garnet is also mentioned under column item description' in the said DGFT Notification No. 26/2015-2020 dated 21.08.2018. Therefore, 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 the policy makers to have the policy prohibition only for Ilmenite, Rutile, Gamet, Zircon etc which is found on beach sand and not those found inland. The Tariff

Heading No. 2513 2030 is specifically mentioned in the said DGFT Notification and this tariff item also does not differentiate between Garnet found on Beach and Mineral inland. Thus, the beach sand mineral is to be read only as indicative class of goods/generic class of goods. The argument of the appellant that natural Garnet which they are exporting is mined in Rajasthan and not any Beach in India is absurd and farcical. It cannot be the aim of any policy maker just to prohibit a type of mineral which are found in beach but if same mineral is found/mined in land can be allowed to be exported freely under export policy. Such interpretation as is done by the appellant will produce absurd, irrational and farcical results defeating the basic aim of DGFT policy.

3.6. Revenue further submitted as follows:-

(i) The Garnet in question being of Rajasthan origin does not take it out of scope of DGFT notification whose intention is to restrict export of Garnet irrespective of its origin. This notification was issued to regulate exploitation of certain rare earth compounds since it increases the mineral monazite which contains Rare Earth Elements (REEs) such as Uranium and Thorium. DGFT issued this notification on the basis of recommendation of the Atomic Energy Regulatory Board (AERB). The appellant has claimed that DGFT has restricted only the garnet found along beaches and not in inland places, and since their product is manufactured after crushing rocks in Rajasthan, it is not restricted as per the DGFT notification. There is no scientific study to claim that Rare Earth Elements (REEs) are found only in sands found near coasts. On the contrary, there are scientific studies to show that a significant quantity of REEs are found in inland places. This is due to geological reasons i.e. shifting of plates.

It is a settled principle of law that in case of any ambiguity, the intention of the law-making body should prevail over any other explanation while interpreting any statute/law.

Intention of the DGFT notification becomes more clear for the following reasons:

(a) The DGFT notification has not canalized only "Beach Sand Mineral". "Beach sand mineral" has been used in generic sense while a specific term i.e. "Garnet" has been used along with its CTH in the notification. Therefore, the term Beach Sand Mineral does not mean minerals mined on beach only.

(b) DGFT notification has not connected the Garnet with geography. Historical background of this notification is that exploitation of Rare Earth Compounds is to be discouraged since it may increase the density of Monazite in the remaining area called tailings. Monazite is a radioactive mineral containing radioactive elements Uranium and Thorium. Since its density increases after mining of Garnet (and other rare earth compounds mentioned in the Notification), it is a security hazard. Its depletion is also discouraged since REEs have become very precious due to modern technological requirements. The appellant claims that only "Beach Sand Minerals" are restricted for export. However, not just the Beach Sand Minerals but Rare Earth Elements are found in inland places also. This view is substantiated in a recent research paper published in Journal of Geochemical Exploration, Vol. 274 in Feb, 2025. Relevant portion from the research paper is reproduced as under:

> *Heavy mineral sands (HMS) represent an alternative major resource of Rare Earth Elements (REE) deposits with over 90% of these formed within the past 66 Myr. These deposits exhibit a diverse range of mineral compositions (ie. ilmenite, rutile, zircon monazite, xenotime, and garnet) and can be formed from a wide range of geological and surficial processes. However, few studies examined the in-depth geological characteristics and exploration strategies to specifically target HMS mineralisation, and particularly none have specifically focussed on the REE component of these deposits. Here we show a total of 1173 REE-HMS deposits that exhibit diverse heavy mineral compositions. The largest REE-HMS deposits show an average heavy mineral grade of 7% (SD = 12) and an average resource size of 1337 Mt. (SD 1932). REE-HMS deposits commonly concentrate along Quaternary coastlines that cluster within a 100 km radius and predominate in tropical humid areas within 25 degrees north and south of the*

Equator. Yet, 40% of large REE-HMS deposits formed during the Neogene, Paleogene, and Cretaceous are situated inland from modern coastlines.

Para 4.4.1 of the paper is reproduced below:

4.4.1. Temporal influence

The distribution of ages among REE-HMS deposits reveals a relatively narrow timeframe, primarily forming within the last 66 Myr, during the Cenozoic (Fig. 6b). The Holocene constitutes a significant portion of these recent deposits, with some still actively forming today (Table 1). The prevalence of deposits being exposed and reworked, reinforces this notion (Fig. 6c). However, it is important to note that older deposits represent -40 % of the largest REE-HMS deposits (Table 1). These deposits are commonly located inland from modern coastlines and formed during the Neogene, Paleogene and Cretaceous. This indicates the importance of intraplate tectonics in facilitating the high preservation rate, either within inland seas or amid rapid coastal regression.

Para 6 concludes the paper. Relevant portion of the para is reproduced below:-

There are 1173 REE-HMS deposits worldwide with various HM assemblages, including ilmenite, rutile, zircon, monazite, xenotime, and garnet. The largest deposits have an average HM grade of 7% (SD = 12) and an average resource of 1337 Mt. (SD-1932) of HM (Table 1). REEHMS deposits vary significantly in HM phase concentration. Ilmenite content ranges from 0.53% to 82.6%, rutile from 0.002 % to 9.7%, zircon from 0.1% to 9.6 %, and monazite plus xenotime from 0.03% to 3.5%. Over 90% of REE-HMS deposits are <66 million years old. Only 8 % are older, with 6% from the Mesozoic and 2% from the Paleozoic era. 40% of large REE-HMS deposits formed during the Neogene, Paleogene, and Cretaceous are inland from modern coastlines. REE-HMS deposits come from rocks found in high-grade metamorphic belts, orogenic belts, and cratons. Tropical humid areas with well-developed river systems are crucial for facilitating transport mechanisms. Most deposits are within 25 degrees north and south of the Equator and have a positive correlation with river systems and coastal areas. REE-HMS deposits globally show patterns: (i) concentration along

modern coastlines; (ii) clustering within 100 km radius; (iii) areas devoid of known. HMS deposits between clusters; (iv) inland presence of REE-HMS deposits, often hundreds of kilometres from coastlines; (v) prevalence of alluvial deposits inland, eolian near coasts; (vi) largest deposits localised on modern shorelines, except where they align with paleo shorelines. Approximately, 40% of the largest REE-HMS are currently exposed.

Thus, as per the paper, 40% of the large REE-HMS deposits formed during ancient times are situated inland from modern coastlines.

(c) Applicant claimed that they had been exporting the material by the name abrasive under CTH 25132030 before DGFT notification and after the notification as their product was found "Natural Garnet" after testing and they requested to change their CTH to 25132090. The DGFT referred the matter to AERB for their comments since it was their domain to give expert comments. The AERB, in consultation with the Atomic Minerals Directorate for Exportation & Research (AMD) and IREL (India), vide the OM No. PSU-3010/44/2019-PSU/2798 dated 25.02.2020 issued by Under Secretary (PSU), GoI, Department of Atomic Energy clearly informed that the material i.e. Rock Garnet proposed to be exported falls under CTH 25132030 which is covered under canalization through the IREL (India). The OM also stated clearly that when there is a specific entry for Garnet i.e. 25132030, classifying it under 25132090 is only to circumvent the provision of canalization. The veracity of this OM was got confirmed by the department vide Under Secretary, DAE's letter dated 27.08.2020.

(d) PIB released after Union Minister's reply in Lok Sabha in 2022 also makes it clear that Rajasthan is also a source of Rare Earth Elements (in the form of oxides). The Union Minister of State, Earth Sciences informed the following data to the parliament:

As on September, 2022, Atomic Minerals Directorate for Exploration and Research (AMD) has established:-

- 13.07 million tonnes in-situ monazite (containing -55-60% total Rare Earth Elements oxide) resource occurring in the coastal beach placer sands in parts of Kerala, Tamil Nadu, Odisha, Andhra Pradesh, Maharashtra and Gujarat and in the inland placers in parts of Jharkhand, West Bengal and Tamil Nadu.
- 7,37,283 tonne Rare Earth Elements Oxide (REO) in Ambadungar area, Chhota Udepur district, Gujarat
- 36,945 tonnes REO in Bhatikhera area, Barmer district, Rajasthan
- 2,000 tonne of heavy mineral concentrate containing -2% xenotime (a phosphate mineral of yttrium and rare earth elements) in the riverine placer deposits of Chhattisgarh and Jharkhand. Presently, AMD is carrying out collection of xenotime bearing heavy mineral concentrate in the unit established in Chhattisgarh and has a stockpile of 97.688 MT xenotime bearing heavy mineral concentrate.

Not just Rajasthan, Chota Udepur district in Gujarat is also very far away from coastline. Chhattisgarh and Jharkhand do not have coastline and rare earth elements have been found there also.

(e) Garnet is a mineral found on both i.e. beach and in inland places. It works as a natural abrasive. The claim of the appellant that since it is manufactured in Rajasthan, it cannot be garnet has no basis after the CRCL report which is not under dispute. On the contrary, Indian Minerals Year Book, 2022 published by Ministry of Mines makes it very clear that Garnet is also found in Rajasthan. Chapter 13 of the Year Book is on Garnet and relevant para is quoted as under:-

RESERVES / RESOURCES

In India, garnet deposits suitable for use in Abrasive Industry occur in Andhra Pradesh, Chhattisgarh, Jharkhand, Kerala, Odisha, Rajasthan, Tamil Nadu and Telangana. Gem variety of garnet occurs in Ajmer, Bhilwara, Jhunjhunu, Sikar and Tonk districts, Rajasthan; Nellore and Srikakulam districts, Andhra Pradesh; Khammam district, Telangana and Coimbatore, Ramanathapuram,

Tirunelveli, Kanyakumari, Tiruchirappalli and Tiruvarur districts, Tamil Nadu. Garnet is found to occur in beach sands along with ilmenite, rutile, sillimanite, etc. in the States of Kerala, Odisha and Tamil Nadu.

In view of (a) to (e), geographical location does not have direct correlation to the Rare Earth Element. Their density may vary from coast to inland places. Therefore, DGFT did not have any reference to the geographical location of Garnet. This is the only plausible explanation for not having any reference to geographical location in the notification. But one thing is certain that a significant portion of the REEs are found in inland places also, and the intent of AERB regulation was to regulate mining due to their presence. This becomes very much clear after the OM issued by the parent authority i.e. AERB and scientific study quoted in (b) above. There is no scientific study to claim otherwise.

(ii) In view of the above submissions, the intention of the DGFT notification is to restrict export of Garnet irrespective of its origin. The origin of the Garnet in question does not take it out of the scope of the notification issued by the DGFT.

Sub-heading 2513 of the tariff is reproduced as under:-

2513	PUMICE STONES; EMERY; NATURAL CORUNDUM, NATURAL GARNET AND OTHER NATRUAL ABRASIVES, WHETHER OR NOT HEAT-TREATED
2513 10 00	- Pumice stone
2513 20	- Emery, natural corundum, natural garnet and other natural abrasives:
2513 20 10	---- Emery
2513 20 20	---- Natural corundum
2513 20 30	---- Natural garnet
2513 20 90	---- Other

A bare perusal of the tariff makes it clear that the tariff also does not distinguish between "Garnet found on beach" and "Garnet found in inland

places". Also, when the Garnet has been given a different and specific sub-heading i.e. 25132030, classifying Garnet as Natural abrasive is incorrect and amounts to mis-declaration. As per the Indian Minerals Year Book, the most prominent use of Garnet is abrasive but when a specific sub-heading is assigned to Garnet in tariff, classifying it under any other sub-heading on the basis of end use is mis- classification and mis-declaration with an intent to evade the restriction on export. In view of the above, the appeal is liable for rejection.

4. As per the time granted, party also made further submissions, and made legal grounds vide his synopsis dated 04.07.2025 emphasizing that the Department of Atomic Energy had written letter which were not in public domain and the same has been relied upon in the impugned order. It also relied upon the decision of Gastrade International Vs. Commissioner of Customs, Kandla as reported in 2025 (29) Centax 8 (S.C). emphasizing that most akin Principle is to be applied while classifying the goods and the onus is on department for proving the category of goods.

5. We have considered the rival submissions. We find that lot of emphasis has been laid down by the party that Office Memorandum issued by Department of Atomic Energy, DGFT was a correspondence which has been relied upon but same was never in public domain. We find that reliance on such a circular may not make much of difference to the merits of the case, as the same was to emphasize the nature of the goods which were covered under DGFT Notification No. 26/2015-20 dated 21.08.2018. We proceed to examine whether the case is otherwise sustainable on the basis of whole gamut of evidence which has been produced by the department. While doing so we have duly considered all the materials placed, objections raised and grounds taken by the appellants, in making their submissions, including the case laws which are on record.

5.1 We find that Notification No. 26/2015-20 dated 21.08.2018 which had inserted at Sr. No. 98A in Chapter 26 of Schedule 2 of ITC (HS) Classification of Export and Import Items, 2018, the item 'Garnet' classifiable under CTH 2513 2030 as a canalised item which could only be exported by M/s. India Rare Earth Limited (IREL) and no other entity. The notification itself dealt with sensitive materials seen from the perspective of national security and placed restrictions of canalising the same to designated agencies and not otherwise. The materials included in the notification are both special mineral materials as well sensitive materials. From the point of view of national security, the restrictions of this nature in any law or notification are therefore required to be strictly interpreted. We find that the same item was being earlier exported as Garnet but inclusion of garnet within the restrictive notification by way of putting description of the Garnet as a canalised item, the applicant started declaring it differently to escape the scope of the notification. In their letter reference No. Nil dated 11.12.2019, the appellant had submitted that prior to DGFT notification, their material was being exported under HS code 2513 2030 which is a same code as applies to "Garnet".

5.2 We also find that there were two test reports in the matter, the first report being inconclusive, the second, CRCL New Delhi clearly stated that on the basis of Physical, Chemical & XRD analysis, the item was nothing but 'Natural Garnet'. There was no cross-examination sought of the experts, who gave such analysis. We also find that the appellants had also applied for canalising before IREL vide KYC Registration No. IRELOSTIRUPAT059. However, in the instant case, the attempt was made by the party to export the same without involving canalising agency i.e. IREL. Since, the party was in knowledge of the procedures as well as restrictions involved, but they still attempted to carry out the exports undergoing restrictions, therefore, this conduct cannot be justified. We agree with the department that the scope of the DGFT notification is to restrict export of Garnet without bothering about

its origin whether of beach origin or otherwise, specially we find that for "Garnet" there is no such rider.

5.3 We also find that there has been no serious challenge to the report given by the CRCL, New Delhi. There has been no attempt to seek cross-examination of the officials involved in expert's lab to indicate that there was anything wrong in the re-test report dated 12.05.2020. Neither the letter has been shown to have been received by the department nor has any stamp of the department of having received such belated request of any re-test been produced. Same is therefore, liable to be rejected as there was no attempt made to seek cross-examination of the experts involving in testing.

5.4 In view of the foregoing, including various submissions made by the department, we are of the considered opinion that Redemption fine of Rs. 10,00,000/- imposed on such canalised item and penalty of Rs. 42,00,000/- imposed, is justified in the facts and circumstances of the case. Appeal is therefore liable to be rejected.

6. Appeal dismissed.

(*Order Pronounced in the open court on 15.07.2025*)

(SOMESH ARORA)
MEMBER (JUDICIAL)

(SATENDRA VIKRAM SINGH)
MEMBER (TECHNICAL)

Raksha