

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

REGIONAL BENCH – COURT NO. 01

CUSTOM Appeal No. 13271 of 2014

[Arising Out Of OIO-KDL-CUSTM-000-APP-350-14-15 Dated-19/06/2014 Passed By
Commissioner of CUSTOMS-KANDLA]

Jain Grani Marmo Pvt Ltd

Near Charak Upavan,
Amberi, Udaipur,
Rajasthan

.....Appellant

VERSUS

C.C.-Kandla

Custom House,
Near Balaji Temple,
Kandla, Gujarat

.....Respondent

APPEARANCE:

Shri. Manish Jain, Advocate for the Appellant

Shri. Prashant Tripathi, Superintendent (Authorized Representative) for the
Respondent

CORAM:

HON'BLE MEMBER (TECHNICAL), MR. RAJU

HON'BLE MEMBER (JUDICIAL), MR. SOMESH ARORA

FINAL ORDER NO.A / 10329 /2024

DATE OF HEARING:25.01.2024

DATE OF DECISION:05.02.2024

SOMESH ARORA

Appellants are 100% EOU and engaged in manufacture and export of marble slabs and tiles. For said manufacturing operations, they import rough marble blocks falling under TI 25151210 by availing benefit of Notification No. 52/2003-Cus dated 31.03.2003 as amended. It is case of the department that appellants have mis-declared the weight of imported rough A marble blocks at the time of import. Further, it is also alleged by declaring the lesser weight, appellants have also violated the policy circular No. 13(RE-08)/2004-2009 dated 30.06.2008 as excess quantity/weight is not

covered by the procurement certificate issued in terms of Notification No. 52/2003-Cus. Aggrieved by the order in appeal confirming duties and penalties as below, appellants have filed the present appeal.

Sr.No	Impugned Order No.	Passed by	Dated	Duty Demand/ Penalty/fine (Rs)
1.	Order-in-Appeal No.KDL-CUSTOM-000- APP-350-14-15	Commissioner of Customs (Appeals), Ahmedabad	19.06.2014	Duty : to be quantified on 590.013 MT penalty : 8 Lakhs
2.	Order-in-Original No. MP & SEZ/19/ADC/SS/GR.I/ 2013-14	Additional Commissioner of customs, Mundra	04.12.2013	Duty : Rs 12,54,539/- Fine : Rs. 20 lakh Penalty : Rs. 10 Lakh
3.	SCN No. VII/43- 58/SIIB/2012	Additional Commissioner of customs, Mundra	31.03.2012	Rs. 12,54,539/- (duty) Fine and penalty proposed

2. It was submitted by the appellants that Notification No. 52/2003-Cus grants exemption from customs duty to all goods imported by EOU which are used in manufacture of finished goods in terms of LOP issued by development commissioner. Thus, exemption from customs duty is available regardless of weight of imported goods. The entire premise of 100% FOU is a bonded warehouse. It is settled legal position that there cannot be customs duty demand on the warehoused goods which are used for manufacture in bond for exports. In this regards reliance is placed on following decisions:

- Paras Fab International v. CCE, Kandla reported in 2010 (256) E.L.T. 556 (Tri.-L.B.)

- Eurotex Industries & Exports Ltd. v. Commissioner 2017 (345) E.L.T. 532 (Tribunal)

2.1 It was submitted that policy circular NO. 13(RE-08)/2004-2009 dated 30.06.2008 is not applicable on EOUs as it clearly states that EOU and SEZ are excluded from scope of circular. Relevant part of circular is extracted as under.

1. Eligibility of the units will be decided based on the following two criteria: (a) Units who have installed marble gang saw machine (except 100% EOU's, units in SEZ and units who have been granted marble block import licences under previous licensing years or are eligible to avail licence in the current licensing year (2008-09) under SIL category).

2.2 It was submitted that in terms of para 6.3.7 of Hand book of procedure. 2005-09, LoP/LOI issued by Development Commissioner would be authorisation for all purposes. Thus, the FTP restrictions would not be applicable for EOU if imported goods are falling under LOP issued by Development commissioner. Para 6.3.7 of HBP is extracted and reproduced as under:

6.3.7 LoP/LoI issued to EOU/EHTP/STP/BTP units by concerned authority would be construed as an authorization for all purposes. Standard format for LoP for EOU units is given in Appendix 14-1-E.

2.3 In view of above, it was submitted that imported goods are not liable for confiscation.

3. As per appellants demand is also time barred as period of import pertains from 13.04.2007 to 19.12.08 and SCN is issued on 31.03.2012. In absence of any suppression or intention to evade customs duty, demand is barred by limitation.

4. Thus, in view of above submission, demand of customs duty is not sustainable. Thus, interest thereon and penalty is also not imposable.

Appellant placed reliance on the following judgements:-

- Paras Fab International Vs. Commissioner of C.Ex., Karnataka 2010 (6) TMI 184- CESTAT, New Delhi
- Renfro India Pvt. Ltd. vs. Commissioner of Customs (Exp.), Nhava Sheva 2018 (6) TMI 742- CESTAT, Mumbai
- Eurotex Industries & Exports Ltd. vs. Commissioner of Customs, Nhava Sheva 2016 (10) TMI 75- CESTAT, Mumbai
- Krishna Filament Ltd. vs. Commissioner of C. Ex., Mumbai- III 2002 (1) TMI 821-CEGAT, Mumbai
- Marble Art Vs. Commissioner of Customs, ICD, TKD, New Delhi 2003 (156) E.L.T. 370 (Tri.- Del.)
- Topaim Industries Pvt. Ltd. Vs. Commissioner of Customs, Nhava Sheva 2005 (192) E.L.T. 950 (Tri.- Mumbai)
- Welspun Corp. Ltd. vs. Commissioner of Customs, Mundra 2019 (370) E.L.T. 874 (Tri.- Ahmd.)
- Xron Gases P. Ltd. v. Commissioner of Customs, Nhava Sheva-I 2017 (356) E.L.T. 121 (Tri.- Mumbai)
- Geetanjali Woollens Pvt. Ltd. Vs. Commr. of Cus. (Export), Mumbai 2002 (149) E.L.T. 1192 (Tri.- Mumbai)

5. Learned AR seeks to rely on the order of lower authority and justifies the imposition of penalty as well as demand of duty as excess quantity as per the record of CHA was found to have been sent to the EOU.

6. Considered the adversarial submissions, it is found that the department has made out a case of excess receipt of weight and clearance of same from the premises of EOU on the basis of various documents maintained by CHA including their registers like arrival/dispatch book , LR book and transfer registers for the period 2007 to 2009. On detail

examination of such record department found certain blocks of marble had weight in excess than the weight declared and case was made out on the basis of record of such CHA over the quantity shown in the Bill of Entries. The CHA had maintained the record on the basis of weighment slips issued and received from Mundra CFS. The CHA also informed the Bill of Entries were filed on the basis of bill of lading, invoice, packing list etc has received. Further, it is found that no check of weighment at the premises of appellants, EOU was done nor any excess was found, to have been cleared or even documented as excess production or clearance of wastage. Department has not even charged them with excess production of clearance in the EOU from clearance of excess marble as such nor has it brought any evidence on record to this effect. The appellants on the other hand agree that weight might have been in excess as per the trade practice. We find force in appellants contention that difference of weight is due to supplier showing chargeable weight which is relevant for valuation/transaction entries with supplier, whereas physical weight due to irregular shape of blocks could be more due to uneven shape of blocks resulting in greater waste content. We also find merit in the arguments that working in EOU environment, the unit is allowed duty free imports of any material mentioned as per their letter of approval. In the absence of any evidence from the department to the contrary showing how imputed excess quantity allegedly received by the EOU was eventually disposed of, the ratio of the decision of *Paras Fab International v. CCE, Kandla* reported in 2010 (256) ELT 556 (Tri.- LB.) holding that in the absence of proof of imported goods having been cleared demand of duty cannot be sustained, will apply to the facts of the case also. Similar is the ratio, in the matter of *Eurotex Industries & Exports Ltd. Vs. Commissioner* reported in 2017 (345) ELT 532 (Tri-Mumbai), whether, it has been held that any material received is used in manufacturing in EOU, then the same cannot be subjected to duty. Further,

we find the trade practice mentioned by the appellant has been duly considered in 2005 (192) ELT 950 (Tri.- Mumbai) in the matter of TOPAIM INDUSTRIES PVT. LTD. Vs. Commissioner of Customs, Nhava Sheva where in relation to Marble Block, the practice of showing invoices for chargeable weight which is neither gross weight nor the net weight of a block was noted and the case of misdeclaration made by the revenue was set aside. Relevant observations are contained in para 3 of the order and it reproduced below:-

"3.*On consideration of the submission and the material it is found-*

(a) There is a practice claimed and not contested to charge for a block on basis of a weight which, is neither Gross Weight of the Block nor is it the Net Weight as contested by the Revenue. There is no correlation of any kind between chargeable weight of a Block and the actual weight of a block, which is mentioned gross weight on the importers invoice and weight ascertained by the Dock staff. In fact for BE 6/3774 the declared weight is 84.28 while ascertained weight is 83.15. While in other cases the ascertained is in excess of such declared weight. The explanation of charged weight as per commercial estimates of useful/usable slabs of marble that could be obtained will have to be accepted, since it appears to be an Industry/Trade Practice & not contested. The Marble Gross Weight are approximate arrived weights and differences would be manifest due to reasons of change in scales etc. In that view of the matter, the importers declarations cannot be held to be a misdeclaration on the BE as regards weight. Since the chargeable weight in BE 613774 remains as 65.24 MTs in spite of ascertained weight to be less than Gross Weight as declared; no reason or/ & relationship of a mathematical Formula to Gross weight and chargeable weight being established, the proposed to levy duty on values arrived by multiplying per MT the chargeable Rate price with ascertained weight cannot be upheld. If a Baker sells Hot Cross Buns at Rs. 12 to a dozen, then for the thirteenth Bun put on the Basket as Bakers Dozen understood in that Trade cannot call for the Bakers Dozen to be valued at Rs. 13, (misdeclarations called for, as also to demand duty ad valorem pro rata on thirteen Buns price of Rs. 13. However, the situation would be different if the rate of duty is specific and per Bun, then duty will have to be calculated on 13 Buns multiplied by specific rate. Trade Practices are to be honoured if genuine and established charges of misdeclaration in section cannot be upheld. We find therefore no reason to uphold confiscation under Section 111(i) &/or 111(m) of the Customs Act, 1962 for the reasons of excess weight & to call for a penalty under Section 112(a) on the importer or to charge duty on value as enhanced. Orders to that effect are set aside & appeal allowed."

7. In view of the foregoing, it is clear that the practice as pointed out by the appellant is well established and case of excess weight made out cannot be sustained, as the same was based on ignorance of such trade practice and department has failed to establish that any excess goods or weight was

cleared and not used in manufacture. Consequently appeal is allowed with consequential relief in relation to duty, penalty and interest.

8. Appeal is allowed.

(Pronounced in the open Court on 05.02.2024)

(RAJU)
MEMBER (TECHNICAL)

(SOMESH ARORA)
MEMBER (JUDICIAL)

Prachi