CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Customs Appeal No. 87533 of 2023

[Arising out of Order-in-Appeal No. GOA-CUSTM-APP(VNT)-067-2023-24 dated 03.10.2023 passed by the Commissioner of Customs (Appeals), Goa.]

Aryan Mines & Minerals **.... Appellant**
Room No.4/7, NL-A-1. Opp. MGM School
Nerul Node-III
Navi Mumbai – 400 706.

Versus

Commissioner of Customs, Goa **....Respondent**
Custom House,
Marmagoa, Goa – 403 803.

WITH

Customs Appeal No. 87534 of 2023

[Arising out of Order-in-Appeal No. GOA-CUSTM-APP(VNT)-067-2023-24 dated 03.10.2023 passed by the Commissioner of Customs (Appeals), Goa.]

Navnath Narayan Gole **.... Appellant**
Rosewood Heights, 302, Alder,
Sector 10, Kharghar
Navi Mumbai – 410 210.

Versus

Commissioner of Customs, Goa **....Respondent**
Custom House,
Marmagoa, Goa – 403 803.

APPEARANCE:

Shri Jhamman Singh, Advocate for the Appellant

Shri Ram Kumar, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)

HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/86761-86762/2025

Date of Hearing: 29.01.2025
Date of Decision: 29.01.2025

Per: M.M. PARTHIBAN

These appeals have been filed by M/s Aryan Mines & Minerals, Navi Mumbai (for short, referred to as "the appellant company") along with Shri Navnath Narayan Gole, Chief Executive Officer of the appellant M/s Aryan Mines & Minerals (herein after, referred together as "the appellants", for short) assailing the Order-in-Appeal No. GOA-CUSTM-APP(VNT)-067-2023-24 dated 03.10.2023 (herein after, referred to as "the impugned order") passed by the Commissioner of Customs (Appeals), Goa.

2.1 The brief facts of the case are that the appellants had attempted to export 'Natural Garnet' classifiable under Customs Tariff Item (CTI) 2513 2030 of the First Schedule to the Customs Tariff Act, 1975 through the port of Goa, by mis-declaring the same as 'Natural Abrasive Stone' in classifying it under CTI 2513 2090. The Directorate of Revenue Intelligence, Regional Unit, Goa (DRI) had received a specific intelligence that the appellants are resorting to export some restricted goods which fall under the category of 'rare earth minerals' vide Shipping Bills (S/Bs) No. 4433505 and 4433582 both dated 12.08.2020. Acting on the said intelligence, DRI had examined the export goods of 670 MTs contained in 24 containers covered under two S/Bs No. 4433505 and 4433582; upon opening each of the container, it was found to contain the reddish coloured granular sand like material, which is a Beach Sand Mineral i.e., 'Natural Garnet' that is restricted for export, and regulated for export only through Indian Rare Earth Limited in terms of Notification No.26/2015-2020 dated 21.08.2020 issued by the Directorate General of Foreign Trade (DGFT); thus, these goods were seized under panchanama proceedings dated 31.08.2020. In order to confirm the exact specification of the export goods, representative samples were drawn by DRI from each of the 24 containers and sent for mineralogical analysis to IREL (India) Limited Research Centre laboratory, Kollam, Kerala. The report dated 28.11.2020 received from the said laboratory confirmed that the export consignment in 24 containers contained 'Garnet' predominantly. Pending investigation, on the basis of the request of the appellant company the export goods were provisionally released under 'back to town' permission for use in the country on execution of bond for full value of export goods of Rs.1,26,42,900/- and bank guarantee for Rs.25,28,580/-.

2.2 Detailed investigation was conducted by DRI including recording of statements from Shri Navnath Narayan Gole, Chief Executive Officer and Shri Prashant Navrutti Gole, Proprietor, of the appellant company and various other persons concerned with improper export of goods. The said investigation also revealed that the appellant company had in the past exported 1285 MTs of 'Natural Garnet' in four consignments through S/Bs No. 4120075 dated 28.07.2020; 4173215 dated 30.07.2020; 4193384 dated 31.07.2020 and 4316601 dated 06.08.2020 through Marmagoa port.

2.3 On completion of investigation, DRI had issued Show Cause Notice (SCN) vide F. No. DRI/MZU/GRU/INT/61/2020 dated 21.01.2022 proposing for revising the classification of export goods under CTI 2513 2030 and for holding such goods liable for confiscation under Section 113(d) and 113(i) of the Customs Act, 1962; for imposition of penalties on the appellants under Section 125, 114(i), 114AA ibid and for appropriation of the bank guarantee for Rs.25,28,580/- executed by the appellant company.

2.4 The said SCN dated 21.01.2022 was adjudicated by the learned Additional Commissioner of Customs, Goa confirming all the proposals made in the SCN by issuing the Order-in-Original dated 28.02.2023. In the said original order the adjudicating authority has rejected the declared classification of export goods under CTI 2513 2090 and re-determined its classification under CTI 2513 2030 as 'Natural Garnet' based on the test reports of such goods; confiscated the present export consignment of two S/Bs and allowed the same for use in India or for export only through IREL, upon payment of redemption fine of Rs.20,00,000/-; also confiscated the past consignment of 'Natural Garnet' which was exported in four S/Bs; and imposed penalty of Rs. 3,00,000/- on the proprietor of the appellant company Shri Prashant Nivrutti Gole and Rs. 3,00,000/- on the appellant Shri Navnath Narayan Gole, CEO of the appellant company under Sections 114(i) and 114AA of the Customs Act, 1962. Being aggrieved with the aforesaid order, the appellants filed two appeals before the learned Commissioner (Appeals), who vide the impugned order had dismissed their appeals by upholding the order of the original authority. Feeling aggrieved with the impugned order, the appellants have filed these appeals before the Tribunal.

3. Learned Advocate submitted that the Commissioner (Appeals) had upheld the order of the original authority in confirming all the proposals made in the SCN without proper examination of the grounds urged before him by the appellants. He further stated that initially the export goods were seized on the presumption that on visual examination of the export goods it was found to contain reddish coloured granular sand like material; and the test report given by IREL Limited was solely relied upon for revising the classification of the export goods, to treat the same as restricted for export. However, the request for cross examination of the person who tested the samples was not acceded to by the Department. Since, Garnet could also be classified under chapter heading 7103, and earlier exportation of the same were allowed by the customs authorities for export out of the country, learned Advocate pleaded that these cannot form the basis for imposition of redemption fine and penalties on the appellants in a disproportionate manner. Therefore, he requested to take a lenient view and prayed for reduction of redemption fine and penalty imposed on them, particularly since they had incurred heavy expenditure in transportation of the provisionally released export goods for taking back to town, for use in the country as permitted in law.

4. On the other hand, the learned AR appearing for the Revenue reiterated the findings recorded in the impugned order and further submitted that evidences in the form of mineralogical analysis reports, supply contracts of the appellant company with the foreign buyers, purchase order dated 06.07.2020 of Dubai based buyer for the export of the same goods which were earlier seized and provisionally released, indicated that the appellant had mis-declared the export goods and even after its seizure by DRI, further attempted to export through different port out of India. Hence, he submitted that the impugned order is sustainable and the appeals filed by the appellants are liable to be dismissed.

5. Heard both sides and carefully examined the case records. The additional submissions made in the form written paper book in this case was also perused carefully.

6. The short issue for determination before the Tribunal is that in the facts and circumstances of the present case, whether the revision of classification of the export goods for holding it as 'restricted' for export; its confiscation and consequent imposition of penalty on the appellants, is legally sustainable or not?

7. We find that the DRI investigation had established the case of attempt made by the appellants for illegal export of 'Natural Garnet' through various documents viz., test reports of the chemical testing done on the export goods declared as 'Natural Abrasive Stones' in all 24 representative samples, evidencing that these are containing predominantly 'Garnet'; supply contract KYTC/INGL/GRNT/0015/20-RO dated 04.07.2020 between the appellant company and M/s Koyenco Trading W.L.L., foreign buyer specifically stating in such contract that the description of export goods are 'Garnet' duly supported by material test report, batch certificates. Further, DRI investigation also showed that there was also one another purchase order No. PVGT/20/0103 dated 05.07.2020 entered into between the appellant company and foreign buyer M/s Prime Ventures General Trading LLC, Dubai for supply of 308 MTs of 'Garnet', from the provisionally released export goods that was earlier seized by DRI. These details have also been put forth before the appellants, who have accepted the same in their voluntary statements given before DRI on various dates. We further find that none of these statements of the appellants given before DRI were retracted by them and these form part of the same investigation.

8.1 It is a fact on record that the export goods are in the form 'natural stones' both as declared and as found during physical examination by DRI. Further, the export goods which were declared with general description of 'natural abrasive stones' when subjected to chemical testing were instead found to be as 'natural garnet'. Therefore, the argument advanced by the appellants that the 'Garnet' can also be classifiable under chapter heading 71 as 'Garnet' which is not restricted, do not found to be convincing for the reason that chapter heading 7103 only covers 'Precious stones (other than diamonds) and semi-precious stones' and CTI 7103 10 51 specifically cover 'Garnet' which is in the form of precious/semi-precious stones, and not the natural stones which are used for abrasive purpose.

8.2 The records of the case also provide that the appellant company had attempted to again re-export the restricted goods 'natural garnet' through one another purchase order No. PVGT/20/0103 dated 05.07.2020 entered with a foreign buyer M/s Prime Ventures General Trading LLC, Dubai, and these facts was accepted by the appellant Shri Navnath Narayan Gole, in a statement given before the DRI. Therefore, we do not find any grounds for considering the plea made by the learned Advocate to reduce the penalty imposed on the appellant company/exporter.

8.3 We further find that the learned Commissioner (Appeals) have dealt in detail on all the disputed issues in the impugned order and had given his clear finding on each of the issue, for upholding the order of the original authority and for dismissing the appeals filed by the appellants.

9. In view of the foregoing discussions and analysis, we do not find any infirmity in the re-classification of the export goods as 'Natural Garnet' classifiable under CTI 2513 2030 which are 'restricted' for export in terms of DGFT Notification No.26/2015-2020 dated 21.08.2020 and for imposition of penalty on the appellant company, by the Original Authority and in upholding the same by the learned Commissioner of Customs (Appeals) vide impugned order dated 21.08.2020. However, we have considered the factual matrix of the case involving the role of the proprietor of the appellant company Shri Prashant Nivrutti Gole and the employee Shri. Navnath Narayan Gole in the alleged illegal exportation activities and the fact that the export of 'Natural Garnet' have been allowed for export only through Indian Rare Earth Limited/IREL (India) Limited, and also the fact the provisional release of seized goods have also been allowed, permitting for its use in India or for re-export through such permitted agency, upon taking a Bank Guarantee (BG) for Rs. 25,28,580/- along with bond for full value of the goods. We further find that such amount of BG has been appropriated in the order of the original authority. Therefore, in consideration of all the above factors and the role of Shri. Navnath Narayan Gole, who is only an employee, we are of the considered opinion that the penalty imposed on the employee of the appellant company alone can be reduced to Rs.1,00,000/- (Rupees One Lakh) only.

Accordingly, the impugned order dated 03.10.2023 passed by the learned Commissioner (Appeals) is modified to the above extent.

10. In the result, the appeal filed by the appellant company/exporter being No. C/87533/2023 is dismissed and the appeal filed by Shri. Navnath Narayan Gole being No. C/87534/2023 is partly allowed to the above extent.

(Operative portion of the Order pronounced in the open Court)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

Sinha