CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, WEST ZONAL BENCH : AHMEDABAD

REGIONAL BENCH - COURT NO. 2

CUSTOMS Appeal No. 10289 of 2025-DB

[Arising out of Order in Appeal MUN-CUSTM-000-APP-163-164-24-25 dated 30.10.2024 passed by the Commissioner (Appeals), Customs, Ahmedabad]

Kuber Enterprises .... **Appellant**
Office No. 811, A Wing, Floor 08, Plot No. 18/19,
Sector-15, CBD Belapur, Navi Mumbai, Thane,
Maharashtra- 400604

VERSUS

Commissioner of Customs – Mundra .... **Respondent**
Office of the Pr. Commissioner of Customs,
Custom House Mundra, Mundra Port and Special
Economic Zone, Mundra, Kachchh-370421, GUJARAT

APPEARANCE :

Ms. Tithi Upadhyay, Advocate for the Appellant
Shri Aakash Singh, Superintendent (AR) for the Respondent

CORAM:

HON'BLE DR. AJAYA KRISHNA VISHVESHA, MEMBER (JUDICIAL)
HON'BLE MR. SATENDRA VIKRAM SINGH, MEMBER (TECHNICAL)

DATE OF HEARING : 14.10.2026
DATE OF DECISION: 28.10.2026

FINAL ORDER NO. 10793/2026

DR. AJAYA KRISHNA VISHVESHA :

This appeal is directed against the impugned Order-in-Appeal No. MUN-CUSTM-000-APP-163-164-24-25 dated 30.10.2024 through which learned Commissioner (Appeals) has upheld the Order-in-Original No. MCH/ADC/MK/275/2023-24 dated 07.03.2024 passed by the Additional Commissioner (Export), Customs House, Mundra.

2. The facts of the case, in brief, are that the Appellant filed five shipping bills all dated 22.04.2023 at Mundra for export of 1,372 MT of goods declared as "Refractory Bed Material" under CTH 69021090, with a declared FOB value of Rs. 2,52,47,838/-. The goods were examined under Panchnama dated 09.05.2023 and samples were taken which on testing by IREL, Kollam, were found to be Natural Garnet, classifiable under CTH 25132030, export of which is canalized through IREL under DGFT

Notification No. 26/2015-20 dated 21.08.2018. The goods were seized on 13.10.2023 and provisional release was granted on 27.10.2023 subject to furnishing a bond of Rs. 2,52,47,838/- and a bank guarantee of Rs. 65,00,000/-. The Appellant did not comply with the conditions of provisional release and therefore, goods continued to remain in Customs custody at the CFS since April 2023.

2.1 A Show Cause Notice was issued to the appellant on 15.02.2024 which was adjudicated vide Order-in-Original dated 07.03.2024 wherein learned Adjudicating Authority rejected the description of goods and classification declared by the exporter as "Refractory Bed Material" under Customs Tariff Item HS Code 69021090. He held the goods as 'Natural Garnet' classifiable under Customs Tariff Item 25132030. The learned Adjudicating Authority also rejected the declared FOB value of the goods and redetermined the value at Rs. 2,57,94,972/-, rejected the claim of drawback of Rs. 4,54,461/- claimed by the exporter and RoDTEP of Rs. 2,52,478/- claimed by the exporter in the shipping bills. He ordered confiscation of seized goods attempted to be exported vide 5 shipping bills by mis-declaring them as 'Refractory Bed Material'. However, he allowed the appellant to redeem the goods and take the goods back to town upon payment of redemption fine of Rs. 35,00,000/-. He imposed penalties of Rs. 15,00,000/- under Section 114(i) and Rs. 15,00,000/- under Section 114AA of the Customs Act, 1962 upon the appellant. He also imposed penalty of Rs. 3,00,000/- under Section 114(i) and penalty of Rs. 2,00,000/- under Section 114AA of the Customs Act, 1962 on Shri Hardik Bhanushali Proprietor of M/s. Shipjet Shipping and Services, Mundra. The appeal filed against this order was rejected by the learned Commissioner (Appeals) who upheld the order of the Adjudicating Authority. Hence, the present appeal before this Tribunal.

3. Learned Counsel for the appellant submitted that the amount of redemption fine and penalty is excessive and too much. Her submission is that they relied upon technical material concerning the chemical composition of the goods, including the Test Report Ref. No. 10818/22/0 dated 15.02.2023 of Gujarat Minerals Laboratory, Beawar, Rajasthan which predates the shipping bills. The subsequent IREL reports identified the goods as 'Garnet'. The technical material relied upon by the appellant, the

chronology of testing and the explanation furnished during adjudication were not taken into consideration by the lower Authorities while.

3.1 Learned Counsel for the appellant relied upon the law laid down by Hon'ble Supreme Court in **Hindustan Steel Limited** vs. **State of Orissa** – reported in AIR 1970 SC 253 : (1969) 2 SCC 627, in which it is held that an order imposing penalty for failure to carry out a statutory obligation is the result of a quasi-criminal proceeding, and penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation. Penalty will not be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on consideration of all the relevant circumstances. Learned Counsel for the appellant submits that this principle has been followed in **Cement Marketing Co. of India Limited** vs. **Assistant Commissioner of Sales Tax -** 1980 (6) E.L.T. 295 (S.C.), and in **JSW Steels Limited** vs. **Commissioner of Central Excise, Belgaum**, 2010 (254) E.L.T. 318 (Tri. Bang.). In these cases, it was held that where the default arose from a bona fide belief and there was no dishonest or contumacious conduct, penalty should not be imposed.

3.2 Learned Counsel for the appellant also submitted that Section 114AA stands on its own statutory footing. It applies where 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. She submits that unless the statutory ingredients are established by the evidence, penalty is not sustainable. It is her submission that Revenue has failed to establish the ingredients which are essential for imposing penalty under Section 114AA of the Customs Act, 1962. She further submits that the provision of Section 114(i) is not attracted in this case, therefore, penalty imposed under Section 114(i) is also not sustainable. She also submits that excessive redemption fine has been imposed without considering the market price of the goods, margin of profit. In **Commissioner of Customs, Mumbai** vs. **Mansi Impex** reported at 2011 (270) ELT 631 (SC), the Hon'ble Apex Court held that quantum of

redemption fine depends on the market price of the goods, which is ceiling prescribed by Section 125 itself.

3.3 The learned Counsel for the appellant relied upon the orders passed in following cases where it has been held that redemption fine and penalty in cases of policy violation may appropriately be fixed at about 10% and 5% of the value of goods respectively.

(a) Marque Enterprises vs. Commissioner of Customs (Preventive), Amritsar - 2015 (329) ELT 307 (Tri. Del.)

(b) Bedy Associates vs. Commissioner of Customs, New Delhi - 2017 (349) ELT 289 (Tri. Del.)

(c) H.T. Company vs. Commissioner of Customs, Hyderabad - 2007 (208) E.L.T. 507 (Tri. Bang.)

She prays that redemption fine imposed under Section 125 of the Customs Act may be substantially reduced keeping above decisions in mind. Penalty of Rs. 15,00,000/- under Section 114AA and penalty of Rs. 15,00,000/- under Section 114(i) of Customs Act, 1962 may also be substantially reduced and penalty within a reasonable time.

3.4 During arguments, learned Counsel Ms. Tithi Upadhyay, also attracted our attention towards order dated 16.07.2026 passed by Hon'ble Gujarat High Court in R/SCA No. 9144 of 2026 with Civil Application (for amendment) No.1 of 2026 in R/SCA No. 9144 of 2026 and requested that the directions given by the Hon'ble High Court may be taken into consideration and complied with while deciding this appeal. The order of Hon'ble High Court is as follows:-

"1. Learned Senior Standing Counsel Mr. Maunil G. Yajnik has tendered the photocopy of the e-mail dated 14.07.2026 addressed by the respondent customs authority to him, pointing out that the e-auction of the confiscated goods of the petitioner scheduled to be on 15.07.2026, is not taking place. The same is taken on record.

2. We have noticed that the petitioner has challenged the action of confiscation of the goods vide original order dated 07.03.2024 confirmed by the Commissioner (Appeal) vide order dated 30.10.2024, before the CESTAT by filing an Appeal. The Appeal is still pending before the CESTAT.

3. Under the circumstances, in the interest of justice, we direct that the issue with regard to the auction of the confiscated goods can be pointed out by the petitioner

before the CESTAT. The CESTAT is authorized to consider all the facets of the matter including the auction of the confiscated goods. Necessary Application shall be filed by the petitioner before the CESTAT within a period of three weeks from the date of receipt of the order. We further direct that the CESTAT shall examine the issue of e-auction of confiscated goods preferably within a period of four weeks thereafter. Till then, we direct that the respondent shall not conduct e-auction of the confiscated goods.

With these observations, the present writ petition is disposed of alongwith the Civil Application**."**

4. Learned AR for the department submitted that in the present case, as per test report dated 27/28.10.2023, goods meant for export by M/s Kuber Enterprises were found to be "Natural Garnet" against the description "Refractory Bed Material". The subject goods being "Natural Garnet" i.e. Beach Sand Mineral, the export thereof was brought under State Trading Enterprise (STE) regime with effect from 21.08.2018 through the canalizing agency M/s IREL vide DGFT, Government of India. Notification No. 26/2015-20 dated 21.08.2018 issued under Section 3 of the Foreign Trade (Development & Regulation) Act, 1992. He submitted that the learned Commissioner (Appeals) has correctly imposed redemption fine and penalty on the appellant which are very reasonable and as such, do not call for any interference. He relied upon the order passed by CESTAT Chennai in Customs Appeal No. 40256 of 2023 in case of **Scania Commercial Vehicles Pvt. Limited** vs. **Commissioner of Customs** in which the Tribunal held as follows:-

"16. Confiscated goods can be redeemed either for home consumption/warehousing or for export only on payment of a fine. I find that the impugned order is legal and proper and no interference in the discretion exercised by the Proper Officer is called for. The Hon'ble Supreme Court in its judgment in **Duncan Industries Limited & Anr** vs. Union of India [AIR 2006 SC 3699/2006 (3) SCC 129] held as under;

"We are broadly in concurrence with the reasoning of the High Court that in matters of administrative discretion it is not open to the courts to interfere in minute details, except on grounds of mala fides or extreme arbitrariness. Interference should be only within very narrow limits, such as, where there is a clear violation of a statute or a constitutional provision, or extreme arbitrariness in the Wednesbury sense."

18. A penalty is the result of a breach of statutory duty. The main object behind the imposition of penalty is deterrence. Re-export of the goods does not cure the breach of statutory duty already committed. While a fine is imposed on the redemption of offending goods imported in breach of law, a penalty is levied on a person responsible for the breach of statutory duty. No interfere should ordinarily be made by an appellate body, in the discretionary order passed by a lower authority, just because another view might be possible, except on grounds of mala fides or extreme arbitrariness. No such

ground has been made out in this case. Hence this plea also does not have any merit and is rejected.

20. In this regards I propose to examine the Larger Bench decision in the case of Hemant Bhai R. Patel (supra), cited by Revenue, which is binding on a Bench of lesser strength. The question examined was that when re-export is permitted no redemption fine can be imposed, which is the same issue involved here.

The Larger Bench of this Tribunal answered the question as under;

"Section 112 authorizes imposition of penalty. Section 125 contains the provisions enabling the Customs Officer to grant an option to the owner or the person from whose possession the goods have been seized to pay a fine in lieu of confiscation. In an adjudication proceeding as in the present case these are the provisions which would come into play. If the owner gets the goods released after payment of redemption fine, he may either clear it for home consumption or re-export the same subject to the relevant rules. A permission granted for re-export on the basis of a request made by the owner of the goods is outside the purview of the adjudication proceedings, as mentioned above. We, therefore, answer the questions referred in the affirmative and hold that it is open to the adjudicating authority to impose redemption fine as well as penalty even when permission is granted for re-exporting the goods. The reference is answered as above." Judicial discipline requires that we follow the judgment of the Larger Bench. The appellant's plea is hence rejected.

4.1 Learned AR also relied upon the order passed by Hon'ble Delhi High Court in **Hughes Network System India Limited** vs. **Commissioner of Customs (Import & General), New Delhi** – 2024 (388) ELT 594 (Del.) in which the Hon'ble High Court has held as follows:-

"40. Reliance placed by Learned Counsel for the appellants on the judgment in the case of Akbar Badrudin Giwani (supra) is misplaced, for the reason that we have found that the discretion in the instant case has been exercised judicially by the Commissioner of Customs.

41. In Akbar Badrudin Giwani (supra), the Supreme Court also considered the proportionality of conduct vis-a-vis the quantum of penalty. In the present case the Commissioner of Customs could have imposed redemption fine and penalty each of 100% of the value of the goods but has restricted the redemption fine to 19% and penalty to 9.5%. We find that discretion has been judicially exercised and in fact has been exercised in favour of the appellants by not imposing a harsh or excessive penalty.

42. Similarly, the decision in the case of Jain Exports Pvt. Ltd. (supra) also does not further the case of the appellants. In Jain Exports Pvt. Ltd. (supra), this Court has referred to the judgment of the Supreme Court in Chairman, SEBI v. Shriram Mutual Fund - 2006 (5) SCC 361 wherein the Supreme Court has held that once contravention is established then the penalty has to follow and only quantum of penalty is discretionary. As noticed in Chairman Sebi (supra), in the present case discretion has been exercised by the adjudicating officer by imposition of lesser penalty then what could have been imposed under the provisions of the Customs Act.**"**

4.2 Learned AR also referred to Section 110(1A) of the Customs Act which empowers Customs Officers to dispose the perishable goods after following the procedure. This Section is reproduced as follows:-

> "(1-A) The Central Government may, having regard to the perishable or hazardous nature of any goods, depreciation in the value of the goods with the passage of time, constraints of storage space for the goods or any other relevant considerations, by notification in the Official Gazette, specify the goods or class of goods which shall, as soon as may be after its seizure under sub-section (1), be disposed of by the proper officer in such manner as the Central Government may, from time to time, determine after following the procedure hereinafter specified."

The learned AR also referred to Notification No.31/86-Cus dated 05.02.1986 and Notification No. 20/2004-Cus (NT) dated 16.02.2004 which have been reproduced below:-

> **Seizure of perishable or hazardous goods — Section 110(1A) of Customs Act**
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> In exercise of the powers conferred by sub-section (1A) of section 110 of the Customs Act, 1962 (52 of 1962), the Central Government, having regard to the perishable nature, depreciation in the value with the passage of time, constraints of storage space and valuable nature, of the goods, mentioned in the Schedule hereto annexed, hereby specifies the said goods for the purposes of that sub-section.
>
> THE SCHEDULE
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> 1. Liquors ;
> 2. Primary cells and primary batteries including re-chargeable batteries ;
> 3. Wrist watches including electronic wrist watches, watch movements, parts or components thereof ;
> 4. All electronic goods including television sets, Video Cassette Recorders, Tape recorders, calculators, computers, components and spares thereof including diodes, transistors, integrated circuites, etc. ; and
> 5. Dangerous drugs and psychotropic substances.
>
> **[Notification No. 31/86-Cus., dated 5-2-1986]**
>
> **Software and any goods provisionally released but not taken within one month — Disposal of, after seizure — Amendment to Notification No. 31/86-Cus.**
>
> In exercise of the powers conferred by sub-section (1A) of section 110 of the Customs Act, 1962 (52 of 1962), the Central Government, having regard to the perishable nature, depreciation in value with the passage of time, constraints of storage space and valuable nature of goods, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 31/86-Customs, dated the 5th February, 1986, namely : -

In the Schedule annexed to the said notification, after item No. 12 and the entries relating thereto, the following item numbers and entries shall be inserted, namely :-

"13. Software;

14. Any good seized by the proper officer under section 110 of the Customs Act, 1962 (52 of 1962) for which order for provisional release has been passed but provisional release has not been taken by the concerned person within a period of one month from the date of the communication of such order".

[Notification No. 20/2004-Cus. (N.T.), dated 16-2-2004]

5. We have heard both sides and perused the record including directions given by Hon'ble Gujarat High Court vide order dated 16.07.2026.

5.1 Learned Counsel for the appellant has challenged the amount of redemption fine and penalties imposed under Sections 114AA and 114(i) of the Customs Act, 1962 by Adjudicating Authority and upheld by the Appellate Authority. In the present case, value of the subject goods sought to be exported by appellant, was redetermined by the Adjudicating Authority at Rs. 2,57,94,972/-. The allegations against the appellant are misdeclaration and misclassification of goods. Considering the value of the subject goods at Rs. 2,57,94,972/-and seriousness of the allegations against the appellant as mentioned above, redemption fine of Rs. 35,00,000/- which comes to around 13.5%, appears to be proper and reasonable and cannot be termed as excessive. We are also of the view that the amount of penalty imposed by Authorities under Sections 114AA and 114(i) of the Customs Act, which is Rs. Fifteen Lakh each appears to be proper and cannot be termed as grave and serious nature of allegations made against the appellant as they attempted to export 'Natural Garnet' by mis-declaring description as "Refractory Bed Material". It is pertinent to mention here that with effect from 21.08.2018, export of "Natural Garnet", is permissible only through the canalizing agency M/s IREL vide DGFT, Government of India, Notification No. 26/2015-20 dated 21.08.2018 issued under Section 3 of the Foreign Trade (Development & Regulation) Act, 1992.

5.2 We agree with the arguments of learned AR that when a fine is imposed for redemption of offending goods confiscated by the proper authority for breach of the provisions of law and penalty is imposed on a person responsible for the breach of statutory duty, ordinarily no interference should be made by the appellate body, in the discretionary

order passed by the lower authority just because another view might be possible, except on grounds of mala fides or extreme arbitrariness. We do not find any such ground existing in this case to interfere in the impugned order.

5.3 Learned Counsel for the appellant has vehemently argued that according to settled position of law, no redemption fine is imposable on goods which are to be re-exported. This contention cannot be accepted as the present case relates to attempted export of restricted goods by mis-declaring the description and classification to pose as export of normal goods. This is not a case of re-export of imported goods. The proper officer has allowed redemption of confiscated goods subject to fulfilment of conditions imposed by him in exercise of his discretionary jurisdiction. Therefore, impugned order cannot be held against the law and no interreference is required.

The Hon'ble Supreme Court in **Duncan Industries Limited and Anr** vs. **UOI** – AIR 2006 SC 3699 has held as under:-

> "We are broadly in concurrence with the reasoning of the High Court that in matters of administrative discretion it is not open to the courts to interfere in minute details, except on grounds of mala fides or extreme arbitrariness. Interference should be only within very narrow limits, such as, where there is a clear violation of a statute or a constitutional provision, or extreme arbitrariness in the Wednesbury sense."

5.4 As regards E-auction of the confiscated goods, we find that the Customs authorities have initiated auction of confiscated goods E under the provisions of Section 110(1A) of the Customs Act and under Notification No. 31/26-Cus dated 05.02.1986 and Notification No. 20/2004-Cus (NT) dated 16.02.2004 and it can't be said that E-auction is without any authority of law. The appeal is being finally disposed of by this order and therefore, it cannot be said that E-auction is being undertaken by the Revenue during pendency of appeal. Revenue authorities may go ahead with E-auction of the subject goods after issuing proper notice to the appellant inviting objections within atleast 30 days, in view of the directions issued by Ministry of Finance vide CBEC Instructions issued vide F. No. 711/4/2006-Cus (AS)

dated 14.02.2006 and after compliance with the relevant provisions of the Customs Act and other Circulars on the subject.

6. In the light of above discussions, we uphold impugned order passed by learned Commissioner (Appeals) and reject the appeal filed by the appellant.

7. Consequently, the appeal is rejected.

(Pronounced in the open court on 28.10.2026*)*

(Dr. Ajaya Krishna Vishvesha)
Member (Judicial)

(Satendra Vikram Singh)
Member (Technical)

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