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

REGIONAL BENCH-COURT NO. 3

CUSTOMS APPEAL NO. 10277 of 2023-DB

(Arising out of OIO-AHM-CUSTM-000-COM-029-30-22-23 dated 25/01/2023 passed by Commissioner of CUSTOMS-AHMEDABAD)

NITCO LIMITED ....**Appellant**

Nitco House Seth Govindram Jolly Marg Kanjur Marg East
Mumbai, Maharasthra

VERSUS

Commissioner of Customs-AHMEDABAD ......**Respondent**

Custom House,
Near All India Radio Navrangpura,
Ahmedabad, Gujarat

WITH

(i) CUSTOMS Appeal No. 10278 of 2023-DB (MR UJWAL PHADTARE)
(ii) CUSTOMS Appeal No. 10279 of 2023-DB (ANAGHA LOGISTICS PVT LTD)
(iii) CUSTOMS Appeal No. 10280 of 2023-DB (PREM CHAND GUPTA)
(iv) CUSTOMS Appeal No. 10286 of 2023-DB (Commissioner of Customs-AHMEDABAD)
(v) CUSTOMS Appeal No. 10287 of 2023-DB (Commissioner of Customs-AHMEDABAD)
(vi) CUSTOMS Appeal No. 10288 of 2023-DB (Commissioner of Customs-AHMEDABAD)
(vii) CUSTOMS Appeal No. 10289 of 2023-DB (Commissioner of Customs-AHMEDABAD)
(viii) CUSTOMS Appeal No. 10290 of 2023-DB (Commissioner of Customs-AHMEDABAD)
(ix) CUSTOMS Appeal No. 10291 of 2023-DB (Commissioner of Customs-AHMEDABAD)

APPEARANCE:

Narendra Kumar Pati, Chartered Accountant & Shri Girish Nadkarni, Advocate appeared for the Appellant-Assessee
Shri G Nair, Assistant Commissioner (AR), appeared for the Respondent-Revenue

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

Final Order No. 12000-12009/2024

DATE OF HEARING: 13.03.2024
DATE OF DECISION: 11.09.2024

RAMESH NAIR

The brief facts of the case are that the assessee M/s. NITCO Ltd are engaged in manufacture and trading of various types of ceramic tiles and registered with central excise department having their manufacturing factory at Silvassa and having corporate and registered office at Mumbai. The assessee has imported goods Rough Dolomite/Dolomite Blocks and declared under classification 25181000 claiming exemption Notification No. 50/2017-CUS dated 30.06.2017 (Sr. No. 120) from basic custom duty and Notification No. 01/2017 Integrated Tax Rate dated 28.06.2017 from IGST. An intelligence was gathered by the officers of revenue intelligence zonal unit, Ahmedabad (hereinafter referred as DRI) indicated that M/s. NITCO was importing Rough Marble blocks classified under Custom Tariff Heading No. 2515 by mis-declaring rough dolomite block/ dolomite block and mis-classifying the same under Custom Tariff Heading No.25181000 and availing the exemption from payment of BCD and IGST. Intelligence gathered further stated that the goods rough dolomite block were actually rough marble block and the same should be classified under Custom Tariff Heading No. 25151210. Thus, the mis-declaration of the description and the classification is being done with intention to evade the payment of higher rate of custom duty including IGST applicable on Custom Tariff Heading No. 25151210 in comparison to Custom Tariff Heading No. 25181000.

1.2 Based on the above intelligence, a search was carried out at the factory premises of NITCO Ltd at Silvassa on 21.09.2020. During the search panchnama dated 21.09.2020 was drawn whereby the officers withdrew the documents related to import of dolomite blocks, stock register, production details etc. During the inquiry various other documents, emails and statements of employees of NITCO were taken . Thereafter, the representative samples were drawn from the similar cargo i.e. Rough Dolomite Blocks imported by other importers namely Stonex India Pvt Ltd , New Delhi under panchnama dated 26.09.2020, Monarch India Pvt Ltd, Gurgaon under panchnama dated 28.09.2020 and M/s. R.K Marble Pvt Ltd, Kishangadh under panchnama dated 31.10.2020 respectively. Against whom simultaneous investigation was also initiated by the DRI. The said representative samples were forwarded to the Geological Survey of India, Western region, Jaipur vide test memos for testing. The Geological survey of India, Western Region, Jaipur submitted the test reports in different parameters/analysis along with response of queries raised by the DRI on various dates. On the perusal of the reports and response to queries received, it appears that goods imported by the above importers has the following characteristics :-

(i) The blocks are hard and compact in nature of white colour.

(ii) The rock is essentially composed of calcined /dolomite

(iii) The rock is a metamorphic rock.

(iv) The specific gravity of rock is 2.068 to 2.77'

(v) Stone is formed from dolomite lime stone

(vi) Rock is hard and capable of taking polish and can be used as marble slab.

(vii) As per the physical property based on petrography chemical composition specific gravity data, the sample meets the specification of marble. More precisely the rock is identified as dolomite marble.

1.3 As per the test reports of Geo Technical Laboratory , one of the petrology laboratory, chemical analysis of the samples and response of queries, the investigation was brief that it is confirmed that the samples drawn meets the specification of marble does it appears that the actual goods imported by all the three importers whose samples were drawn were blocks of rough marble. On the basis of the above test reports of said three importers and various documents, email, website information collected by the investigating agency, show cause notices dated 24.06.2022 and 02.08.2022 were came to be issued to the assessee which detailed below:-

*(1) Show Cause Notice F.No. VIII/10-28/Commr./O&A/2021-22 dated **08.08.2022** issued by the Commissioner of Customs, Ahmedabad demanding the differential Customs Duty amounting to Rs. 1,29,15,992/- (covering 5 Bills of Entry) in respect of the imports at Adani Hazira port (INHZA1), Hazira, Strat and ICD Tumb(INSAJ6), Taluka- Umbergaon, Dist-Valsad, Gujarat. The details of the Bills of Entry involved in the said Show Cause Notice are as under:*

Sr. No.	Bills of Entry No. & Date No. & Date	Value of Goods of Imported (Rs.)	Duty Paid (Rs.)	Actual duty to be Paid (Rs.)	Duty Short paid/to be recovered (Rs.)	Ports/ ICDs of imports
1	**2**	**3**	**4**	**5**	**6**	**7**
1.	3103627 dated 04.09.2017	23,24,493	2,41,922	13,51,533	11,09,632	Adani Hazira Port (INHZA 1)
2.	3103627 dated 04.09.2017	51,85,821	5,39,714	30,15,244	24,75,530	
3.	3103656 dated 04.09.2017	28,09,258	2,92,374	16,33,415	13,41,042	
4.	3269532 dated 16.09.2017	88,89,574	9,25,182	51,68,754	42,43,572	
5.	5616596 dated 09.11.2019	74,17,517	7,99,237	45,45,454	37,46,217	ICD Tumb (INSAJ6)
	Total	**2,66,26,664**	**27,98,429**	**1,57,14,421**	**1,29,15,992**	

(2) Show Cause Notice No.103/2022-23/Pr.Commr./Gr. I& IA/CAC/JNCH dated 26.04.2022 issued by the Pr.Commissioner of Customs, Gr.I/IA, JNCH, Nhava Sheva-1 from F.No.S/26-Misc-2363/2021-22Gr.I/IA.JNCH & DRI/AZU/CI/ENQ-48/INT- 11/2020 demanding Customs Duty of Rs. 1,16,84,333/- (covering 4 Bills of Entry)in respect of the imports at Nhava Sheva Sea port (INNSAI). The said Show Cause Notice has been made

answerable to the Commissioner of Customs, Ahmedabad vide Cor igendum dated 19.07.2022 issued from F.No.S/26-Misc-2363/2021-22 Gr.1/IA.JNCH &DRI/AZU/CI/ENQ-48/INT-11/2020 by the Pr.Commisioner of Customs, GR.I/IA, JNCH, Nhava Sheva-I. The details of the Bills of Entry involved in the said Show Cause Notice are as under:

Sr. No.	**Bills of Entry No. & Date No. & Date**	**Value of Goods of Imported (Rs.)**	**Duty Paid (Rs.)**	**Actual duty to be Paid (Rs.)**	**Duty Short paid/to be recovered (Rs.)**	**Ports/ ICDs of imports**
1	**2**	**3**	**4**	**5**	**6**	**7**
1.	4580575 dated 21.08.2019.	31,14,710	3,35,610	19,08,694	15,73,084	Nhava Sheva Sea (INNSA1)
2.	4580577 dated 21.08.2019.	70,89,779	7,63,924	43,44,616	35,80,693	
3.	5052142 dated 25.09.2019	96,86,094	10,43,677	59,35,638	48,91,962	
4.	5052288 dated 25.09.2019	32,44,419	3,49,586	19,88,180	16,38,594	
	Total	**2,31,35,002**	**24,92,796**	**1,41,77,129**	**1,16,84,333**	

Since the Show Cause Notice at (2) above has been made answerable to the Pr. Commissioner/Commissioner of Customs, Ahmedabad in light of the provisions of Notification No.29/2022-Cus(NT) dated 31.03.2022 read with Notification No.28/2022- Cus(NT) dated 31.03.2022, both the the said Show Cause Notices were made answerable to the Pr. Commissioner/Commissioner of Customs, Ahmedabad.

1.4 The Adjudicating Authority after considering the submission of the assessee passed the Order-In-Original dated 25.01.2023. both the aforesaid show cause notices were adjudicated by the common impugned order wherein the proceeding of show cause notice dated 24.06.2022 was dropped and in case of show cause notice dated 08.08.2022, out of the total demand of Rs. 1,29,15,992 except the demand of Rs. 42,43,572 in respect of bill of entry no. 3269532 dated 16.09.2017, remaining demand was dropped and demand of Rs.

42,43,572 was confirmed and corresponding fine, penalty and interest was also confirmed. Being aggrieved by the Order-In-Original dated 25.01.2023, the revenue filed an appeal for the dropped demand amounting to Rs. 2,03,52,753/- and corresponding penalty, confiscation etc. Against the common impugned order the assessee also filed an appeal against the confirmation of demand amounting to Rs. 42,43,572/- with corresponding interest, penalty and fine and other co-noticees also filed appeals challenging the imposition of penalties.

2. Shri Narendra Kumar Pati, Learned Chartered Accountant with Shri Girish Nadkarni, Advocate appearing on behalf of the assessee in the appeals filed by the assessee submits as under:-

> *"The appellants, dissatisfied with the order, have filed this appeal, contesting the decision on various grounds and seeking reconsideration of the issues addressed by the adjudicating authority.*
>
> ***1. Impugned Order's Lack of Legal Standing**:*
>
> *The appellant argues that the impugned order is illegal and unsustainable as it was passed without proper application of mind, using inconsistent standards for adjudicating the same issue across different consignments. The onus to prove that the goods were classifiable under CTH 2515 was upon the department. Unless the said onus is discharged beyond reasonable doubt, the duty cannot be demanded from the Appellant for want of negative evidence.*
>
> ***2. Selective Confirmation of Demand and Lack of Test Report as Basis for Demand**:*
>
> *Out of nine consignments under adjudication, the demand was dropped for all except for one (Bill of Entry No. 3269532 dated 16.09.2017). The appellant emphasizes that the department accepted the appellant's submissions for eight other consignments under the same show cause notices. Therefore, confirming the demand for one consignment solely due to a missing test report or department's failure to provide a test report, is inconsistent and unjustified.*

The appellant argues that the absence of the test report does not justify the demand for differential duty. The goods were tested at the time of import, and the department's inability to produce the report at this stage should not result in penalties for the appellant.

3. ***Improper Reliance on Samples Tested from the Import Consignment of Third-Party**:*

The appellant argues that the department's reliance on samples from third-party consignments to classify the imported goods as marble is legally unsustainable. It is settled position of law that each Bill of entry is a separate assessment and test report of one bill of entry cannot be made applicable to the goods imported under another bill of entry. Each consignment must be assessed separately, especially for natural mined rocks, where properties vary significantly.

4. ***Misinterpretation of Supplier's Report Merely on account of the nomenclature employed**:*

*The appellant disputes the department's reliance on the M/s Marble Sachanas SA ('**Supplier**') report that labels the goods as marble. Nomenclature or trade name are not the material factors that decide the nature or classification of the goods imported. The material factor that has been i.e, the report's technical data, which shows a mineral composition of 93% dolomite and presence of MgO in the chemical composition, was ignored by the department, leading to an incorrect classification.*

5. ***Incorrect Reliance on Supplier's Website and Third-Party Website**:*

The appellant contends that the department's reliance on general descriptions from the supplier's website, while ignoring detailed mineralogical composition data, is legally unsound. Further, the e-commerce website www.stoneconnect.com has been relied on establish Volakas Marble is a marble quarried in Greece and to therefore conclude that the goods imported by the Appellant are nothing but marble. Further it is settled position in law that information from websites cannot be relied as authentic source of information and thus do not support the case of notice, in any manner.

6. ***Misinterpretation of Emails**:*

The appellant argues that the department misinterpreted emails from Mr. Ujwal Phadtare, twisting the context to support their case. The emails merely clarified the correct customs classification for dolomite, not a misdeclaration of goods. The email has not communicated that the *documents be amended for the purpose mis-declaration and that Marble be replaced with Dolomite. It merely states that the correct CTH for Dolomite was 25181000 or 25182000. Drawing adverse inferences for the said email is uncalled for and is not sustainable.*

***7. Reliance on Statements Without Legal Compliance**:*

In terms of Section 138(B) of the Customs Act, 1962, It has been provided that a statement made and signed by a person during any enquiry or proceeding shall be relevant, for the purpose of proving an offence, when the person, who made the statement, is examined as a witness in the case before the court. The appellant challenges the use of Mr. Phadtare's statements, arguing that they were not obtained in compliance with Section 138B, making them inadmissible as evidence.

***8. Incorrect Inferences from Local Purchase Orders (PO)**:*

The appellant disputes the department's inference that the goods supplied to M/s Godrej Green Homes Ltd. were marble, solely based on the purchase order. There is no evidence linking these goods/PO to the imported consignments."

2.1 As regard the revenue's appeal he made the following submission which is a part of cross-objection filed by the assessee:-

"The Respondent Company have placed the following defence to the appeal raised by the Appellant in the present appeal:

1. ***Reliance on Samples drawn from the Import Consignment of Third-Party is incorrect**:*
   The Respondent Company states that the Department's reliance on samples drawn from third-party consignments over a year later than the concerned BOE to classify the imported goods as marble is legally unsustainable. It is settled position of law that each Bill of entry is a separate assessment and test report of one bill of entry cannot be made applicable to the goods imported under another bill of entry. Each consignment must be assessed separately, especially for natural mined rocks, where properties vary significantly. Furthermore, the Appellant Authority have opted to ignore the composition provided in the test report. The Test Report categorically mentions the mineral composition to be 93% Dolomite. Moreover, the presence of MgO in the chemical composition, which itself is the factor that distinguishes Dolomite from Marble. Therefore, the specific gravity of the

said goods with respect to CTH 2515 becomes immaterial as CTH 2515 concerns itself with only marbles, travertine, ecaussine and other calcareous monumental or building stone and not common-rock forming mineral such as Dolomite.

2. ***Misinterpretation of Emails****:*
   The Respondent argues that the department misinterpreted emails from Mr. Ujwal Phadtare, twisting the context to support their case. The emails merely clarified the correct customs classification for dolomite, not a misdeclaration of goods. It is further stated that a conclusion cannot be drawn merely from the subject of the email and the contents of the said email needs to be read along with the context of the same. The email has not communicated that the documents be amended for the purpose mis-declaration and that Marble be replaced with Dolomite. It merely states that the correct CTH for Dolomite was 25181000 or 25182000. Drawing adverse inferences for the said email is uncalled for and is not sustainable.

3. ***The Test Report of the sample drawn from the goods of the concerned BOE are conclusive in nature:***
   The Test Report of the sample drawn from the goods of the concerned BOE were analysed by three distinct and independent government laboratory (Dy. C.C. Laboratory, JNCH, Nhava Sheva, CRCL, Vadodara and Geological Survey of India, Nagpur). The Test Reports from all the three labs conclusively stated that the goods were 'Dolomite Block' and not 'Dolomitic Marble'. It is further stated that the Appellant Authority have themselves relied upon the test report issued by Geological Survey of India to support the claims, the same authority by who have tested the sample drawn from the goods of the BOE and concluded them to be 'Dolomite Block'.

4. ***The Respondent Company have provided necessary evidence for the clearance of Dolomites:***
   The Respondent Company submits that they are engaged in the manufacturing and processing of Marble Blocks into Slabs and also manufacturing and trading of Ceramic Tiles wherein the Dolomite Block is an important raw material, thereby necessitating it's import. Further, it is submitted that the Respondent Company have provided necessary evidence for the clearance of Dolomites. The Respondent Company had applied for First Check Appraisement for correct determination of description of goods and ascertainment of appropriate Customs Duty payable on subject goods. The concerned officer of Customs upon examination, certified the said goods to be 'Rough Dolomite Blocks' and allowed the clearance of the

subject goods under CTH 2518. Therefore, it was only after the approval of the concerned officer of Customs that the said Dolomite Block was cleared.

5. ***Reliance on Statements Without Legal Compliance****:*
In terms of Section 138(B) of the Customs Act, 1962, It has been provided that a statement made and signed by a person during any enquiry or proceeding shall be relevant, for the purpose of proving an offence, when the person, who made the statement, is examined as a witness in the case before the court. The appellant challenges the use of Mr. Phadtare's statements, arguing that they were not obtained in compliance with Section 138B, making them inadmissible as evidence."

3. Shri Girish Nair, Learned Assistant Commissioner (AR) appearing on behalf of the Revenue in respect of Assessee's appeals reiterates the finding of the impugned order. As regard the Revenue's appeals he reiterates the grounds of appeal and submits that the Adjudicating Authority has decided the classification as Rough Dolomite Blocks as declared by the assessee on the basis of test report whereas there are ample of material such as website of the supplier, email correspondence and admission of the assessee employee, accepting that the goods imported is marble blocks and not dolomite block. The finding of the Adjudicating Authority to the extent he dropped the demand is not correct and legal, the same needs to be set aside and Revenue's appeal be allowed.

4.1 We have carefully considered the submission made by both sides and perused the records. We find that the core issue present in both appeals to be decided is that whether the goods imported by the assessee is Rough Dolomite Blocks, classifiable under Custom Tariff Heading No. 25181000 as declared by the assessee or classifiable under

Custom Tariff Heading No. 25151210 as claimed by the Department. To ascertain the legality of the order passed by the Adjudicating Authority, it is necessary to read the finding of the Adjudicating Authority. In respect of the duty demand dropped by the Adjudicating Authority, the following finding is given in the impugned order :-

Discussion and Findings:

26. I have carefully gone through the Show Cause Notice, submissions made by the Noticees in written and in person as well as the material available on record.

27. Two Show Cause Notices have been issued to M/s. NITCO Ltd. in the present investigation initiated by DRI which involves multiple jurisdictions i.e. Customs Commissionerates of Ahmedabad and Nhava Sheva-I. The details of the Show Cause Notices issued are as under:

(1) Show Cause Notice F.No.VIII/10-28/Commr./O&A/2021-22 dated 08.08.2022 issued by the Commissioner of Customs, Ahmedabad demanding the differential Customs Duty amounting to **Rs. 1,29,15,992/-** (covering 5 Bills of Entry) in respect of the imports at Adani Hazira port (INHZA1), Hazira, Surat and ICD Tumb(INSAJ6), Taluka- Umbergaon, Dist-Valsad, Gujarat. The details of the Bills of Entry involved in the said Show Cause Notice are as under:

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3.	3103656 dated 04.09.2017	28,09,258	2,92,374	16,33,415	13,41,042	
4.	3269532 dated 16.09.2017	88,89,574	9,25,182	51,68,754	42,43,572	
5.	5616596 dated 09.11.2019	74,17,517	7,99,237	45,45,454	37,46,217	ICD Tumb (INSAJ6)
	Total	**2,66,26,664**	**27,98,429**	**1,57,14,421**	**1,29,15,992**	

(2) Show Cause Notice No.103/2022-23/Pr.Commr./Gr.I& IA/CAC/JNCH dated 26.04.2022 issued by the Pr.Commissioner of Customs, Gr.I/IA, JNCH, Nhava Sheva-1 from F.No.S/26-Misc-2363/2021-22Gr.I/IA.JNCH & DRI/AZU/CI/ENQ-48/INT-11/2020 demanding Customs Duty of Rs.**1,16,84,333/-** (covering 4 Bills of Entry)in respect of the imports at Nhava Sheva Sea port (INNSAI). The said Show Cause Notice has been made answerable to the Commissioner of Customs, Ahmedabad vide Corrigendum dated 19.07.2022 issued from F.No.S/26-Misc-2363/2021-22 Gr.I/IA.JNCH &DRI/AZU/CI/ENQ-48/INT-11/2020 by the Pr.Commisioner of Customs, GR.I/IA, JNCH, Nhava Sheva-I. The details of the Bills of Entry involved in the said Show Cause Notice are as under:

Sr. No.	Bills of Entry No. & Date No. & Date	Value of goods imported (Rs.)	Duty Paid (Rs.)	Actual duty to be paid (Rs.)	Duty Short paid/to be recovered (Rs.)	Ports / ICDs of imports
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2	4580577 dated 21.08.2019.	70,89,779	7,63,924	43,44,616	35,80,693	
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4.	5052288 dated 25.09.2019	32,44,419	3,49,586	19,88,180	16,38,594	
	Total	**2,31,35,002**	**24,92,796**	**1,41,77,129**	**1,16,84,333**	

Since the Show Cause Notice at (2) above has been made answerable to the Pr.Commissioner/Commissioner of Customs, Ahmedabad in light of the provisions of Notification No.29/2022-Cus(NT) dated 31.03.2022 read with Notification No.28/2022-Cus(NT) dated 31.03.2022, I take up the said Show Cause Notice along with Show Cause Notice F.No.VIII/10-28/Commr./O&A/ 2021-22 dated 08.08.2022 for adjudication, collectively, through this common order.

28. Issues to be examined and decided by me in the present cases are as under-

(i) **Whether the goods imported by the Importer M/s. NITCO Ltd. vide 9 Bills of Entry, as mentioned at paras supra, are 'Rough Marble Blocks' classifiable under Customs Tariff Heading No.25151210 OR they are 'Rough Dolomite Blocks' classifiable under Customs Tariff Heading No.25181000'.**

(ii) **Whether the consequential action such as determination of Customs Duty with interest, liability of confiscation of the imported goods and penalties on the Importer and its Senior Manager(Procurement) arises or otherwise, and**

(iii) **Whether the Customs Broker Firms i.e. M/s. Anagha Logistics Pvt.Ltd. and it's Director Shri Prem Chand Gupta and M/s. International Cargo Corporation and it's Authorised Representative Shri Rupesh Jivanbhai Katariya are liable for penalty for mis-declaring and misclassifying the said imported cargo.**

CORRECT CLASSIFICATION OF THE GOODS IMPORTED VIDE NINE BILLS OF ENTRY AS MENTIONED AT PARA SUPRA:-

29. **The most vital question that comes up for consideration in both the cases is whether the goods in question are Rough Marble Blocks, classifiable under Customs Tariff Heading No.25151210, as per Show Cause Notice, or 'Rough Dolomite Blocks' classifiable under Customs Tariff Heading No.25181000', as per the Importer. Second and third issue would be relevant only if the goods in question are found as Rough Marble Blocks, classifiable under CTH 25151210.** For the purpose of ascertaining the same, it would be appropriate firstly to make a reference to the Customs Tariff Headings 2515 and 2518 as appearing in the Customs Tariff Act, 1975 as well as the HSN Explanatory Notes for the said Tariff Headings.

29.1 Customs Tariff Heading No.2515 reads as under:

2515 MARBLE, TRAVERTINE, ECAUSSINE AND OTHER CALCAREOUS MONUMENTAL OR BUILDING STONE OF AN APPARENT SPECIFIC GRAVITY OF 2.5 OR MORE, AND ALABASTER, WHETHER OR NOT ROUGHLY TRIMMED OR MERELY CUT, BY SAWING OR OTHERWISE, INTO BLOCKS OR SLABS OF A RECTANGULAR (INCLUDING SQUARE) SHAPE

- Marble and travertine :
2515 11 00 -- Crude or roughly trimmed
2515 12-- *Merely cut, by sawing or otherwise, intoblocks or slabs of a rectangular (includingsquare) shape :*
2515 12 10--- Blocks
2515 12 20--- Slabs
2515 12 90 --- Other
2515 20 --- *Ecaussine and other calcareous monumental or building stone; alabaster :*
2515 20 10 --- Alabaster.
2515 20 90 --- Other

29.2 Customs Tariff Heading No.2518 reads as under:

2518 DOLOMITE, WHETHER OR NOT CALCINED OR SINTERED, INCLUDING DOLOMITE ROUGHLY TRIMMED OR MERELY CUT, BY SAWING OR OTHERWISE, INTO BLOCKS OR SLABS OF A RECTANGULAR (INCLUDING SQUARE) SHAPE; DOLOMITE RAMMING MIX

2518 10 00 - Dolomite not calcined or sintered.
2518 20 00 - Calcined or sintered dolomite.
2518 30 00 - Dolomite ramming mix

It can be seen from the above that 'Marble Blocks' are covered under Customs Tariff Heading No.25151210 whereas 'Dolomite Blocks' are covered under Customs Tariff Heading No.25181000,

29.3 HSN Explanatory Notes to Customs Tariff Heading No.2515 reads as under:

***Marble** is a hard calcareous stone, homogeneous and fine-grained, often crystalline and either opaque or translucent. Marble is usually variously tinted by the presence of mineral oxides (coloured veined marble, onyx, marble, etc.) but there are pure white varieties.*

Travertines *are varieties of calcareous stone containing layers of open cells.*

Ecaussine *is extracted from various quarries in Belgium and particularly at Ecaussines. It is a bluish grey stone with an irregular crystalline structure and contains many fossilised shells. On fracture Ecaussine shows a granular surface similar to granite and is therefore sometimes known as 'Belgian granite', 'Flanders granite' or 'Petit granit'.*

The heading covers ***other similar hard calcareous monumental or building stones, provided their apparent specific gravity is 2.5 or more*** *i.e. effective weight in kg/1.000 cm3. Calcareous monumental or building stones of an apparent specific gravity of less than 2.5 are classified in heading 25.16.*

The heading also includes both ***gypseous alabaster****,which is usually white and uniformly translucent, and* ***calcareous alabaster****, normally yellowish and veined.*

The heading is restricted to the stones specified, presented in the mass or roughly trimmed or merely cut, by sawing or otherwise, into blocks or slabs of a rectangular (including square) shape. In the form of granules, chippings or powder, they fall in ***heading 25.17.***

Blocks etc., which have been further worked, i.e. bossed, dressed with the pick, bushing hammer or chisel etc., sand-dressed, ground, polished, chamfered, etc., are classified in ***heading 68.02****. The same classification applies to blanks of articles.*

The heading also excludes:

(a)Serpentine or ophite (a magnesium silicate sometimes called marble) ***(heading 25.16).***
(b)Limestone (known as 'lithographic stone' and used in the printing industry) ***heading 25.30*** *when in the crude state).*
*(c)Stones identifiable as mosaic cubes or as paving flagstones, even if merely shaped or processed as specified in the text of this heading (****heading 68.02 or 68.01*** *respectively).*

29.4 HSN Explanatory Notes to Customs Tariff Heading No.2518 reads as under:
Dolomite is a natural double of calcium and magnesium.

The heading covers crude dolomite as well as calcined and sintered dolomite. Dolomite is calcined at a temperature range of 700oC – 1000oC to convert it into magnesium and calcium oxides by releasing carbon dioxide. On the other hand, sintered dolomite is obtained by heating dolomite to a temperature range of 1700o C – 1900o C when it becomes a refractory material. The heading also includes dolomite which has been roughly trimmed or merely cut, by sawing or otherwise, into blocks or slabs of a rectangular (including square) shape.

The heading further includes dolomite ramming mixes which are used as refractory materials (e.g. for furnace lining). These products are traded in powder or granular form consisting predominantly of crushed sintered dolomite. Depending on the field of application or temperature at which the mix will be used, different non-hydraulic binding agents (e.g. tar, pitch, resins) are used.

However, the heading does not cover crushed dolomite for concrete aggregates, road metalling or railway ballast ***(heading 25.17)***

29.5 Further, as per Geology.com, 'Marble' is a metamorphic rock composed primarily of the mineral calcite ($CaCO_3$) and usually contains other minerals, such as clay minerals, micas, quartz, pyrite, iron oxides, and graphite whereas

Dolomite is a common rock-forming mineral i.e. a calcium magnesium carbonate with a chemical composition of $CaMg(CO_3)_2$.

29.6 As per **Para 30.6 of Indian Minerals Year Book 2020,** issued by Government of India, Ministry of Mines, Indian Bureau of Mines, **Dolomite** (CaCO3 .MgCO3) theoretically contains CaCO3 54.35% and MgCO3 45.65% or CaO 30.4%, MgO 21.9% and CO2 47.7%. However, in nature, Dolomite is not available in this exact proportion. Hence, in commercial parlance, the rock containing 40-45% MgCO3 is usually called Dolomite.

29.7 As per **Para 30.6 of Indian Minerals Year Book 2020,** issued by Government of India, Ministry of Mines, Indian Bureau of Mines,in terms of geological definition, **Marble** is a metamorphosed limestone produced by re-crystallisation under conditions of thermal and regional metamorphism. In commercial parlance, all calcareous rocks capable of taking polish are classed as marbles. Furthermore, serpentine rocks containing little calcium or magnesium carbonates, if attractive and capable of taking good polish are also classed as marbles.

29.8 On going through the Customs Tariff Headings 2515 and 2518, the HSN Explanatory Notes of the said Tariff Headings, the details available for 'Marble' and 'Dolomite' in Geology.com, as well as the data available in **Indian Minerals Year Book 2020,** issued by Government of India, Ministry of Mines, Indian Bureau of Mines, it is observed as under:

(a) Marble:

- It is a hard calcareous stone, homogeneous and fine-grained, often crystalline and either opaque or translucent which is usually variously tinted by the presence of mineral oxides (coloured veined marble, onyx, marble, etc.) but there are pure white varieties.
- 'Marble' is a metamorphic rock composed primarily of the mineral calcite ($CaCO_3$) and usually contains other minerals, such as clay minerals, micas, quartz, pyrite, iron oxides and graphite.
- In commercial parlance, all calcareous rocks capable of taking polish are classed as marbles. Further, serpentine rocks containing little calcium or magnesium carbonates, if attractive and capable of taking good polish are also classed as marbles.
- **'**Marble Blocks' are classifiable under Customs Tariff Heading No.25151210.

(b) Dolomite:

- It is a natural double of Calcium and Magnesium.
- Dolomite is a common rock-forming mineral i.e. a Calcium Magnesium Carbonate with a chemical composition of $CaMg(CO_3)_2$.
- **Dolomite** (CaCO3 .MgCO3) theoretically contains CaCO3 54.35% and MgCO3 45.65% or CaO 30.4%, MgO 21.9% and CO2 47.7%. However, in nature, Dolomite is not available in this exact proportion. Hence, in commercial parlance, the rock containing 40-45% MgCO3 is usually called Dolomite.
- 'Dolomite Blocks' are classifiable under Customs Tariff Heading No.25181000.

29.9 The contention of the Importer and Customs Broker M/s. International Cargo Corporation is that the subject goods are Dolomite classifiable under CTH 25181000. The Importer and the said Customs Broker in support of their contention have heavily relied upon Test Reports issued by Dy C.C. Laboratory, JNCH, Nhava Sheva and CRCL, Vadodara in respect of the samples drawn from the import consignments covered under the aforesaid Bills of Entry. I also find that the Importer M/s. NITCO Ltd. as well as the Customs Broker M/s. International Cargo Corporation had submitted copies of Test Reports in respect of the samples drawn from the cargo imported under 5 Bills of Entry covered under the two Show Cause Notices mentioned at para 27 above i.e. 4 Bills of Entry bearing Nos. 4580575 dated 21.08.2019, 4580577 dated 21.08.2019, 5052142 dated 25.09.2019 and 5052288 dated 25.09.2019 cleared through Nhava Sheva Sea Port and 1 Bill of Entry No.5616596 dated 09.11.2019 cleared through ICD, Tumb. It was also submitted that they had sought clearance of the aforesaid goods under Customs Tariff Heading No.25181000 by applying for First Check Appraisement for correct determination of description of the goods and ascertainment of appropriate Customs Duty payable on the subject goods and the proper Officer of Customs during the course of examination, certified the goods to be 'Rough Dolomite Blocks' and forwarded the representative sealed samples from all the 4 consignments to the Dy.CC of JNCH, Nhava Sheva. Thereafter, upon receipt of the Test Reports of the samples, the proper Officer allowed the clearance of the goods by extending the benefit of exemption of Duty as claimed by the Importer. Similarly sample drawn from consignment cleared through ICD, Tumb was sent to CRCL, Vadodara and on the basis of the Test Report that the sample consisted of Calcium and Magnesium(Dolomite), the proper Officer of Customs allowed the clearance of the subject goods by extending the benefit of exemption as claimed by the Importer.

I have gone through all the aforementioned Test Reports. **Since the Test Results are not referred to in the Show Cause Notice and the same have been referred to by the Importer and Customs Broker during hearing, authenticity of said Test Results was sought from the respective jurisdictional Customs Officers i.e. Deputy Commissioner of Customs, Gr.I& IA, Nhava Sheva-I and Deputy Commissioner of Customs, ICD, Tumb. Genuineness of the same is confirmed by the Deputy Commissioner of Customs, Gr.I & IA, Nhava Sheva-I vide Letter F.No.S/26-Misc-2363/2022-23/Gr.I & IA dated 08.12.2022 and 16.08.2022 and Deputy Commissioner of Customs, ICD, Tumb vide Letter F.No.CUS/ SHED/MISC/1018/2022-ICD-UMNG-CUS-COMMRTE-AHMEDABAD dated 3.12.2022.** Hence, the Test Reports received from CRCL, Vadodara as well as from Dy. CC Laboratory, Nhava Sheva in respect of the samples of the products imported by M/s. NITCO Ltd are readily available in the present case which appear to be conclusive enough to help in classifying the products of the Importer. Each of the Reports received from Dy CC, Nhava Sheva (in respect of the goods imported through Nhava Sheva under 4 Bills of Entry) states that ***'the sample is composed of Carbonates of Calcium and Magnesium(Dolomite) with small amount/traces of Iron, Silicious matter etc.'*** .The Test Report in respect of sample of the goods imported through ICD, Tumb vide one Bill of Entry states that **'the sample consisted of Calcium and Magnesium(Dolomite)'.**Details of the Test Reports are as mentioned in the table below:

Sr. No.	Bill of Entry No. and date	Port from which imported	Test Report No. and date of sample	Name of Laboratory.	Result of Test Reports
01.	4580575 dated 21.08.2019	Nhava Sheva Sea Port	3053/19-20 Gr I dated 22.08.2019 (Lab No.1954 I)	Dy.C.C. JNCH Laboratory, Nhava Sheva	The sample is composed of carbonates of Calcium and Magnesium(Dolomite) along with traces of Aluminium, Iron and siliceous matter.
02.	4580577 dated 21.08.2019	Nhava Sheva Sea Port	3054/19-20 Gr I dated 22.08.2019 (Lab No.1953 I)	-do-	The sample is composed of carbonates of Calcium and Magnesium(Dolomite) along with small amount of Silica, Iron etc.
03.	5052142 dated 25.09.2019	Nhava Sheva Sea Port	3533/19-20 Gr I dated 27.09.2019 (Lab No.2131/ I)	-do-	The sample is composed of Calcium, Magnesium (Dolomite) together with traces of Iron and Siliceous matter having $CaCO_3$= 57.12% and $MgCO_3$ = 42.22

04.	5052288 dated 25.09.2019	Nhava Sheva Sea Port	3532/19-20 Gr I dated 27.09.2019 (Lab No.2136- I)	-do-	The sample is composed of Calcium and Magnesium (Dolomite) along with small amount of Iron and silica.
05.	5616596 dated 09.11.2019	ICD Tumb	RCL/SU/IMP/1685/ 13.11.2019	CRCL, Vadodara	The sample is composed of Carbonates Calcium and Magnesium (Dolomite) %CaO content = 30.4% and %MgO content = 24.0%

29.10 Further, as discussed earlier, HSN Explanatory notes to Customs Tariff Heading No.2518 specifically states that 'Dolomite' is a natural double of Calcium and Magnesium and that it is an anhydrous Carbonate mineral composed of Calcium Magnesium Carbonate, ideally $CaMg(CO_3)_2$.

29.11 DC, Customs, ICD, Tumb vide letter F.No.CUS/SHED/MISC/ 1018 /2022-ICD-UMGN-CUS-COMMRTE-AHMEDABAD dated 03.12.2022 has also confirmed that the final assessment of the Bill of Entry is done based on the said Test Report. DC, Customs, Gr.I/IA, NS-I, JNCH, Nhava Sheva-I vide Letters F.No.S/26-Misc-2363/2022-23/Gr.I& IA dated 08.12.2022 and 16.12.2022 has informed that all the 4 Bills of Entry cleared through Nhava Sheva Sea Port were given first check and the same were finally assessed based on the Examination Reports and Test Reports.

29.12 It would be seen from above that out of the total nine Bills of Entry covered in the Show Cause Notices, assessment has been finalised in aforesaid five Bills of Entry based on the Test Results issued by the Central Excise & Customs Laboratory at Vadodara and Chemical Laboratory, JNCH, Nhava Sheva in respect of the samples drawn from the goods imported vide these Bills of Entry. Remaining four Bills of Entry were filed at Customs, Adani Hazira Port.

29.13 In this regard, on being enquired by the Office of the Commissioner of Customs Ahmedabad**,** DC, Customs, Adani Port, Hazira vide letter F.No.CH/234/Hazira/Misc/2022-23 dated 13.12.2022 and 27.12.2022 informed that samples of cargo imported vide 4 Bills of Entry were drawn and the said Bills of Entry were provisionally assessed and final assessment is pending. The details of the same have been provided as under:

Sr.No.	BE NO. & date	Importer's name	Supplier's name	Test Memo No and date	Item Description	Current status
1.	3103627 dated 04.09.2017	M/s. NITCO ltd.	M/s Marmor SG SA Marble & Granite, Greece.	122/ 13.09.2017.	Dolomite Block(White Colour)	Provisional
2.	3103648 dated 04.09.2017	M/s. NITCO ltd.	M/s. Dermitzakis Bros SA, Greece.	123/ 13.09.2017.	Dolomite Block(White Colour)	Provisional
3.	3103656 dated 04.09.2017	M/s. NITCO ltd.	M/s. Marble Sachanas SA, Greece.	124/ 13.09.2017.	Dolomite Block(White Colour)	Provisional
4.	3269532 dated 16.09.2017	M/s. NITCO ltd.	M/s. Birros Hellenic Marble SA, Greece.	152/ 29.09.2017.	Dolomite Block(White Colour)	Provisional

Vide email dated 14.12.2022, DC, Customs, Adani Port, Hazira has forwarded copies of 3 Test Reports of samples of M/s. NITCO Ltd., Silvassa drawn in respect of Bills of Entry No.3103627 dated 04.09.2017, 3103648 dated 04.09.2017, 3103656 dated 04.09.2017 alongwith copy of Letter F.No.137/Customs/TCS/GSI/CR/2017 dated 07.12.2017 of the Director (Geology), Geological Survey of India, Nagpur, Adani Hazira Port, Surat. Further, DC, Customs, Adani Port, Hazira vide Letter F.No.CH/234/Hazira/Misc/2022-23 dated 24.01.2023 has clarified that the dates of the aforementioned Bills of Entry have been wrongly mentioned as 13.09.2017 instead of 04.09.2017 in the

Test Reports received from the Geological Survey of India, Nagpur. The details of these Test Reports is summarised in the Table below:

Sr. No.	Bill of Entry No. and date	Port from which imported	Test Report No. and date of sample	Name of Laboratory.	Result of Test Reports
01.	3103627 dated 04.09.2017	Adani Hazira Port	Test Report dated 13.11.2017 (of Sample No.122)	Geological Survey of India, Nagpur.	The sample is mainly composed of dolomite with subordinate calcite, Density 2.85 g/cm3, Hardness of 3-3.5 (Moho Hardness scale). Based on above physical, optical and limited chemical properties of rock sample interpreted as **'Dolomite'**. As per Test Report of Analysis dated 27.11.2017 of sample, CaO content = 32.54%, MgO content = 19.51% and LOI content= 42.24%.
02.	3103648 dated 04.09.2017	Adani Hazira Port	Test Report dated 13.11.2017 (of Sample No.123)	Geological Survey of India, Nagpur.	The sample is mainly composed of dolomite with subordinate calcite, Density 2.85 g/cm3, Hardness of 3-3.5 (Moho Hardness scale). Based on above physical, optical and limited chemical properties of rock sample interpreted as **'Dolomite'**. As per Test Report of Analysis dated 27.11.2017 of sample, CaO content = 33.45%, MgO content = 18.48% and LOI content= 43.02%.
03.	3103656 dated 04.09.2017	Adani Hazira Port	Test Report dated 13.11.2017 (of Sample No.124)	Geological Survey of India, Nagpur.	The sample is mainly composed of dolomite with subordinate calcite, Density 2.85 g/cm3, Hardness of 3-3.5 (Moho Hardness scale). Based on above physical, optical and limited chemical properties of rock sample interpreted as **'Dolomite'**. As per Test Report of Analysis dated 27.11.2017 of sample, CaO content = 34.87%, MgO content = 18.42% and LOI content= 42.84%.

29.14 Thus, it would be seen that first check or first appraisement was resorted to in the case of eight Bills of Entry filed by the Importer at various Customs locations viz. Nhava Sheva Port, ICD-Tumb and Hazira Port, and the assessment of Bills of Entry filed at ICD-Tumb and JNCH, Nhava Sheva has been finalised on the basis of the Test Results issued by the Central Excise and Customs Laboratory, Vadodara and Dy.CC Laboratory at JNCH, Nhava Sheva.

30. At this stage it would be appropriate to refer to the Test results of samples of import cargo covered in the said eight Bills of Entry for ascertaining as to whether the subject products are Marble or Dolomite. Scanned copies of the Test Reports of the samples drawn in respect of all the Bills of Entry covered in the 2 Show Cause Notices, except Bill of Entry No.3269532 dated 16.09.2017,are reproduced herein below for ease of reference-

(1) **Test Report RCL/SU/IMP/1685/13.11.2019 dated 14.11.2019 issued by the Central Excise & Customs Laboratory, Vadodara in respect of sample drawn from goods of <u>Bill of Entry No.5616596 dated 09.11.2019</u>.**

RCL/SU/IMP/1685/13-11-19
B/E No 5616596/9-11-19

Report: The sample is in the form of white broken pieces of blocks. It is composed of carbonates calcium & Magnesium (Dolomite)

% CaO content = 30.4% by wt
% MgO content = 24.0% by wt

Sealed remnant returned

14/11/19
डॉ. महेश कुमार
DR. MAHESH KUMAR
प्रधान / रासायनिक परीक्षक ग्रेड-I
Head / Chemical Examiner Grade-I
केन्द्रीय उत्पाद एवं सीमा शुल्क प्रयोगशाला
Central Excise & Customs Laboratory
वडोदरा / Vadodara

Despatch No. 1022
Dt. 14/11/19
C.Ex. & Cus. Lab., Vadodara.

(2) **Test Report No.3053/19-20 Gr.I dated 22.08.2019 issued by the Laboratory, Jawaharlal Nehru Customs House, Nhava Sheva in respect of sample drawn from goods of <u>Bill of Entry No.4580575 dated 21.08.2019</u>.**

B/E : 4580575 Dtd - 21/08/19

TEST REPORT

Test Report No. 3053/19-20 I TR Date 22/08/19

Lab No. 1054 I Lab Date 21-8-19 Examined ID

Test Result The Sample as received is in the form of off white shining hard lumps of irregular shapes and sizes. It is composed of Carbonates of Calcium and Magnesium (Dolomite) alongwith traces of Aluminium Iron and Siliceous matter.

Technical Opinion R/S may be collected within 15 days

28/8/19
(D.K. Solanki)

28/8/19
KUMARI
CHEMICAL EXAMINER GR.II
JNCH-LABORATORY
JAWAHARLAL NEHRU CUSTOMS HOUSE
NHAVA-SHEVA

Analyzed and returned to the Asstt. Commissioner on
And the Result/Technical Opinion as above
Remnant Sample Fully Consumed/Retaubed/Returned

Date

Chemical Examiner/Dy. Chief Chem

(3) Test Report No.3054/19-20 Gr.Idated 22.08.2019 issued by Laboratory, Jawaharlal Nehru Customs House, Nhava Shevain respect of sample drawn from goods of Bill of Entry No.4580577 dated 21.08.2019.

B/E:- 4580577 दिनांक - 21/08/19

TEST REPORT

Test Report No. 3054/19-20 Gr. I TR Date 22/08/19

Lab No. 1953 I Lab Date 26.8.19 Examined ID

Test Result The sample is in the form of white rough cutting blocks. It is composed of carbonates of Calcium & Magnesium (Dolomite) along with small amount of Silica & Iron.

Technical Opinion R/S may be collected within fortnight.

28/08/19
ABHISHEK DE
Chemical Assistant

28.8.19
ASHISH KUMAR
Chemical Examiner GR-I

Analyzed and returned to the Asstt. Commissioner on
And the Result/Technical Opinion as above
Remnant Sample Fully Consumed/Retaubed/Returned

Date

Chemical Examiner/Dy. Chief Che

(4) Test Report No.3532/19-20 Gr.I dated 27.09.2019 issued by Laboratory, Jawaharlal Nehru Customs House, Nhava Sheva in respect of sample drawn from goods of Bill of Entry No.5052288 dated 25.09.2019.

BE No:- 5052288 Dtd. 25/09/19

TEST REPORT

24/09/19

Test Report No. 3532/19-20 Gr.I TR Date 27/09/19

Lab No. 2136 - I Lab Date 30/9/19 Examined ID

Test Result The sample as received is in the form of white broken pieces. It is composed of Carbonate of calcium and magnesium (Dolomite) along with small amount of Iron and silica.

R/s may be collected with in fort night

Technical Opinion

4.10.19

4.10.19

ASHISH KUMAR
Chemical Examiner GR-I

Analyzed and returned to the Asstt. Commissioner on
And the Result/Technical Opinion as above.
Remnant Sample Fully Consumed/Retained/Returned

Date

Signature Not Verified
Digitally signed by SACHIN PARESHKUMAR BHANUSHALI
Date: 2019.10.04 18:20:04 IST
Reason: Secure Document
Location: India

Chemical Examiner/Dy. Chief Chem.

(5) **Test Report No.3533/19-20 Gr.I dated 27.09.2019 issued by Laboratory, Jawaharlal Nehru Customs House, Nhava Sheva in respect of sample drawn from goods of <u>Bill of Entry No.5052142 dated 25.09.2019.</u>**

BE:- 5052142 dtd- 25/09/19

TEST REPORT

Test Report No. 3533/19-20 Gr. I TR Date 27/09/19

Lab No. 2131/I Lab Date 30/09/19 Examined ID

Test Result The sample is in the form of greyish white hard broken pieces of varying shape & size. It is mainly composed of Calcium, Magnesium (Dolomite) together with traces of Iron & siliceous matter wanting.

Technical Opinion $CaCO_3 = 57.12\%$
$MgCO_3 = 42.22\%$
Remnant may be returned [illegible]

4/10/19

Analyzed and returned to the Asstt. Commissioner on
And the Result/Technical Opinion as above
Remnant Sample Fully Consumed/Retained/Returned

4.10.19

ASHISH KUMAR
Chemical Examiner GR-I

Date

Signature Not Verified
Digitally signed by SACHIN PARESHKUMAR BHANUSHALI
Date: 2019.10.04 18:19:38 IST
Reason: Secure Document
Location: India

Chemical Examiner/Dy. Chief Chg

(6) **Test Report dated 13.11.2017issued by Geological Survey of India, Petrology Division, Nagpur in respect of sampleNo.122 drawn from goods of Bill of Entry No.3103627 dated 13.09.2017(actual date is 04.09.2017).**

GOVERNMENT OF INDIA
GEOLOGICAL SURVEY OF INDIA
CENTRAL REGION
REGIONAL PETROLOGY DIVISION
NAGPUR-440006

Petrological Test Report

Sender's Name	Office of the Assistant Commissioner of Customs, Adani Hazira Port Pvt. Ltd. Hazira Bypass Road, Choriyashi, Hazira bypass road, Hazira, Surat-394 270
Exporter	M/s. NITCO LTD, Survey No. 176/1/3, Opp Goa Gutka Com., Nera Shubhalaxmi Polyester, Sillivil, Silvassa, Dadra, D & N Haveli Dadra & Nagar Haveli-392230
IGM/ITM No.	-
B.E.No.	3103627 dated,13.09.2017
DD No.	066279 & 066281 dated 18.10.2017
Received Sample no.	**Sl: No. 122 -Dolomite Blocks (white colour)**
1.Lab test	**Description**
a) Physical properties study	In hand specimen, sample shows white color, fine-medium grained, vitreous luster, crystalline and/or saccharoidal structure, hard and compact rock showing uneven fracture (Fig.1).
b) Petrographic study	Under the plane polarized light: Rock is fine medium grained, non-pleochroic, mainly composed of dolomite, calcite (Fig.2) with accessory amount of muscovite and iron oxide. Under the XPL: Rock is fine medium grained, shows equigranular interlocking /granoblastic texture with development of triple junction grain boundaries at places. The modally dolomite is >97% while <3% consist of calcite and other minerals. Dolomite and calcite are subhedral in shape, shows fourth order interference color and polysynthetic twining (Fig.3).
c) Chemical study i) Staining test	Sample also verified with staining technique for carbonates (Method after Dickson, 1965). Stained rock sample pale pink color.
ii) Acid Test	low effervescence with hydrochloric acid (HCl)
2. Composition of goods	The sample mainly composed of dolomite with subordinate calcite.
3. Density of goods	2.85 g/cm^3
3. Hardness of goods	3-3.5 (Moho hardness scale)
4. Whether it has the characteristics of dolomite	Yes
Name of the rock	Based on above physical, optical and limited chemical properties of rock sample interpreted as **Dolomite.**

This report is subject to following conditions:

1. This report is valid only for the sample submitted for identification.
2. This office is not responsible for any type of liability or litigation in case any controversy arises

अन्वेषक / Investigator	अन्वेषक / Investigator	प्रभारी अधिकारी /Officer in Charge
B. Srinivasulu 13/11/2017	13.11.17	13/11/17
(S.R.Baswani)	(Tushar Meshram)	(M. L. Dora)
भूवैज्ञानिक/Geologist	व. भूवैज्ञानिक/ Sr. Geologist	अधिक्षण भूवैज्ञानिक / Suptdg. Geologist

(7) Test Report dated 13.11.2017 issued by Geological Survey of India, Petrology Division, Nagpur in respect of sample N0.123 drawn from goods of Bill of Entry No.3103648 dated 13.09.2017 (actual date is 04.09.2017).

GOVERNMENT OF INDIA
GEOLOGICAL SURVEY OF INDIA
CENTRAL REGION
REGIONAL PETROLOGY DIVISION
NAGPUR-440006

Petrological Test Report

Sender's Name	Office of the Assistant Commissioner of Customs, Adani Hazira Port Pvt. Ltd. Hazira Bypass Road, Choriyashi, Hazira bypass road, Hazira, Surat-394 270
Exporter	M/s. NITCO LTD, Survey No. 176/1/3, Opp Goa Gutka Com., Nera Shubhalaxmi Polyester, Sillivil, Silvassa, Dadra, D & N Haveli Dadra & Nagar Haveli-392230
IGM/ITM No.	-
B.E.No.	3103648 dated,13.09.2017
DD No.	066278 & 066280 dated 18.10.2017
Received Sample no.	**Sl. No. 123 -Dolomite Blocks (white, semi white colour)**
1.Lab test	**Description**
d) Physical properties study	In hand specimen, sample shows white to creamy white color, very fine grained, sub vitreous to pearly luster, crystalline/saccharoidal structure, hard and compact (Fig.1).
e) Petrographic study	Under the plane polarized light: Rock is very fine-grained, non-pleochroic, mainly composed of calcite, dolomite (>98%) with <2% of accessory minerals (Fig.2). Under the XPL: Rock is very fine-grained, shows equigranular texture with interlocking of dolomite and calcite grains. Dolomite and calcite grains are subhedral in shape, shows fourth order interference color and polysynthetic twining (Fig.3). The muscovite and iron oxide at places occur interstitial to carbonate grains.
f) Chemical study i) Staining test	Sample also verified with staining technique for carbonates (Method after Dickson, 1965). Stained rock sample pale pink color.
ii) Acid Test	low effervescence with hydrochloric acid (HCl)
2. Composition of goods	The sample mainly composed of dolomite with small amount of calcite
3. Density of goods	2.85 g/cm^3
3. Hardness of goods	3-3.5 (Moho hardness scale)
4. Whether it has the characteristics of dolomite	Yes
Name of the rock	Based on above physical, optical and limited chemical properties of rock sample interpreted as **Dolomite.**

This report is subject to following conditions:

3. This report is valid only for the sample submitted for identification.
4. This office is not responsible for any type of liability or litigation in case any controversy arises

अन्वेषक / Investigator	अन्वेषक / Investigator	प्रभारी अधिकारी /Officer in Charge
B. Srinivasulu 13/11/17	13.11.17	13/11/17
(S.R.Baswani)	(Tushar Meshram)	(M. L. Dora)
भूवैज्ञानिक/Geologist	व. भूवैज्ञानिक/ Sr. Geologist	अधिक्षण भूवैज्ञानिक / Suptdg. Geologist

(8) Test Report dated 13.11.2017 issued by Geological Survey of India, Petrology Division, Nagpur in respect of sample No.124 drawn from goods of Bill of Entry No.3103656 dated 13.09.2017(actual date is 04.09.2017).

GOVERNMENT OF INDIA
GEOLOGICAL SURVEY OF INDIA
CENTRAL REGION
REGIONAL PETROLOGY DIVISION
NAGPUR-440006

Petrological Test Report

Sender's Name	Office of the Assistant Commissioner of Customs, Adani Hazira Port Pvt. Ltd. Hazira Bypass Road, Choriyashi, Hazira bypass road, Hazira, Surat-394 270
Exporter	M/s. NITCO LTD, Survey No. 176/1/3, Opp Goa Gutka Com., Nera Shubhalaxmi Polyester, Sillivil, Silvassa, Dadra, D & N Haveli Dadra & Nagar Haveli-392230
IGM/ITM No.	-
B.E.No.	3103656 dated,13.09.2017
DD No.	066277 & 066282 dated 18.10.2017
Received Sample no.	**Sl. No. 124 -Dolomite Blocks (white, semi white colour)**
1.Lab test	**Description**
g) Physical properties study	In hand specimen, sample shows white color, fine grained, vitreous luster, saccharoidal structure, hard and compact (Fig.1).
h) Petrographic study	Under the plane polarized light: Rock is fine-grained, non-pleochroic, mainly composed of calcite and dolomite (>99%) with <1% of accessory minerals (Fig 2). Under the XPL: Rock is fine grained, shows equigranular texture. Dolomite and calcite grains are subhedral in shape and shows fourth order interference color. A primary feature of medium to fine grained grading also observed in the sample (Fig.3).
i) Chemical study i) Staining test	Sample also verified with staining technique for carbonates (Method after Dickson, 1965). Stained rock sample pale pink color.
ii) Acid Test	low effervescence with hydrochloric acid (HCl)
2. Composition of goods	The sample mainly composed of dolomite with subordinate calcite.
3. Density of goods	2.85 g/cm^3
3. Hardness of goods	3-3.5 (Moho hardness scale)
4. Whether it has the characteristics of dolomite	Yes
Name of the rock	Based on above physical, optical and limited chemical properties of rock sample interpreted as Dolomite.

This report is subject to following conditions:

5. This report is valid only for the sample submitted for identification.
6. This office is not responsible for any type of liability or litigation in case any controversy arises

अन्वेषक / Investigator
B. Srinivasulu 13/11/17
(S.R.Baswani)
भूवैज्ञानिक/Geologist

अन्वेषक / Investigator
13.11.17
(Tushar Meshram)
व. भूवैज्ञानिक/ Sr. Geologist

प्रभारी अधिकारी /Officer in Charge
13/11/17
(M. L. Dora)
अधिक्षण भूवैज्ञानिक / Suptdg. Geologist

(9) Test Report of Analysis in respect of samples No.122, 123 and 124 of Bills of Entry No.3103627, 3103648 and 3103656, all dated 04.09.2017issued by Geological Survey of India, Petrology Division, Nagpur

भारत सरकार / Government of India
भारतीय भूवैज्ञानिक सर्वेक्षण / Geological Survey of India
मध्य क्षेत्र / Central Region
रसायन प्रभाग / Chemical Division
GSI Complex, Seminary Hills, Nagpur-440006Telephone: 0712- 2510378 Fax: 0712- 2510378

TEST REPORT OF ANALYSIS

Test Report No./ Lab. No.	20027(1-3)	Format No. :	-------
Sender's Name & Address :	Superintendent of Customs, Office of the Assistant Commissioner of Customs, Adani Hazira Port, Choryashi, Hazira Bypass Road, Hazira, Surat- 394270	Method No.:	-------
Ref. Letter No.:	Letter dated 13.09.20172017	Date of receipt:	01.11.2017
Item No.:	NA	Date of Report:	27.11.2017
Descriptions:	Dolomite Blocks	Field Season:	NA
Locality:	?	Project:	NA
Analyzed By:	Dr. Sanjay Kumar Sharma, Sr. Chemist, Nitin P. Nagmote, Sr. Chemist, Alka A. Sonkusale, Sr. Chemist, Anurag, Chemist Kumar Robins, Assistant Chemist,	Toposheet:	NA
Method/ Technique	XRF		
Any other information in request proforma:	Name & Address of the Exporter: - Sl. No. 1-3 = M/s. Nitco Ltd, Survey No. 176/13, Opp. Goa Gutkha Company, Near Shubhlaxmi Polyester, Sillivil, Silvassa, Dadra & Nagar Haweli		

Sl. No.	Samples No.	Ref. no.- As a Bill of entry no.	SiO_2 (%)	Al_2O_3 (%)	Fe_2O_3 (%)	CaO (%)	MgO (%)	LOI (%)
1	122	3103627/ 13.09.2017	1.89	0.83	<0.5	32.54	19.51	42.24
2	123	3103648 / 13.09.2017	1.40	0.54	<0.5	33.45	18.48	43.02
3	124	3103656 / 13.09.2017	0.49	<0.5	<0.5	34.87	18.42	42.84

Note: Samples received to chemical division in unsealed open condition in the form of slab / blocks in uneven shape & size.

This report is subject to following conditions:

1. Results relate only to the items tested.
2. Test Report shall not produce without approval of competent authority.
3. This report is valid only for the sample submitted for analysis.
4. This office is not responsible for any type of liability or litigation in case any controversy arises.
5. Samples were analyzed by pressed pellet method.

Place : Nagpur
Date: 27.11.2017

(Dr. T. K. Pal)
Superintending Chemist

30.1 I have gone through all the Test Reports reproduced above. However, before discussing the aforementioned Test Reports, I find it prudent to refer to the available details on 'Marble' and 'Dolomite' which have already been discussed in detail in paras 29 to 29.7 above. On a combined reading of the Customs Tariff Headings 2515 and 2518, the HSN Explanatory Notes of the said Tariff Headings, the details available for 'Marble' and 'Dolomite' in Geology.com, as well as the data available in **Indian Minerals Year Book 2020,** issued by Government of India, Ministry of Mines, Indian Bureau of Mines, it is observed as under:

(a) Marble:

- It is a hard calcareous stone, homogeneous and fine-grained, often crystalline and either opaque or translucent which is usually variously tinted by the presence of mineral oxides (coloured veined marble, onyx, marble, etc.) but there are pure white varieties.

- 'Marble' is a metamorphic rock composed primarily of the mineral calcite ($CaCO_3$) and usually contains other minerals, such as clay minerals, micas, quartz, pyrite, iron oxides and graphite.
- In commercial parlance, all calcareous rocks capable of taking polish are classed as marbles. Further, serpentine rocks containing little calcium or magnesium carbonates, if attractive and capable of taking good polish are also classed as marbles.
- 'Marble Blocks' are classifiable under Customs Tariff Heading No.25151210.

(b) Dolomite:

- It is a natural double of Calcium and Magnesium.
- Dolomite is a common rock-forming mineral i.e. a Calcium Magnesium Carbonate with a chemical composition of $CaMg(CO_3)_2$.
- **Dolomite** (CaCO3 .MgCO3) theoretically contains CaCO3 54.35% and MgCO3 45.65% or CaO 30.4%, MgO 21.9% and CO2 47.7%. However, in nature, Dolomite is not available in this exact proportion. Hence, in commercial parlance, the rock containing 40-45% MgCO3 is usually called Dolomite.
- 'Dolomite Blocks' are classifiable under Customs Tariff Heading No.25181000.

30.2 On going through the Test Reports of the Chemical Examiner of Dy.C.C Laboratory, JNCH, Nhava Sheva in respect of the samples drawn from the goods of Bills of Entry Nos.4580575 dated 21.08.2019, 4580577 dated 21.08.2019, 5052142 dated 25.09.2019, 5052288 dated 25.09.2019, I find all of them mentioning that the samples are composed of '*Carbonates of Calcium and Magnesium (Dolomite) along with traces/small amounts of Aluminum, Iron, silica, siliceous matter* etc. Test Report of sample in respect of Bill of Entry No.5052142 dated 25.09.2019 also mentions that the sample is composed of Calcium, Magnesium (Dolomite) together with traces of Iron and Siliceous matter and is having $CaCO_3$=57.12% and $MgCO_3$=42.22%. As per the Test Report dated 13.11.2019 received from CRCL, Vadodara in respect of sample drawn from the goods of the Bill of Entry No.5616596 dated 09.11.2019, 'the sample is composed of Carbonates Calcium and Magnesium (Dolomite) wherein CaO content = 30.4% and MgO content = 24.0%. HSN Explanatory notes of Customs Tariff Heading No.2518 states that ***'Dolomite is a natural double of Calcium and Magnesium'***. As per the website *Geology.com,* Dolomite is a common rock-forming mineral i.e. a Calcium Magnesium Carbonate with a chemical composition of $CaMg(CO_3)_2$. The Test Reports also mention that the sample is composed of '*Carbonates of Calcium and Magnesium'*. Thus, a plain comparison of the details mentioned in the HSN Explanatory Notes of Customs Tariff Heading No.2518 and the details as per website *Geology.com* in respect of Dolomite with that mentioned in the Test Reports, it is clearly apparent that the samples are nothing but 'Dolomite'.

30.3 Further, Test Reports in respect of the samples drawn from the goods imported from Adani Hazira Port under Bills of Entry No.3103627 dated 04.09.2017, 3103648 dated 04.09.2017 and 3103656 dated 04.09.2017 received from Geological Survey of India, Nagpur are based on the chemical composition, Density, Hardness etc. Density of the samples is mentioned as '2.85 g/cm^3' and Hardness as '3-3.5'. The Chemical Composition in respect of all the aforementioned 3 samples has been more specifically mentioned in the Test Report of Analysis of the Geological Survey of India, Nagpur which mentions the Range of CaO content 'between 32.54% and 34.87%' and MgO content 'between 18.42% to 19.51%. It also mentions the percentage of Chemical contents of the other components which are in negligible amount such as SiO_2, AL_2O_3 and Fe_2O_3. The Test Reports categorically mentioned that the sample is of 'Dolomite' conforming to characteristics of Dolomite in terms of physical, optical and chemical properties of sample rock. A plain comparison of the details mentioned in the HSN Explanatory Notes of Customs Tariff Heading No.2518 and the details as per the website *Geology.com* in respect of Dolomite with that mentioned in the Test Reports makes it apparently clear that the samples are nothing but 'Dolomite'. Thus, on the basis of the aforementioned Test Reports of the samples drawn in respect of the aforementioned 8 Bills of Entry, I find and conclude that the aforementioned samples are nothing but 'Dolomite'.

31. It would be seen that aforesaid Test Reports are provided by the respective Authorities as per the requests/Test Memos issued by the concerned Customs Authorities. **Hon'ble Supreme Court in the case of Polyglass Acrylic Mfg.Co.Ltd vs. Commissioner of Customs, Visakhapatnam, reported in 2003 (153) E.L.T. 276 (S.C.)**, held that report obtained at the instance of the Department itself had great force and it should not have been ignored.

31.1 Hon'ble Supreme Court in the case of Reliance Cellulose Products Ltd Vs. Collector of C.Excise, Hyderabad, reported in 1997 (93) E.L.T. 636 (S.C.) held that Test Report of Chemical Examiner and Chief Chemist of the Government, unless demonstrated to be erroneous, cannot be lightly brushed aside on the basis of opinion of some private persons obtained by the assessee.

32. Now, I take up the grounds given in the Show Cause Notices for discussion, one by one. I find that the one of the grounds for raising demand of Customs Duty in both the Show Cause Notices is that the Test Reports of the samples drawn from the similar cargo of some other importers viz. (i) M/s. Monark India Pvt.Ltd., Gurgaon under panchnama dated 28.10.2020 (ii) M/s. Stonex India Pvt.Ltd., New Delhi vide panchnama dated 26.09.2020 and (iii) M/s. R.K.Marble Pvt.Ltd., Kishangarh under panchnama dated 31.10.2020, against whom simultaneous investigation was initiated by the DRI, who had cleared their imported goods by declaring it as "Rough Dolomite Blocks" and the Test Reports issued by the Geological Survey of India, Jaipur identified the samples as that of 'Dolomitic Marble'.

32.1 I find that Show Cause Notices have linked the case of NITCO (Noticee) with the other aforesaid Importers as the same Overseas suppliers, who had supplied the goods to these Importers, from whom M/s. NITCO also imported the goods by declaring them as "Rough Dolomite Blocks". In the present case, the Test Reports of Chemical Examiners in respect of the samples drawn from the subject cargo imported by the Importer vide the eight Bills of Entry covered in the Show Cause Notice, discussed at paras supra, are available. Hence, there is no relevancy in applying the Test Reports pertaining to the consignment of third parties with that of the Noticees especially when the Noticee's consignments of impugned goods have been tested by Government Laboratories. It would be pertinent to state here that the Chemical Test reports discussed at paras supra are issued specifically in respect of the samples drawn from the cargo imported by the Noticee under the Bills of Entry covered in the Show Cause Notices, except one Bill of Entry. Thus, there is no reason to rely on the Test Results pertaining to a third party's import consignments. It is also noteworthy to mention here that these imports took place after around one to three years of imports involved in the Notices.

32.2 It is a settled position in law that Test Reports of one consignment cannot be made applicable for other consignments. **Hon'ble Tribunal, New Delhi in the case of S.D. Kemexc Industries vs Collector of Central Excise, Kolkata, reported in 1995 (75) E.L.T. 377 (Tri.)** held that test report applicable only to the two products sampled and not to all the rest of the products. **Hon'ble Tribunal, Kolkata in the case of Shalimar Paints Ltd vs. CCE, Kolkata, reported in 2001 (134) E.L.T.285 (Tri-Kolkata)** held that Test Report of a particular import cannot be applied to previous imports done by the appellant importer. Relevant para of this Order is reproduced below for ease of reference.

> 7 The first grievance of the appellant is that though the classification lists in question covered about 30 products, test reports relatable to only 4 products are available and there is absolutely no material against the appellant in so far as the remaining 26 products are concerned. He submits that presuming though denying that the test reports of CRCL are correct, the same can be made the basis for classifying only those products to which the test report relates. The same cannot be made applicable to the other items for which no samples were either drawn or if samples were drawn, there is no test report. For this proposition he relied upon the Tribunal's decision in the case of S.D. Kemexc Indus. v. CCE - 1995 (75) E.L.T. 377. In the said decision assessee was manufacturing 22 different types of chemicals. The Department drew samples only from two types of chemicals. It was held that test reports can be made applicable only for the two products for which the samples were drawn and not to the rest of the products. Following the ratio of the above decision we fully agree with the contention of the ld. adv. that the test reports, if at all could be made applicable only to the 4 items in question to which it belonged to. The balance 26 products would be classified under Heading 27.15 on the basis of the declarations made by the appellant which is based upon their technical literature as well as the production records and for which the Revenue has not adduced any evidence to shift the classification to heading 32.10.

By dismissing the Civil Appeal filed by the Commissioner of Central Excise, Kolkata against the order of Tribunal, **Hon'ble Supreme Court upheld the aforesaid decision of Hon'ble Tribunal**. (Commissioner Vs Shalimar Paints Ltd – 2002 (145) E.L.T. A.242)

33. Show Cause Notices further relied on some website information/reports in respect of the products of the overseas manufacturers .

(i) The Mineral & Chemical Composition Report issued by Overseas supplier in respect of Invoice No. 07 dated 17.07.2017 to M/s. NITCO, which shows that goods supplied, were Dolomite Marble with trade name *Marble Sachanas SA* and the said goods were cleared by M/s. NITCO under **Bill of Entry No.3103656 dated 04.09.2017** by declaring description of goods as 'Dolomite Block (White Colour)' under Customs Tariff Heading No.25181000.

However, the Petrological Test Report dated 13.11.2017 in respect of the sample drawn from the goods of the said Bill of Entry were categorically identified as 'Dolomite' by the Geological Survey of India, Nagpur which is discussed at paras supra. This Test Result in terms of physical, optical and chemical properties of sample of the same impugned goods, **is having more weightage than the General report of the manufacturer. Considering this fact, no force is found in the above charges.**

(ii) As per the Official website of **M/s. Dermitzakis Bros SA, Greece**, one of the Overseas suppliers of the Importer, their products are classified as 'White Marble' and 'Coloured Marble'. Certificate dated 27.07.2017 was issued by this Overseas supplier M/s. Dermitzakis Bros SA, Greece for supply of goods under Commercial Invoice No. 91 dated 21.07.2017 in which the Mineralogical Composition, Chemical Analysis and Physical Mechanical Properties of the material was the same as it was shown on the website of M/s. Dermitzakis Bros SA for VOLAKAS marble, but the same were cleared by M/s. NITCO under **Bill of Entry No.3103648 dated 04.09.2017** by declaring description of goods as DOLOMITE BLOCK (WHITE COLOUR) under Customs Tariff Heading No.25181000.

However, the Petrological Test Report dated 13.11.2017 in respect of the sample drawn from the goods of the said Bill of Entry were identified as 'Dolomite' by the Geological Survey of India, Nagpur, which is discussed at paras supra. Test Report issued by a Government

Department in respect of a sample drawn from a particular import consignment of the Importer, which is a part and parcel of the Show Cause Notice is more authentic than website literature of another Company. Hon'ble Tribunal, Ahmedabad in the case of India Medtronics Pvt Ltd Vs. Commissioner of Customs, Ahmedabad, reported in 2007 (214) E.L.T. 373 (Tri-Ahm.), held that information obtained from internet website is unreliable/unauthentic, and it is more so if contrary expert opinion is on record. In the present case, the expert opinion viz. Test Report of Geological Survey of India, Nagpur, is on record and therefore cannot be rejected.

(iii) During the course of statement recorded of Shri Ujwal Phadtare, Sr. Manager(Procurement) of M/s. NITCO Ltd. on 16.02.2021 and 04.03.2022, he was shown printouts of contents of one website https://stonegroup.gr/ of M/s. Marmor SG & SA Marble and Granite, wherein "Stone contact" clearly mentioned that Volakas Classic was a kind of white marble quarried in Greece. On being asked, he stated that they imported the goods by declaring as Dolomite Blocks vide **Bill of Entry No. 3103627 dated 04.09.2017**.

However, the Petrological Test Report dated 13.11.2017 in respect of the sample drawn from the goods of the said Bill of Entry were specifically identified as 'Dolomite' by the Geological Survey of India, Nagpur, which are discussed at paras supra. As stated supra, information obtained from internet website is unreliable/unauthentic, and it is more so if contrary expert opinion is on record. Hence, said Test Report of Geological Survey of India would prevail over the said website information.

(iv) Email correspondences held with Shri Ujwal Phadtare, Senior Manager (Procurement), M/s. NITCO and Ms. Erifyli Angelopoulou of M/s. Dermizakis, Greece wherein it appeared that Shri Ujwal Phadtare has raised two queries with regard to correct HSN Code of Dolomite Block, whether 25181000- Dolomite not calcined or sintered, OR 25182000- Dolomite not calcined or sintered to the said Overseas supplier to which Ms.Erifyli Angelopoulou of M/s. Dermizakis, Greece informed that 'Their Block' HSN Code was 2515110000; that the Overseas supplier clearly advised Shri Ujwal Phadtare to classify the imported goods in Customs Tariff Heading No.2515 in the said mail but Shri Ujwal Phadtare retorted that as per their Customs Tariff Dolomite Blocks were classified under 25181000 or 25182000 and marble is classifiable under CTH 2515110000.

However, on going through the email correspondence, the scanned copy of which is contained in the Show Cause Notice itself, it does not appear that Shri Phadtare had asked the Overseas supplier to mention the imported goods as 'Dolomite Block' instead of 'Marble Blocks' in their invoice and mention the Customs Tariff Heading as "2518" instead of "2515".

(v) Shri Ujwal Phadtare, Senior Manager(Procurement) of M/s. NITCO Ltd. has admitted in his statements dated 22.09.2020, 16.02.2021 and 04.03.2022 that due to higher Duty structure they had insisted their suppliers to mention the product name as 'Dolomite Block' and CTH/HSN Code as 2518 even though the suppliers were supplying the product with name 'Rough Marble Block' under HSN code 2515. He has also admitted that they had committed a mistake and not paid the appropriate Duty applicable on products 'Rough Marble Block' required to be classifiable under CTH 2525 and that by mis-declaring 'Rough Marble Block(Dolomite)' as 'Dolomite Block' and by misclassifying the same under CTH 2518 instead of CTH 2515 they had evaded Customs Duty.

It is pertinent to mention that contrary to the aforesaid statements, the Test Reports of samples drawn from the cargo imported under eight Bills of Entry covered in the subject Show Cause Notices which suggested or identified the samples as 'Dolomite', were issued long back before the recording of the said statements under Section 108 of the Customs Act, 1962, i.e. all of these Reports were issued about one year before the recording of the said statements or even prior to one year of the recording of the said statements. Hence, the admission made by Shri Ujwal Phadtare in the above statements appears to be contradictory to the facts on record. The said Test Reports which are issued by the Government Laboratories working under the Ministry of Finance and Ministry of Mines are of direct and irrefutable evidentiary value for the captioned case than the oral evidence. Further, in the case where the contents of a statement are found contradictory to that of a valid documentary evidence, no evidentiary value can be provided to such statements. It is settled law that documentary evidence will prevail over oral evidence. Thus, the statement dated 22.09.2020, 16.02.2021 and 04.03.2022 of Shri Ujwal Phadtare has no evidentiary value in the present cases.

34. Besides the above, reliance has been also placed on (a) Purchase Order No. 4000003313 dated 17.06.2019, placed by M/s. Godrej Green Homes Ltd., one of the buyers for purchase of Marble Slabs to M/s. NITCO from which it appeared that M/s. Godrej Green Homes Ltd. has placed order for purchase of Volakas Marble Slabs.(b) Data available on the websites of their Overseas suppliers who supplied the goods to M/s. NITCO, from which it appeared that the goods supplied by Overseas suppliers was Rough Marble Block but same was cleared by M/s. NITCO by declaring description of goods as "Rough Dolomite Block" under Customs Tariff Heading No.25181000 to evade payment of appropriate Duty.

In this matter it is seen that nothing is mentioned in the Show Cause Notices to show that the goods supplied by the Importer to M/s. Godrej Green Homes Ltd against the Purchase Order No. 4000003313 dated 17.06.2019 were from the goods imported under the nine Bills of Entry involved in the present cases. It is seen from the scanned copy of said Purchase Order, which is affixed on the Show Cause Notice dated 08.08.2022 itself that the Purchase Order was issued by M/s. NITCO Limited, Survey No. 176/1/3/1/ , 176/1/3/1/2, 179/1/9/2, Village Silli, Silvassa. It is a fact that M/s. NITCO Limited is having a manufacturing plant at this address and this is the place where they are engaged in the processing of Marble Blocks into Slabs and the major raw material viz. Marble Blocks are procured from local market as well as imported from foreign countries. This fact is clearly mentioned in the Show Cause Notices. In such a situation, origin of the goods supplied by the Importer to the purchaser should have been mentioned. Considering these facts, this point does not have any relevancy.

4.2 From the above detailed finding which is based on test reports of the department's own Central Excise and Customs Laboratory, Vadodara as well as independent Central Government Organization namely Geological Survey of India the Adjudicating Authority has decided that in respect of the goods imported by the assessee against 8 bills of entry out of 9 bills of entry is Rough Dolomite Blocks classifiable under 25181000.

Revenue in the grounds of appeal heavily relied upon the email correspondences with the supplier which was contended by the Revenue that the assessee has instructed the supplier to change the description of the goods from Marble to Dolomite which shows that the goods is marble and not dolomite. In this regard, we find that consignments were cleared after conducting the chemical test by the laboratory. Moreover, from the email correspondences it does not suggest that the assessee has any mala fide intention or it has not been established that the assessee has instructed to mis-declare the goods in the supplier invoice for the reason that when in the test report it has come out that the goods are dolomite even the instruction of the assessee is absolutely correct that the correct description of the goods is dolomite and not marble. We agree with the findings of the Learned Commissioner that when the goods have been tested, the classification of goods is clearly based on the test reports and not on the basis of any oral or any other documents, therefore, even the website which was relied upon for classifying the goods as dolomite is of no help to the department. In the grounds of appeal there is no rebuttal on test reports of Central Excise and Customs Laboratory, Vadodara and also of Geological Survey of India.

4.3 If at all had the department was not agreeing with such test reports a re-test could have been conducted but no re-test was done. Therefore, the test reports relied upon by the Adjudicating Authority are conclusive and finding. Therefore, we do not find any substance in the revenue's appeal to counter the finding of the Adjudicating Authority. Therefore, as regard the dropping of demand in both the show cause notices based on test reports and other findings, we do not find any infirmity in dropping of demand.

4.4 As regard the assessee's appeal whereby it was challenged the confirmation of demand in respect of Bill of Entry No. 3269532 dated 16.09.2017, the adjudicating authority has given the following finding:-

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"35 *I further find that no Test Report is on record in respect of the sample drawn from the consignment imported by the Importer through Adani Hazira Port under Bill of Entry No. 3269532 dated 16.09.2017. Importer have also not come up with Test Report of any Government Laboratory to support their arguinent that the product imported under this Bill of Entry was 'Dolomite' only. In the case of the Eight Bills of Entry, Test Reports of various Government Laboratories viz. Dy C.C Laboratory, JNCH, Nhava Sheva, CRCL, Vadodara and Geological Survey of India, Nagpur are on record and these Technical/Expert Reports overrule the contentions raised in the Show Cause Notices, as discussed at para supra. In absence of any Test result issued by a Government Laboratory with regard to the samples of the goods imported vide Bill of Entry No. 3269532 dated 16.09.2017, I have no option other than to agree with the proposal of the Show Cause Notice dated 08.08.2022 in respect of the goods imported vide the said Bill of Entry.*

35.1 *In view of the discussions in paras supra and the evidences on record, I am left with no option but to conclude that the goods imported by the Importer M/s. NITCO ltd. vide Bills of Entry covered in the two Show Cause Netices, except the Bill of Entry No. 3269532 dated 16.09.2017, are nothing but 'Dolomite Blocks' classifiable under Customs Tariff Heading No.25181000 and liable to applicable Customs Duty as per the said Customs Tariff Heading.*

35.2 *In view of my above findings, out of the demand raised vide show Cause Notice F.No.VIII/10-28/Commr./O&A/2021-22 dated 08.08.2022 for Customs Duty of* ***Rs. 1,29,15,992/- involved in the goods imported under five Bills of Entry, demand for Rs.86,72,420/-(Eighty Six Lakhs Seventy Two Thousand Four Hundred and Twenty only)*** *involved in the four Bills of Entry (appearing at Sr.Nos. 1 to 3 and 5 of Annexure-A to the Show Cause Notice) is required be dropped and demand of differential Customs Duty of Rs. 42,43,572/- involved in the Bill of Entry No.3269532 dated 16.09.2017 (appearing at Sr.No. 4 of Annexure-A to the Show Cause Notice) is required to be confirmed. Further, demand raised* *vide Show Cause Notice No.103/2022- 23/Pr.Commr./Gr.1% IA/CAC/JNCH dated 26.04.2022 issued by the Pr. Commissioner of Customs, Gr.I/IA, JNCH, Nhava Sheva-1 from F.No.S/26- Misc-2363/2021-22 Gr.I/IA.JNCH & DRI/AZU/CI/ENQ-48/INT-11/2020 for differential Customs Duty amounting to* ***Rs. 1,16,84,333/- (One Crore Sixteen Lakhs Eighty Four Thousand Three Hundred and Thirty Three only)*** *involved in the four Bills of Entry are required to be dropped.* ***M/s. International Cargo Corporation*** *is the Customs Broker who has filed the Bills of Entry on behalf of M/s. NITCO NIT ltd. for imports under the four Bills of Entry in respect of the goods imported through Nhava Sheva Sea Port (covered under the Show Cause Notice No.103/2022-23/Pr.Commr./Gr.I& IA/CAC/JNCH dated 26.04.2022 issued by the Pr. Commissioner of Customs, Gr.1/IA, JNCH, Nhava Sheva-I/IA as well as under the Bill of Entry No.5616596 dated 09.11.2019 (shown at Sr.No.5 of Annexure-A to the Show Cause Notice F.No.VIII/10-28/Commr./O&A/2021-22 dated 08.08.2022 issued by the Commissioner of Customs, Ahmedabad). Since the Duty demand in respect of the said five Bills of Entry is required to be dropped, penal proposals against the aforementioned Customs Broker as well as* ***Shri Rupesh Jivanbhai Katariya, Authorised Signatory M/s. International Cargo Corporation*** *are also required to be vacated.*

36*. In view of the above detailed discussions on the matter of classification of the goods imported under the Nine Bills of Entry at paras supra, I find that the consequential questions pertaining to confiscation of goods and penalty on Importer and Customs Broker, as proposed in the Show Cause Notices, are to be answered in the matter of the importation done under only one Bill of Er ty i.e. No. 3269532 dated 16.09.2017."*

4.5 From the above finding, it can be seen that the demand in respect of the bill of entry dated 16.09.2017 which is subject matter of the Assessee's appeal was confirmed only on the ground that the assessee could not produce the test report. From the facts it is clear that for the goods of the bill of entry no. 3269532 dated 16.09.2017 also sample was drawn and a test was conducted but since the test report was not available with the assessee, they could not produce the same. It is the case of the revenue that the goods declared by the assessee is not correct. Therefore, the onus is on the department to bring on record tthetest report or other evidence, if available in the matter of classification. In this case only because the test report is not available with the assessee, burden to prove the correct classification cannot be shifted from department to assessee . It is settled law that burden to prove the classification as claimed by the revenue is on the revenue and not on the assessee. Moreover, in the facts of the present case when out of 9 consignment in respect of 8 consignments when the test reports are in favour of the assessee, it cannot be presumed that in respect of one bill of entry dated 16.09.2017, the goods is different from the goods of other 8 bills of entry. It was found that the common description was declared in respect of all 9 bills of entry and in respect of 8 bills of entry where the test reports are available, it has been established that the goods are dolomite blocks and not marble blocks. In this fact and circumstances the adjudicating authority is not correct in classifying the goods as claimed by the revenue under 25151210. As regard the principle of burden to prove in the matter of classification to be first discharged by the department, we rely upon the following judgments:-

a) In the case of Navin Chimanlal Sutaria Vs. Union of India and Others- 1981 (8) ELT 913 the Hon'ble High Court of Bombay has passed the following order:-

> ***7.*** *This discussion is intended to demonstrate the futility of Mr. Advani's contention that the issue of the goods falling within Item 28 has been raised for the first time in the present petition. It is nothing of the kind. On the contrary, the approach of all the authorities was that as the goods did not attract the exemption notification, they automatically fell within Item 22(4)(a). This approach has nothing to commend itself except its untenability. Even if the goods did not attract the benefit of the exemption notification, Item 22(4)(a) could not be automatically attracted, more so in the teeth of the petitioner's contentions that the goods fell within Item 28, in support whereof he produced an expert opinion and cited standard technical books. All this was totally ignored. If it was the department's stand that the goods fell within Item 22(4)(a), which in fact was the stand of the department as is manifest from the notice of demand dated 22nd*

December, 1973, the burden of proof was on the department, as observed by the Supreme Court in Deputy Commissioner of Agricultural Income-tax and Sales Tax, Quilon v. Travancore & Tea Co., (1967) 20 Sales Tax Cases 529, at page 527-

"......In all cases of taxation the burden of providing necessary ingredient laid down by law to justify taxation is upon the taxing authority.......................".

These observations were also followed by a Division Bench of this Court in Amar Dye Chem. Ltd. v. Union of India (1980) Cen-Cus 242D. This elementary and salutary rule of law has, in this case, been entirely ignored by the department.

b) In the case of Heveacrumb Rubber (P) Ltd. Vs. Superintendent of Central Excise- 1983 (14) ELT 1685 the Hon'ble Kerala High Court has given the following view:-

***"3.** It is interesting to note, that in the counter-affidavit filed by the respondents in paragraph 2, it is asserted that the products of the petitioner's factory are liable for Central Excise duty under Tariff Item 68. But in paragraph 3, it is stated that there is no adverse order passed by the respondents against the petitioner and in paragraph 7 it is repeated that Exts. P3 and P5 are still pending for consideration. This has to be taken along with the assertion made in Ext. P2 by the 1st respondent wherein it is stated in paragraph 2 that block or crump rubber produced in the petitioner's factory is liable for Central Excise duty under Tariff Item 68 of the Central Excise Tariff. The petitioner has filed detailed objections, evidenced by Exts. P3 and P5. In Ext. P3 the petitioner has also relied upon the decision of the Appellate Collector who has gone through the matter very exhaustively. It is also worthy to note that a Division Bench of this Court in O.P. No. 1770 of 1975 and connected cases directed that there will be a full-fledged enquiry in the matter after giving the petitioners a full and fair opportunity to substantiate their contentions. Notwithstanding all these, it is surprising that the respondents even without a proper investigation and adjudication as to whether the block or crump rubber produced in the petitioner's factory is liable for Central Excise duty under Tariff Item No. 68 of the Central Excise tariff have been repeatedly asking the petitioner to furnish certain details in connection therewith. If the particular item produced in the petitioner's factory is not liable for excise duty as contended by the petitioner, there is no reason why the respondent should insist the petitioner for furnishing the details. If, on the other hand, the respondents hold the view that notwithstanding the objections raised in Exts. P3 and P5, as also the decision of the Appellate Collector referred to in Ext. P3, the petitioner is liable for excise duty, the petitioner should be told so definitely with reasons therefor. A speaking order is a pre-requisite before saddling the petitioner with the liability to pay Excise Duty. The respondents have merely asserted that the block or crump rubber produced in the petitioner's factory is liable for excise duty under Tariff Item No. 68 of the Central Excise Tariff. This is not sufficient. It is for the Revenue to allege and substantiate, at least prima facie, as to why a particular item is taxable under a particular Tariff entry. The initial burden is on the Revenue to substantiate the assertion. I have come across a few cases wherein only assertions are made that a particular item will fall under a particular entry in the Tariff, without referring to any material or basis on which it is so surmised. The assessee is entitled to know and should be informed, the basis on which the Revenue proceeds to assess it, so that the opportunity* *given to the assessee will be real and effective and not illusory and a make believe. Without such a real opportunity being afforded, if on mere assertions, further documents and papers are obtained and assessments are made and liability saddled on the assessee making it a "fait accompli", it will be hard, unjust and improper. Steps so taken will be violative of the principles of natural justice. The assessing authority will be acting arbitrarily and not fairly. That the statutory authorities invested with power, which when exercised will effect persons with civil consequences, should act fairly, reasonably and in just manner, has been laid down repeatedly by courts. But it is regretable that such principles are given a go-bye in many cases and parties are driven to resort to this court under Article 226 of the Constitution. Notwithstanding the very detailed objections the respondents have not cared to dispose of Exts. P3 and P5, but continued to insist that the petitioner should furnish certain details asked for. The procedure adopted is unwarranted."*

c) In the case of Tata Exports Ltd. Vs. Union of India and Ors.-1985 (22) ELT 732, the Hon'ble High Court of Madhya Pradesh have given the following finding:-

"4. *The Supreme Court in Union of India v. Delhi Cloth Mills - 1977 E.L.T (J 199) (S.C.) = AIR 1963 S.C. 791 has held that manufacture implies a change, but every change is not manufacture and yet every change of an article is the result of treatment, labour and manipulation. But something more is necessary and there must be transformation; a new and different article must emerge having a distinctive name, character or use. Relying on this decision, the Supreme Court in South Behar Sugar Mills v. Tata Chemicals - 1978 E.L.T. (J 336) = AIR 1968 S.C. 922 further held that there must be such a transformation that a new and different article must emerge having a distinctive name, character or use. In Sandoz India Ltd. v. Union of India - 1980 E.L.T. 696 a Division Bench of the Bombay High Court held that the processing of the physical form from a solid state to a liquid state by the addition of dispersing agents and water did not result in manufacture as there was no change in the chemical composition of the pigment. In Shakti Insulated Wires v. Union of India - 1982 E.L.T 10, the Bombay High Court further held that it is obvious that merely because some process is carried on any article it would not necessarily amount to a manufacture of a fresh article amounting to 'manufacture' under Section 2(f) of the Act. In Coromandel Proorite v. Government of India - 1985 (20) E.L.T. 257 a Division Bench of the Madras High Court held that if as a result of the process, raw-materials have been transformed into a distinct and commercially new product, then alone the process can be taken to be a manufacture. In this case since the end product brought about by the process of mixture or dilution continues to have the same chemical properties as resin, there cannot be said to be any manufacturing process. Recently, the Supreme Court in Empire Industries Ltd. v. Union of India - 1985 (20) E.L.T. 179 reiterated that any process or processes creating a new commodity commercially known as a distinct and separate commodity having its own character, use and name would be 'manufacture'. It is settled law that in a case of taxation the burden of proving that the necessary ingredients prescribed by the taxing provision are satisfied is entirely upon the taxing authority [Sandoz India Ltd. v. Union of India (Supra)]. It is, therefore, primarily for the taxing authority to satisfy the Court that formulation of pigment slurry is entirely distinct commodity* *having entirely distinct name, character and use as compared with the pigment itself."*

d) In the case of Collector of Central Excise Vs. Fertilizers and Chemicals, Travancore Ltd-1986 (24) ELT 388 the CEGAT special Bench New Delhi has given the following view:-

> ***"7.*** *The Department has referred to the Fertilizer Control Order as well as the Glossary of Terms used in Fertilizer Trade and Industry (IS 1304-1980). But this has been an exercise in futility as reference to both these authorities only establishes that ammonium chloride of high technical purity as well as lower purity is fully covered in the broad specifications applicable to fertilizers. In this situation, the burden of proof that the product in question, is not a fertilizer is on the Department and they have failed to discharge this burden. In view of the definitions contained in the Fertilizer Control Order, Glossary of Terms used in the Fertilizer Trade and Industry as well as the specific wording of Notification No. 164/69, there is hardly any justification for going into the end use of the product in question. We cannot also lightly brush aside the argument that if at all there was any doubt as regards the alternative classification, then as per accepted principles, a specific tariff entry is to be preferred to the general entry and also the view favourable to the assessee will have to be accepted. We are also quite clear that the allegation of suppression of facts that is now being made in the course of arguments, is wholly untenable. This allegation is not contained in the show cause notices and in view of regular submission of classification lists, we find that there is no substance in the allegation that there has been suppression of facts by the assessee. In this view of the matter, we agree that the demands of duty would also be essentially barred by limitation. However, this issue is largely academic, in view of the fact that the goods in question are being held to be fully covered by the exemption Notification No. 164/69."*

In view of the above settled legal position, coupled with facts and circumstances of the present case we agree with the assessee that in respect of the goods covered under bill of entry No. 3269532 dated 16.09.2017 is correctly classifiable as dolomite blocks under Custom Tariff Heading No. 25181000.

4.5 As per our above discussion and finding we are of the view that the demand of custom duty dropped by the Adjudicating Authority is correct and legal. Hence, the same is upheld. The custom duty demand in respect of bill of entry No. 3269532 dated 16.09.2017 is not legal and correct, hence, the same is set aside.

4.6 All other issues such as confiscation, redemption fine their against, interest and penalties which are consequential to the demand of custom duty in both appeals do not sustain. The penalties on other parties shall also not survive. As a result, the Revenue's appeals are dismissed and Assessee's appeals and other connected appeals of co-appellants are allowed.

(Pronounced in the open court on 11.09.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(C L MAHAR)
MEMBER (TECHNICAL)

Raksha