

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

REGIONAL BENCH- COURT NO.3

Excise Appeal No. 12268 of 2013- DB

(Arising out of OIO-20-22/MP/VAPI/2013 dated 30/03/2013 passed by Commissioner of Central Excise, Customs and Service Tax-VAPI)

C.C.E. & S.T.-Vapi

4th Floor...Adharsh Dham Building,
Opp. Town Police Station, Vapi-Daman Road, Vapi
Vapi, Gujarat - 396191.

.....Appellant

VERSUS

Stonemann Marble Industries

Plot No. 3, Survey No. 263/3/2,
Village : Sayali, Silvassa
Ut Of Dadra & Nagar Haveli

.....Respondent

WITH

- **Excise Appeal No. 12308 of 2013 (Stonemann Royale Ltd Formerly Ms Stonemann Marble Industries)**
- **Excise Appeal No. 12309 of 2013 (Sushant Mukhopadhyay)**
- **Excise Appeal No. 12310 of 2013 (Sameer Gulabchand Shah)**

APPEARANCE:

Shri, Anand Nainawati, Advocate for the Appellant
Shri, Tara Prakash, Deputy Commissioner (AR) for the Respondent

**CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. C L MAHAR**

Final Order No. A/11408-11411/2023

DATE OF HEARING: 11.04.2023
DATE OF DECISION: 03.07.2023

RAMESH NAIR

By the impugned order demand of Rs.1,05,59,320/- was confirmed on the ground that the polished granite slabs are classifiable under tariff item no. 6802 23 90 as per the revenue and not under tariff item no. 2156 1200 as claimed by the appellant. The demand of Rs. 9,07,393/- was confirmed on artificial marble slabs cleared after 26.02.2010. The amount of Rs.

49,811 was demanded on the clearance of 1612 square metres of marble slabs without payment of duty and duty demand of Rs. 2,26,598/- was confirmed on the clearance of 7,333.275 Square metres marble slabs which was cleared without payment of duty.

02. Shri Anand Nainawati, learned counsel appearing on behalf of the appellant at the outset submits that as regard the demand of duty on the granite slabs due to dispute in the classification whether the same is classifiable under tariff item no. 6802 23 90 or tariff item no. 2156 1200 the issue has been settled in favour of the appellant in the case of the following judgments:-

- Aman Marbles Industries Pvt. Ltd. Vs. CE- 2003 (157) ELT 393 (SC)
- Associated Stone Industries (Kotah) Ltd. Vs. CCE- 1992 (60) ELT 639 (T) affirmed by the Supreme Court of India- 2010 (251) ELT A147 (SC)
- Oriental Trimex Ltd. Vs. CCE- 2010 (249) ELT 259 (T)
- Classic Marbles Vs. CCE- 2013 (293) ELT 563 (T)
- Classic Marbles Vs. CCE- 2014 (301) ELT 533 (T)

2.1 He submits that in view of the above judgments, it has been settled that by invoking chapter note of chapter 25 that the goods cannot be classified under 68022390 therefore, the demand of Rs.1,05,59,320/- on this count is not sustainable.

2.2 As regard the demand of Rs. 9,07,393/-, he submits that against the said demand an amount of Rs. 6,71,789/- has already been paid. As regard the demand of Rs.49,811, he does not press being a small amount. Similarly, as against demand of Rs. 2,26,598/-, the appellant have paid amount of Rs. 2.24 lacs. He submits that in respect of demand of Rs. 9,07,393/- they did not pay excise duty on the clearance of polished granite slabs during the period April 2010 to June 2010. Subsequently, on 30.06.2010, the appellant had paid the differential duty of Rs.6,71,789/- and declared in ER-1 return for the month of June 2010 showing the payment of Rs.6,71,789/-.

2.3 As regard the demand of Rs.49,811/- and Rs. 2,26,598/- he argued that the entire duty demand on this count is beyond the normal period of limitation and therefore, the same is liable to be set aside.

03. Shri Tara Prakash, learned Deputy Commissioner (AR) appearing on behalf of the revenue reiterate the finding of the impugned order.

04. We have carefully considered the submissions made by both the sides and perused the records. As regard the demand of Rs.1,05,59,320/-on the issue of classification that whether the product is classifiable under tariff item no. 68022390 or 2156 1200, the said issue has been decided by this tribunal in the case of CLASSIC MARBLES reported in 2013 (293) ELT 563 (Tri.) wherein, the tribunal has passed the following order :-

9.*We have considered the submissions made at length by both sides and perused the records.*

10.*The period involved in these appeals is from 1-3-2006 to 30-9-2010.*

10.1*The issue involved in this case is "whether the imported natural marble blocks, imported agglomerated blocks and imported marble slabs after being subjected to processes such as cutting or sawing into slabs, fibre backing, resin filling, polishing and further edging etc. are classifiable under CSH No. 2515 12 20, 6810 19 90 and 6802 21 90 of Customs Excise Tariff Act, 1985 as contended by assessee or would merit same classification under CSH No. 6802 19 00, 6810 99 90 and 6802 91 00 of Customs Excise Tariff Act, 1985 as contended by the Revenue.*

11.*We find that the facts in issue are not in dispute from both sides. Both sides agree that the appellants herein are importing marble blocks both natural as well as agglomerated. From their factory, the same are sent to different job workers for processes of 'sawing/cutting' i.e. the process of cutting the said blocks into slabs as the appellant did not have the facility of sawing in the factory. It is also undisputed that the natural blocks, after being cut into natural marble slabs, are received in the factory of the assessee under the cover of Central Excise invoices from the job worker on discharge of Central Excise duty @ Rs. 30 per sq. mtr., after availing the benefit of Notification No. 4/2006-C.E., dated 1-3-2006. There is also no dispute that the agglomerated marble blocks, after being cut into agglomerated marble slabs, are received from the job workers under the cover of delivery challans on payment/discharge of Service Tax under the category of Business Auxiliary Service.*

12.*The adjudicating authority, in the entire Order-in-Original, has dedicated the findings as to whether the process of fibering of the marble slabs, filling of the marble slabs with resin, filling with color pigments in order to fill the cracks and pin holes present on the surface of the slabs, process of edge-cutting in which un-even sides of the slabs are being cut to give proper size to the slab and process of polishing wherein the front side of the slab is polished, will amount to manufacture as per the Section*

2(f) of Central Excise Act, 1944 read with Chapter Note to Chapter 25 of Central Excise Tariff Act, 1985.

13. In order to come to a conclusion, we would like to address the issue for the different periods i.e. from 1-3-2006 to March 2008 and for the period beyond March 2008, in respect of dutiability of the processed natural marble slabs and in respect of leviability of duty of processed agglomerated marble slabs for the period 1-3-2006 to March 2008 and for the period after March 2008 to 26-2-2010 and also on the issue of leviability of duty on processed imported natural marble slabs.

14. As regards dutiability of processed natural marble slabs for the period 1-3-2006 to March 2008, it is undisputed that, the appellant had no gang saw machinery installed in their unit. It is also seen from the record and admitted that the appellants were getting the natural marble slabs cut/sawn into slabs on job work basis from independent job workers and the said job-workers were clearing such slabs on payment of Excise duty by virtue of Note No. 6 of Chapter 25 w.e.f. 1-3-2006. The said note specifically declares that the activity of cutting/sawing of blocks into marble slabs would be deemed manufacturing activity. It is also undisputed that the job workers discharge the duty liability by availing the benefit of Notification No. 4/2006-C.E., dated 1-3-2006 @ Rs. 30 per sq.mtr. We find as recorded by us hereinabove that there is no dispute that the processes which the appellant is carrying out is resin filling, fibre backing/netting, grinding, edge cutting and polishing before the product i.e. processed natural marble slabs are sold in the market. In our view, the processes undertaken by the appellant on duty-paid natural marble slabs would not amount to manufacture in terms of Section 2(f) of Central Excise Act, 1944 as no new, distinct separately identifiable and marketable product emerges as a result of such processes. We find that principle of law, in respect of identical product i.e. marble slabs, the judgment of Hon'ble Supreme Court in the case of Aman Marble Industries Pvt. Ltd., [2003 \(157\) E.L.T. 393](#) (S.C.) and the judgment in the case of Associated Stone Industries Ltd. - 2003 (10) SCC 771 (S.C.) = [2010 \(251\) E.L.T. A147](#) (S.C.) would apply.

15. We also find that the decision of the Tribunal in the case of Nitco Tiles Ltd. - [2004 \(165\) E.L.T. 50](#) (Tri.-Mum) and in the case of Oriental Trimex Ltd. - [2010 \(249\) E.L.T. 259](#) (Tri.-Del.) is on the self same issue. We find that the reliance placed by the adjudicating authority on the Chapter Note 6 of Chapter 25 is inserted w.e.f. 1-3-2006 would not have any applicability inasmuch as the said note would apply only when processes specified therein are undertaken for conversion of blocks into

slabs or tiles. In order to appreciate correct position, we produce said Chapter Note 6 as under :

"In relation to products of heading 2515 and 2516, the process of cutting or sawing or sizing or polishing or any other process, for converting of stone blocks into slabs or tiles, shall amount to "manufacture".

16.*It can be seen from above reproduced chapter note that this note will be applicable to a situation wherein an assessee brings entire stone blocks into his factory, cuts into the slabs and tiles and does all other activities. It cannot be read into this Chapter note that an activity performed by the appellant on the duty paid slabs shall also amount to manufacture. We find that reliance placed by the Commissioner on the judgment on Hon'ble Supreme Court in the case of Emptee Poly Yarn Pvt. Ltd. is misplaced as the said judgment was rendered in context of Section 80 (IA) of Income-tax Act, 1961, which is beneficial legislation and cannot be interpreted and applied in the manner so as to create duty liability under indirect taxes legislation. We also find that Hon'ble Supreme Court itself has emphasized that applicability of said judgment would remain restricted to a specific case only and judgment cannot overrule nor can be said to have overruled the judgments of Hon'ble Supreme Court rendered in context of Section 2(f) of Central Excise Act, 1944, more specifically in respect of the processes undertaken on or in relation to the marble blocks/slabs. The judgment of Hon'ble Apex Court in the case of Associated Stone Industries Ltd., is direct on the issue under consideration and will be applicable more than the judgment which is given under the different Acts.*

17.*As regards the activities for the period post March 2008 on the imported natural slabs, we find that the appellant herein was undertaking cutting/sawing of blocks on their own and thereafter such slabs were subjected to one or more processes like resin filling, fibre netting or backing, grinding, edge cutting and polishing before being dispatched for sale into the market. As we have already held hereinabove that this kind of activity of converting stone blocks into slabs or tiles would amount to manufacture including the processes undertaken if an assessee had done so in his factory premises by doing such activity on the stone slabs. We find that the appellant-assessee in this case, after doing such activity after March 2008, on natural marble slabs has discharged the duty liability under Heading 2515 12 20 on payment of duty @ Rs. 30 per sq. mtr. in terms of Notification No. 4/2006-C.E. It is the case of the Revenue that post March 2008, the appellant's activity of processing natural marble slabs into processed natural marble slabs would be classifiable under CSH 6802 91 00 and chargeable to duty at ad valorem basis is*

incorrect as the word "polishing" which is mentioned in Note 6 of Chapter 25 is to be read in respect of product which is falling under Heading No. 2515, 2516 and cannot be taken out and read independently in isolation, so as to read that the appellant is manufacturing polished natural marble slabs and would get covered under Chapter 68 of Customs Excise Tariff Act, 1985. In our view, the activity undertaken by the appellant from cutting of the marble blocks till the polishing of the same would remain classifiable under Chapter 25 and would fall under Heading 2515 1220 and is eligible for benefit of Notification No. 4/2006. Our view is fortified by the decision of the Tribunal in the case of Oriental Trimex Ltd. (supra). We find in that judgment, the co-ordinate Bench of the Tribunal was considering an identical issue for the period prior to 1-3-2006 and also post 1-3-2006. In that case also, Revenue was canvassing a view that the product processed marble slabs would fall under Chapter 68. With respect, we reproduce the entire judgment, which is as under :

Common issue is involved in these appeals and, therefore, both are being
1. taken up together for disposal.

The 2. relevant facts of the case as per record, in brief, are that the appellants were purchasing marble blocks and marble slabs for processing thereon. The blocks were subjected to processing of sizing to make it rectangular and cut into slabs of uniform thickness by using Gangsaw machines. The slabs got cracks and pin holes in some cases and pasted fibre glass sheets on one side and resin is applied to fill-in holes the cracks on the other side of the slabs for smooth transportation. The final products are rough marble slab, cut to size marble slabs (polished stroke by rough) and marble tiles (polished). In view of the decision of the Hon'ble Supreme Court in the case of Annul Marble Industries Pvt. Ltd. v. CCE - [2003 \(157\) E.L.T. 393](#) (S.C.), the appellant claimed that prior to 1-3-2006 the processes undertaken by them do not amount to manufacture and no duty was paid. From 1-3-2006, Note 6 was inserted to Chapter 25 of CETA, 1985. The appellants claimed the classification of the products would come under sub-heading no. 2525 12 20 and 2515 12 90 and availed concessional rate of duty under Notification No. 4/2006-C.E.. dated 1-3-2006. On 5-7-2006. the Central Excise Officers visited the appellants factory and examined the processes undertaken by the appellants. They had recorded the statements of the representative of the appellants. Show cause notices were issued time to time proposing demand of duty and imposition of penalty. Commissioner confirmed the demand of duty for the entire period from April, 2005 to September, 2007 and imposed penalties along with interest.

3. In the impugned orders, Commissioner held that after introduction of 8-digit classification code from 1st March 2005 in the Central Excise Tariff Act, 1985 the decision of the Hon'ble Supreme Court in the case of Aman Marble Industries v. CCE, [2003 \(157\) E.L.T. 393](#) (S.C.). would not apply and the products are not classifiable under Chapter 25 of the Tariff. Rough Marble Slabs/Polished Marbles are classifiable under sub-heading no. 6802 91 00, Polished Marble Tiles are classifiable under sub-heading no. 6802 21 10 and Granite Blocks and Granite files are classifiable under sub-heading no. 6802 23 10 and 6802 93 00 of the Tariff respectively.

Ld. 4. Advocate on behalf of the appellants submits that the entire period of demand of duty may be divided in two parts, as under :

From April, 2005 to February, 2006 (i.e. (A) Prior to 1-3-2006)

The (a) processes are cut-to-size rough marble slabs cut-to-size marble slabs (basically rectangular pieces of slabs) and polished marble tiles.

(b) It is well settled by the various decisions that the processes do not amount to manufacture prior to 1-3-2006 :-

(i) Associated Stone Industries (Kotah) Ltd. v. CCE - 1992 (60) E.L.T, 639, affirmed as reported at (2003) 10 SCC 771 (cutting into marble slabs and tiles).

(ii) Rajasthan SED v. Associated Stone industries - (2000) 6 SCC 141 (cutting and polishing of stones into slabs).

(iii) Aman Marbles Industries v. CCE - [2003 \(157\) E.L.T. 393](#) (S.C.) (Cutting into marble slabs).

(iv) Bell Granito Ceramica Ltd. v. CCE, [2006 \(198\) E.L.T. 161](#) (S.C.) (Polishing of tiles).

(v) Anmol Granites v. Union of India. [2006 \(199\) E.L.T. 769](#) (Raj.) cutting and polishing of granites into slabs.

(vi) Calcutta High Court in the case of Oriental Tiles Ltd. v. Union of India vide its judgment dated 18-5-2006. (cutting of marble into slabs and polishing).

(c) The Central Government introduced 8 digit classification in Central Excise Tariff with effect from 1-3-2005. C.B.E. & C. vide Circular no. 808/5/2005-CX., dated 25-2-2005 clarified that Government had no intention to vary the duty structure on goods while transition from 6 digits to 8 digits.

(d) In view of the above C.B.E. & C. Circular, the Department cannot change its stand post 1-3-2005 and the decisions are applicable even in 8 digit tariff.

(e) There was a uniform practice all over the country that no marble processing unit was paying duty during that period.

(B) From 1-3-2006 and Notification No. 4 2006-C.E., dated 1-3-2006.

(a) Note 6 was inserted in Chapter 25 of the Tariff w.e.f. 1-3-2006 providing that the process of cutting or sawing or sizing or polishing or any other process for converting of stone blocks into slabs or tiles shall amount to manufacture.

(b) The marble slabs processed by the appellants are classifiable under sub-heading No. 2515 12 20 and eligible for concessional rate of duty under notification No. 4/2006-C.E., dated 1-3-200.

(c) There is no Chapter Note in Chapter 68 deeming the process of sizing/treaming or polishing would amount to manufacture as mentioned in Note 6 of Chapter 25.

C.B.E. (d) & C. vide Circular F.No. 134/2/2006-CX., 4 dated 3-9-2008 clarified that when the marble slabs still have uneven surface as when it was cut or sawn, the application of glass fibre net or resin/harder on the marble slabs shall not take these marble slabs out of Chapter 25. Such marble slabs shall continue to be classified in Chapter 25 and the concessional rate of duty under Notification No. 4/2006-C.E., shall be available to them.

(e) As per Chapter Note 1 to Chapter 68, products of Chapter 25 are excluded from the scope of Chapter 68. Thus, the products which are otherwise classifiable under Chapter 25 are excluded from Chapter 68.

(f) Goods under CETH 6802 are shaped articles and worked by a stone-mason or sculptor. Marble slabs in question are not such goods which are simply sawn/cut from blocks. Net fibre pasting, resin filling of holes and cracks of such slabs, would not change the character, name and use of marble slabs to that of articles mentioned within the scope of Heading 6802. Such processes would thus not take out their classification out of Chapter 25.

It (g) is slated that all the marble slab processors are availing concessional rate of duty under the said notification and the appellants should not be treated separately.

Without prejudice to the above contention, it is submitted that (h) the demand of duty was not properly quantified and cum-duty benefit was not extended.

5. Ld. DR. on behalf of the Revenue reiterates the findings of the Commissioner. He submits that the Commissioner classified the goods under Chapter 68 for the entire period. He submits that the process undertaken by the appellants is not merely cutting by saw. He submits that besides cutting a number of processes were being Undertaken by Item on the raw materials received by them. The process undertaken by them are sizing, surfacing, applying fibre paste, filling of resin, cutting in sizes, edge trimming, polishing, etc., and such processes are clearly beyond the process of cutting of crude or roughly trimmed marble. He also submits that Shri S.C. Anand, DGM (Operation) in his statement dated 6-7-2006 stated that the stone blocks are subjected to the processes like sizing and surfacing of the laces before being cut into slabs of uniform thickness by Gangsaw machine. It is his submission that on physical examination of the goods, it was found that the goods were neither in crude form nor merely cut by sawing etc. So. it would not come within the purview of Chapter 25.

6. He submits that decision of the Hon'ble Supreme Court in the case of Aman Marble Industries Pvt. Ltd. (supra) would not apply for the reasons that in the said case, the process was simply mere cutting of marble blocks into slabs. But, in the present case, the appellants were undertaking various processes by which the goods does bring into existence a distinct commodity. He also submits that marble blocks and slabs were further worked to the varieties of stone referred to in Heading No. 2515 or 2516 and, therefore, it would come within the purview of Heading No. 6808 of the Tariff. The appellant is not eligible for the exemption benefit. He submits that Board Circular would not apply in this case, because, the appellants undertook various processes as slated above and Note 2 of Chapter 68 of Tariff would apply.

7. After considering the submissions of both the sides and on perusal of the records, we find that the main contention of the Ld. DR is that in the present case, marble blocks were not simply sawn but more processes were undertaken viz. sizing, edging, trimming and polishing for making the cut to size, polished marble slabs and polished marble tiles. So. the case laws relied upon by the Ld. Advocate are not applicable after 1-3-2005. As such, the case laws relied upon by the appellants are discussed below :-

The (a) Tribunal, in the case of *Associated Stone Industries (Kotah) Ltd. v. CCE - [1992 \(60\) E.L.T. 639](#)* (Tribunal) held that the marble slabs that are merely sawn from the marble blocks cannot be called as distinct commodity. The end-product, which would come into existence after the activity is completed, would still be called "marble". Thus, the original identity continues despite the several processes undergone. In the trade circles, marble slabs or the marble tiles that are manufactured after cutting the edges, trimming, polishing, and other processes, continue to be known as marble. It has been held that marble blocks and slabs after cutting edging, trimming, polishing and other processes, it does not amount to manufacture as there is no transmission of marble into any other commodity.

Revenue filed appeal before the Hon'ble Supreme Court against the (b) order of the Tribunal in the above case of *Associated Stone Industries (Kotah) Ltd. (supra)*. The Hon'ble Supreme Court dismissed the appeal filed by the Revenue as reported in (2003) 10 SCC 771 (*Collector of Central Excise, Jaipur v. Associated Stone Industries (Kotah) Ltd.* held as under :-

"2. We have gone through the judgment and order passed by the CEGAT. It cannot be held that cutting, edging, trimming, polishing and other processes on the marble slabs amount to a process of manufacture as it does not bring in a distinct product. Hence, this appeal is dismissed. There shall be no order as to costs."

(c) The Hon'ble Supreme Court in the case of *Aman Marble Industries Pvt. Ltd. v. Collector of Central Excise, Jaipur* reported in [2003 \(157\) E.L.T. 393](#) (S.C.) held that the cutting of blocks into marble slabs involves only sawing of the marble blocks and thereby does not bring into existence as distinct commodity so as to state that when such activity is completed a new substance has come into existence and marble will remain marble and, therefore, this activity does not amount to manufacture.

(d) The Hon'ble Rajasthan High Court in the case of *Anmol Granites v. Union of India* reported in [2006 \(199\) E.L.T. 769](#) (Rajasthan) allowed writ petition, wherein, the issue was involved as to whether cutting and polishing of granite slabs and tiles from block amounts to manufacture and the end-product becomes subject to charge of excise duty under the Central Excise Act. 1944.

(e) The Tribunal in the case of *NITCO Tiles Ltd. v. CCE, Mumbai-II* reported in [2004 \(165\) E.L.T. 50](#) (Tribunal-Mumbai) held that marble

slabs obtained by cutting, polishing and fibre glass reinforcement of marble slabs does not amount to manufacture as no new distinct commodity having emerged.

(f) The Tribunal in the case of R.K. Marble Pvt. Ltd. v. CCE, Jaipur-II vide Final Order No. 839/2008-EX., dated 5-8-2008 held as under :-

"3. Contention of revenue is that as per chapter note 1 of Chapter 25 of the Central Excise Tariff, this chapter covers the products which are in the crude state or which have been washed, crushed, ground etc. but not the products which have been roasted, claimed or subjected to processing beyond that mentioned in each heading, while in the present case, the slabs, in question, are processed by applying resin and reinforced with the fibre netting and, therefore, the same are not covered under Chapter 25. The Chapter 68 of the Tariff specifically covered the articles of stone, plaster, cement etc. and Heading No. 6802.21 covers 'other monumental or building stones'. The contention is (hat as the appellant undertaken the process of dressing of Marble Blocks. Sawing Process, Netting Process, Crack Filling & Resin Treatment and Tiling process, therefore, the processes undertaken by the appellant amount to manufacture as the marble slabs will not remain the marble in the crude form. In these circumstances, the goods, in question, are rightly classifiable under Chapter 68 of the Central Excise Tariff. We find, the appellant are engaged in the manufacture of Marble Slabs and clearing the same under the Chapter 25 of the Central Excise Tariff. During the process of slitting, of the blocks into slabs, in 10% to 12% marble slabs there are some cracks. The appellant undertakes the process such as applying Resin, Sawing and also applying fibre netting at the back and also filling the cracks. The Revenue's contention is that the process undertaken by the appellant amounts to manufacture and the resultant product is classifiable under Chapter 68 of the Tariff. We find that this issue came before the Tribunal in the case of Nitco Tiles Ltd. (supra), whereas the Tribunal held that the process of polishing. Resin coating and fibre glass reinforcement of marble slabs does not amount to manufacture. In the present case, the appellants are undertaking the similar processes. Therefore, the ratio of above decision is applicable, in the facts of the present case. In view of the above decision, the impugned order is set aside. The appeal is allowed."

The 8. Commissioner observed that the case of Associated Stone Industries (Kotah) Ltd. (supra) and Aman Marbles Ltd. (supra) are not applicable in the present case as the said cases pertain to the period prior to 1-3-2005 (i.e. date of introduction of 8 digit Tariff). We are unable to accept the finding of the Commissioner. We find that ratio of the above

decisions are squarely applicable in this case. The activities carried out by the appellants on the marble blocks and slabs do not amount to manufacture even after introduction of 8 digit classification code in the Tariff on 1-3-2005, unless by Section Note or Chapter Note of the Tariff or by wording of the relevant heading or sub-heading, the said process has been specified as "manufacture".

9. *We find that Note 6 was inserted in Chapter 25 of the Tariff with effect from 1-3-2006, as under :-*

"In relation to products of heading 2515 and 2516, the process of cutting or sawing 01 sizing or polishing or any other process, for converting of stone blocks into slabs or tiles, shall amount to "manufacture".

It is observed by the Commissioner in the impugned order that Note 6 to Chapter 25 is clarificatory in nature. It is also observed that even if Note 6 was not in existence before 1-3-2006, the processes undertaken by the appellants rendered their product classifiable in a Chapter other than 25. We find that as per Section 2(f)(ii) of Central Excise Act. 1944, "manufacture" includes any process, which is specified in relation to any goods in the Section or Chapter Notes of the First Schedule to the Central Excise Tariff Act. 1985 (5 of 1986) as amounting to "manufacture". So, the process specified in Note 6 of Chapter 25 of the Tariff cannot be clarificatory nature. We agree with the submission of the Id. Advocate that the activities carried out by the appellant prior to 1-3-2006 do not amount to manufacture.

The 10. Commissioner observed that Heading Nos. 2515 and 2516 cover Marble and Granite respectively in crude or roughly trimmed form or merely cut into blocks/slabs. But, if the same are carried out those processes, it would come under the expression "worked monumental or building stone" classifiable under Heading No. 6802. Reliance was placed on Note 2 of Chapter 68 of Tariff. For the convenience, the relevant portion of Chapter 68 is reproduced below :-

CHAPTER 68

Articles of stone, Plaster Cement. Asbestos, Mien or similar materials Notes :

This 1. Chapter does not cover :

(a) goods of Chapter 25;

xxx xxx xxx

In 2. heading 6802, the expression "worked monumental or building stone" applies not only to the varieties of stone referred to in heading 2515 or 2516 but also to all other natural stone (for example, quartzite, flint, dolomite and steatite) similarly worked; it does not, however, apply to slate.

xxx xxx xxx

6802 Worked monumental or building stone (except slate) and articles thereof, other than goods of heading 6801, mosaic cubes and the like, of natural stone (including slate), whether or not on a backing; artificially coloured granules, chippings and powder, of natural stone (including slate)

6802 21 10 Marble blocks tiles"

11. It is clear that Note 1 of Chapter 68 specifically excluded the goods of Chapter 25. It is revealed from HSN Explanatory Notes, that Heading 6802 covers "natural monumental or building stone (except slate), which has been worked beyond the stage of normal quarry products of Chapter 25". In the present case, Commissioner observed that the activity carried out by the appellants are "worked beyond the stage of normal quarry products of Chapter 25." We are unable to accept the finding of Commissioner in view of the HSN Explanatory Notes of Heading 6802 as under :-

"The heading therefore covers stone which has been further processed than mere shaping into blocks, sheets or slabs by splitting, roughly cutting or squaring, or squaring by sawing (square or rectangular faces).

The heading thus covers stone in the forms produced by the stone-mason, sculptor, etc."

It 12. is not the case of department that the goods in question are monumental or building stone or the stone in the form produced by stone-mason, sculptor, etc. So, the classification of goods under Chapter 68 and demand of duty after 1-3-2006 are not justified.

13. It is seen that the C.B.E. & C. vide Circular No. 134/02/2006-CX., 4 dated 3-9- 2008 clarified as under :-

"A question has arisen as to whether marble slabs on which resin and hardner are applied on one side and fibre net on the other side would be covered by the exemption under Notification No. 4/06-C.E., dated 1-3-2006.

The 2. process of manufacture is that glass fibre net is applied on one side of the marble slabs to strengthen the slabs which are fragile and to enable safe handling and transportation. On the other side of this slab, polyester resin is applied to repair the cracks and pin holes in the slabs. The surface of the slabs still remains uneven as it was when it was cut or sawn. The glass fibre net is peeled off before fixing by the customer or finishing.

The 3. matter has been examined. The Board is of the view that when the marble slabs still have uneven surface as when it was cut or sawn, the application of glass fibre net or resin/hardner on the marble slabs shall not take these marble slabs out of chapter 25. Such marble slabs shall continue to be classified in chapter 25 and the concessional rate of duty under Notification No. 4/06-C.E.. shall be available to them."

In 14. view of the above discussions and Board Circular dated 3-9-2008, we hold that the activities carried out by the appellants prior to 1-3-2006, would not amount to manufacture. From 1-3-2006, the goods in question are classifiable under Chapter 25 and benefit of Notification No. 4/2006-C.E., dated 3-2-2006 are admissible. Hence, the demand of duty and penalty are not sustainable. The impugned orders are set aside. The appeals are allowed with consequential relief.

18.*One another aspect which needs to be mentioned herein is that the adjudicating authority has denied the benefit of exemption Notification No. 4/2006 as regards polished natural marble slabs on the ground that the said slab will not fall under CSH 6802 21 90. We find that the adjudicating authority has failed to note that sub-heading 6802 91 00 and three sub-headings following it are a sub-classification of group of articles described as 'other' which is preceded by "- -". It would mean that sub-heading and three entries are in the nature of residual entries and can be considered only if the subject goods are not classifiable under preceding entries. In the case in hand, we find that the goods are polished marble slabs and are covered under sub-heading No. 6802.21 and hence merit classification under sub-heading No. 6802 21 90. We find that the position seems to have been clarified by the Board vide Budgetary Circular dated 16-3-2012, wherein C.B.E. & C. has specifically stated that the appropriate heading of polished marble slab shall be 6802 21 90 only and the benefit of exemption Notification No. 4/2006-C.E. would be admissible. The clarification issued by the Board would indicate that the appellant is eligible for the benefit of exemption Notification No. 4/2006-C.E. extending the analogy of the said Circular of C.B.E. & C., the duty liability, if any, arises on the appellant, on the marble slabs which they received prior to March 2006 from their job workers on payment of duty,*

the appellant is eligible to avail the CENVAT Credit on such amount and he would have been eligible for benefit of Notification No. 4/2006-C.E. and they would discharge of duty liability @ Rs. 30 per sq. mtr. as indicated in the said notification, which is revenue neutral position.

19.*As regards leviability of duty on the processed agglomerated marble slabs for the period from 1-3-2006 to March 2008, we find that it is undisputed that job worker used to cut the agglomerated marble slabs on job work basis and were sending the slabs to the appellant on payment of Service Tax under the category of 'Business Auxiliary Service' for the reason that after cutting/sawing of agglomerated marble blocks, the processed agglomerated marble slabs would fall under Chapter Heading No. 68 would not amount to manufacture as there was no deemed manufacture definition. The Revenue authorities have been accepting the discharge of Service Tax liability by job worker holding that such an activity does not amount to manufacture. We find that this proposition of the appellant is vindicated by the judgment of Hon'ble Supreme Court in the case of Aman Marble Industries Pvt. Ltd. (supra) and various other judicial pronouncements as there was no enabling chapter note in Chapter 68, declaring that such process of cutting/sawing of agglomerated marble blocks into slabs would be considered as deemed manufacture. The appellant received such agglomerated marble slabs, and undertook the activity of resin filling and polishing as may be required before dispatch of such agglomerated marble slabs into the market. As already held by us hereinabove that the process of resin filling, polishing etc. will not amount to manufacture in view of the facts discussed above, fortified by the judgment of co-ordinate Bench in the case of Oriental Trimex Ltd. (supra), we find that the activity of resin filling, polishing by the appellant on agglomerated marble slabs will not amount to manufacture. Hence, the demand of duty on such processed agglomerated marble slabs for the period prior to March 2008 is unsustainable in law. As regards the clearance of processed agglomerated marble slabs after March 2008 upto 26-2-2010, the activity undertaken by the appellant of cutting/sawing of agglomerated marble blocks into slabs during this period resin filling and polishing would not amount to manufacture as the judgment of Hon'ble Supreme Court in the case of Aman Marble Industries Pvt. Ltd. is applicable in this case. With effect from 26-2-2010, vide Finance Bill, 2010, as a Chapter note was inserted in Chapter 68 declaring such activities as deemed manufacture, such declaration and chapter note inserted w.e.f. 26-2-2010 will be effective from that date and cannot be applied to an activity for the earlier period. In our view, the demand of duty raised and confirmed on processed agglomerated marble slabs falling under Chapter 68 for the period March*

2008 to 26-2-2010 is not sustainable under the law. As a matter of fact, post 26-2-2010, it is submitted by the Id. Counsel that the appellant has been discharging duty liability under the relevant Chapter 68.

20.*As regards leviability of duty on the processed imported slabs, we find that the appellant is importing the marble slabs and does the process of fibre netting, resin filling, grinding, cutting and polishing as may be required. As already held by us hereinabove, by relying on the judgment of co-ordinate Bench of the Tribunal in the case of Oriental Trimex Ltd. (supra), this activity would not amount to manufacture during the relevant period on the imported marble slabs.*

21.*In view of the foregoing, we are of the considered view that the duty liability raised and confirmed against the appellant in both appeals E/1328-1331/2010 and E/70/2012 is not sustainable and consequently the penalties imposed are also not sustainable.*

22.*As we have decided the entire issue on the merits of the case and relying upon the judicial pronouncements on identical issue, we have not recorded any finding on the various other points urged by both sides including limitation.*

23.*In view of the foregoing, the impugned orders are set aside the appeals are allowed with consequential relief.*

From the above decision of the tribunal, it can be seen that the issue is no longer res-integra moreover, the same issue once again decided by this tribunal in the case of same party i.e. CLASSIC MARBLE COMPANY PVT. LTD. Accordingly, the issue is no more under dispute. Following the above decision, we are of the view that the product in question i.e. Granite Slabs is correctly classified under 21561200 and not under 68022390 accordingly, the demand on this count is not sustainable hence, the same is set aside.

4.1 As regard the demand of Rs. 9,07,393/-, we find that the appellant have made the submission that they had paid the duty on 30th June 2010 for the period April 2010 to June 2010 as a differential duty. However, the adjudicating authority may verify the said claim of the appellant and arrive at a correct computation of demand.

4.2 As regard the demand of Rs.49,811/-, we find that the same is not pressed by the appellant therefore, the same is sustained.

4.3 As regard the demand of Rs. 2,26,598/- in respect of clearance of marble slabs, the appellant has paid the duty of Rs. 2.24 lacs accordingly, the same may be verified by the adjudicating authority.

05. As per our above observation, the appeal is partly allowed in the above terms.

(Pronounced in the open court on 03.07.2023)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(C L MAHAR)
MEMBER (TECHNICAL)

Raksha