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

REGIONAL BENCH-COURT NO. 3

Custom Appeal No. 10261 of 2024 - DB

(Arising out of Order in Original MUN-CUSTM-000-COM-026-23-24 dated 29/02/2024 passed by the Principal Commissioner of Customs-Mundra)

STONEX INDIA PVT LTD ....**Appellant**
Through its Auth. Signatory,
Pradeep Singh, WZ 29 Mansarovar,
Garden Ring Road,
New Delhi-110015

VERSUS

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

WITH

Custom Appeal No. 10262 of 2024 - DB

(Arising out of Order in Original MUN-CUSTM-000-COM-026-23-24 dated 29/02/2024 passed by the Principal Commissioner of Customs-Mundra)

SAJITH KUMAR ....**Appellant**
Import Executive and Authorized Signatory of MS
Stonex India Pvt LTd
WZ 29 Mansarovar,
Garden Ring Road,
New Delhi-110015

VERSUS

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

APPEARANCE:
Shri Manish Jain, Advocate, appeared for the Appellant
Shri Girish Nair, Assistant Commissioner (AR) appeared for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. RAJU

Final Order No. 12527-12528/2024

DATE OF HEARING: 23.10.2024
DATE OF DECISION: 25.10.2024

RAMESH NAIR

Present appeals are directed against Order-in-Original No. MUN-CUSTM-000-COM-026-23-24 dated 29.02.2024 passed by Ld. Commissioner of Customs, Mundra.

2. Brief facts are that the Appellant is engaged in the business of importing, processing Dolomite Blocks into Dolomite Slabs and selling the same. The subject goods are sold domestically either without processing and/or after carrying out certain processes thereon. Present dispute is with regards to classification of imported dolomite block and dolomite slabs. At the time of imports appellant classified "Rough Dolomite Block/ Rough Dolomite Block White" under CTH 25181000 and "Dolomite Slabs/ Dolomite Commercial Slabs" under CTH 68022900. DRI initiated investigation in respect of imports of VOLAKAS and THASSOS i.e. dolomite blocks and slabs from various foreign suppliers such as Marble Sachanas S.A. and Costamar G & Co., Greece across India. After investigation Show Cause Notice dated 21.04.2024 was issued to appellant. Similar shows cause notices were also issued to other importers of dolomite blocks. It is case of department that appellant have mis-classified and mis-declared the imported goods as dolomite blocks and slabs. According to department, imported goods are rough marble blocks and marble slabs. It is alleged by department that "Rough Marble Blocks" are correctly classifiable under CTH 2515 12 10 and "Polished Marble Slabs" are classifiable under CTH 68022190. During course of investigation some consignments of dolomite blocks and dolomite slabs imported by appellant vide certain bills of entry, the samples thereofwere sent for testing by DRI and based on said test reports SCN was issued for reclassification of said live consignments and also for past imports for which goods were not tested. The case of department is based on Test report issued by Geological Survey, Jaipur which reported that imported goods are marble.SCN also alleged that vide various emails appellant instructed foreign suppliers to declare dolomite in the documents. Department reclassified goods also after relying upon website of foreign suppliers which shows that they are engaged in supply of marbles. SCN was issued for demanding differential customs duty amounting to Rs. 27,21,617/- demand in terms of Annexure-A1 and A2 to SCN for goods which were seized at mundra port. SCN also demanded customs duty in terms of Annexure B and C to SCN for goods imported during past period from 14.01.2019 to 28.04.2020 by invoking extended period of limitation under section 28(4) of customs Act. SCN also proposed fine and penalty on appellant. Ld. Commissioner of customs vide impugned Order dated 29.02.2024 has confirmed the differential duty demand redemption fine, and penalty. While demanding duty, Ld. Adjudicating authority has also confirmed demand for after invoking extended period of limitation under Section 28(4) of customs Act. Additionally, the Impugned Order also confirmed the penalty under Section

112(a)(ii) on Mr.Sajith Kumar, Import Executive of the Appellant Company.Aggrieved by the impugned order-in-original present Appeals have been filed.

3. Shri Manish Jain, Learned Counsel appearing on behalf of the appellant at the outset submits that they are not challenging demand of customs for seized consignments i.eRs. 27,21,617/- for Annexure A1 and A2 to SCN as they have already recovered customs duty from customers. He submits that they are challenging only redemption fine and penalty and also customs duty demand raised for extended period from period 14.01.2019 to 28.04.2020 (Annexure-B and C to SCN) as show cause notice is issued only on 21.04.2023. He submits that imported goods are nothing but dolomite blocks and dolomite slabs.

3.1 He submits that Imported goods are dolomite as same is evident from the analysis reports issued by foreign suppliers.Mineralogical analysis report for consignments provides that imported goods contains 97% dolomite and 3% calcite. Further reports issued by foreign supplier i.e. Marble Sachanas S A provides composition of goods as 99% dolomite and 1% calcite. It is evident that imported goods are dolomite. The analysis reports are on record. Neither the SCN nor the impugned order has given any reference to the said analysis reports issued by foreign suppliers which clearly records content of dolomite in the imported goods as 92 % to 99%. On the other hand department has relied upon inconclusive test reports of geological survey of India, Jaipur which does not even provides for content of dolomite in the report.

3.2 He further submits that as part of common investigation, identical goods from very same foreign supplier (Marble Sachanas S A) to other importers in India were tested by other customs laboratories of India including Geological survey of India, Nagpur and concluded that imported goods are dolomite, further, after relying upon said test reports, it was held to be dolomite by Hon’ble Cestat in case of Nitco limited Vs Commissioner of customs, Ahmedabad in appeal No. 10277 of 2023 wherein Hon’ble Cestat, Ahmedabad in identical case has decided the classification of dolomite blocks from the same foreign supplier under CTH 2518. The said decision covers the very same issue in connected investigation wherein major foreign suppliers and the imported goods are common.

3.3 He further submits that Test reports and query response relied upon by department are inconclusive, contradictory and incomplete as impugned order has heavily relied upon test reports dated 21.01.2021 and query response dated 17.02.2021 issued by Geological survey of India, Jaipur. The said test reports are in respect of Bills of entry mentioned in Annexure A1 and A2 to SCN. Even though the demand of duty under Annexure A1 and A2 to SCN is not being challenged (without admitting the classification of goods), it is submitted that the test report have categorically noted that rock is essentially composed on calcite/dolomite. After having noted the same, chemical examiner ought to have concluded that imported rock is dolomite. The test report has not given any finding on content of dolomite in the imported goods which is the only vital factor to be determined the imported goods. The test report has not given any finding on content of $CaCO_3$, $MgCO_3$ also which are very important minerals to determine the imported goods as dolomite or not. Further chemical test report has clearly noted that CaO is ranging from 32 % to 36% and MgO is ranging from 17% to 19 % (approx). Thus, in terms of Mineral yearbook 2017 and 2020 the above range is sufficient to classify the imported goods as dolomite.

3.4 He further submits that IS 10346 (2004) Flux grade Dolomite for use in steel plants provides that (CaO + MgO) content can be with in range of 46 to 52, CaO content as 30 and MgO content as 19 or 20 can be considered as Dolomite. Similarly, test report at page 52 and 61of decision in case of Nitco Ltd.wherein based on similar parameters Geological survey of India, Nagpur has concluded that goods are Dolomite.

3.5 He submits that the test report issued by Geological survey of India, Jaipur does not test physical properties, petrographic study, staining test or acid test, it does not clearly provide mineral composition of goods, hardness of goods. Further it does not even test as per IS 1760 (1991) standards of testing of dolomite as it does not provide for loss of ignition.

3.6 He submits that the test reports relied on by the department are inconclusive and, therefore cannot be relied upon to reject the classification declared by the Appellant. Reliance in this regard is placed on the decision of -

- ***Golden Enterprise Vs. Commr. of C. Ex. & S.T., 2016 (341) E.L.T. 293 (Tri. – Chan.)***
- ***Commr. ofCus. Vs. Magus Metals Pvt. Ltd., 2017 (355) E.L.T. 323 (S.C.)***

3.7 He further submits that the onus to prove that the goods were classifiable under CTH 251512110 (blocks)/CTH 68022190 (for slabs) was upon the department. Unless the said onus is discharged beyond reasonable doubt, the duty cannot be demanded from the Appellant. Thus, in the present case, department has not discharged onus.

3.8 He further submits that the department misinterpreted emails from Mr.Sajith Kumar, 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 of 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 from the said email is uncalled for and is not sustainable.

3.9 He further submits 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 MgOamdCaO in the chemical composition, was ignored by the department, leading to an incorrect classification.

3.10 He further submits that the department's reliance on general descriptions from the supplier's website, while ignoring detailed mineralogical composition data, is legally unsound. Further, the website 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.In any case, foreign supplier website costamar provides for minieralogical composition of goods as Dolomite 92 % to 95%, MgO 19 % and CaO 32%. Thus, it is evident that foreign supplier’s website also shows goods as dolomite only.

3.11 He further submits that 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.Sajith Kumar’s statements, arguing that they were not obtained in compliance with Section 138B, making them inadmissible as evidence. In any case, statement is contrary of records. Further, classification cannot be determined based on statement of person. It has to be decided based on composition of goods.

3.12 He submits that without prejudice to above, demand of customs duty in respect of Annexure B and C to SCN as provided in para 26.2 of impugned order is barred by limitation as there is no suppression by appellant. Demand for period of FY 2018-2019, FY 2019-2020 as mentioned in Annexure B and Annexure-C to SCN is barred by limitation as SCN is issued on 21.04.2023 thus any demand of customs duty in respect of imports prior to 21.04.2021 is barred by limitation under section 28(4) of Customs Act. There is no suppression by appellant in the present case. Analysis reports issued by foreign supplier were already on record which clearly provides chemical and mineral analysis of imported goods i.e. dolomite is ranging from 92% to 99%. Thus, there is no dispute that predominantly, imported goods are nothing but dolomite. There is question of suppression or mis-declaration in the present case. Thus, extended period under section 28(4) of Customs Act is not invokable in the present case. Further, as issue pertains to classification of goods, which is issue of interpretation of law. Thus, extended period cannot be invoked on issue of classification of goods.

3.13 He further submits that without prejudice to above submissions, present test reports taken for seized goods cannot be applied to post imports for which no samples were drawn or on testing was conducted. Further, foreign suppliers analysis reports clearly provide dolomite as 92% to 99%. 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. Further, foreign suppliers analysis reports clearly provides dolomite as 92% to 99%. Further, goods from very same foreign suppliers were tested and found as dolomite by other customs laboratories and Geological survey of India, Nagpur. He relies upon following decision :

- Shalimar Paints Ltd. v. Commissioner — 2001 (134) E.L.T. 285 (Tribunal) affirmed by Hon'ble Supreme court in case of [Commissioner v. Shalimar Paints Ltd. - 2002 (145) E.L.T. A242].
- Commissioner of customs (preventive) Vs Marks Marketing P Ltd. - 2017 (346) ELT 144 (Tri - Del)

3.14 He submits that the present case relates to the interpretation of the headings/subheadings of the Customs Tariff Act, 1975 and merely classifying a good in a particular head does not amount to fraud, collusion, or wilful misstatement. He relies on the following case laws:

- ***DaxenAgritech India Pvt. Ltd. vs. Principal Commissioner of Customs, New Delhi, 2023 (12) TMI-1080-CESTAT-DELHI***

- ***D & M Building Product Pvt Ltd Vs CC, 2019 (370) ELT 1183 (T)***
- ***Perfettivan Melle India Pvt Ltd Vs CCE, 2015 (330) ELT 684 (T)***
- ***Nizam Sugar Factory vs. Collector of Central Excise, A.P., 2006 (197) ELT (465) (S.C.)***

3.15 He further submits that a claim of the classification or claim of exemption notification cannot be treated as a mis-declaration. He relies on the following case laws:

- ***DensonsPultretaknik vs. CCE, 2003 (155) E.L.T. 211 (S.C.),***
- ***CC, Bangalore vs. A. Mahesh Raj., 2006 (195) ELT 261***
- ***M/s. Shah Foils Vs. Commr. of Customs, Mundra, 2024 (5) TMI 336 - CESTAT AHMEDABAD***

3.16 He submits that the subject goods are not liable for confiscation under Section 111(m) of the Customs Act, 1962, therefore redemption fine under Section 125 of the Customs Act, 1962, is not imposable. Further, no interest is impossible under Section 28AA as the demand for Custom Duty is not maintainable. He relies on the following case laws:

- ***Northern Plastic Ltd. vs. Collector Of Customs & Central Excise, 1998 (101) E.L.T. 549 (S.C.)***
- ***Shiv KripaIspatPvt. Ltd Vs CCE 2009 (235) ELT 623(Tri-LB.)***
- ***Asia Motor Works Vs CC 2020 (371) ELT 729(T)***
- ***Commissioner of Customs, Chennai vs. Jayathi Krishna and Co., 2000 (119) ELT 4 (S.C)***

3.17 He submits that the penalty is not imposable under Section 114A of the Customs Act, 1962 as the demand of duty is not sustainable. He relies on the following case laws:

- ***Vishal G. Trivedi v/s. CC, Ahmedabad, 2019 (367) ELT 660 (Tri. – Ahmd.)***
- ***Jai Research Foundation Vs CCE, 2019 (25) GSTL 473 (T)***
- ***BaharAgrochem& Feeds Pvt. Ltd Vs CCE, 2012 (277) E.L.T. 382 (T)***

3.18 He submits that since goods are also not liable to confiscation, thus penalty and redemption fine is not imposable in present case. On the basis of above submission, penalty on Mr.Sajith Kumar, import executive is also not imposable.

4 Shri Girish Nair, learned Authorized Representative appearing on behalf of the revenue reiterates the finding of the impugned order and submitted that appellant have mis-classified the goods. He also relied upon website wherein thassos is mentioned as marble. He also relied upon email exchanges between supplier and appellant to allege that appellant have mis-declared the imported goods as dolomite blocks /slabs.

5. We have carefully gone through the submissions made by both sides and perused the case records. The present dispute relates to correct classification of imported dolomite blocks and slabs. Appellant are not challenging demand of customs duty for within 2 years (Annexure A1 and A2 to SCN). They are only challenging demand of customs duty raised for extended period (Annexure B and C to SCN) and penalty on appellant (Rs. 4,39,22,685/-), and Rs. 5,00,000/- on Shree Sajhit Kumar and redemption fine amounting to Rs. 7,00,000/-.

5.1 We find that case can be decided without going into the issue of correct classification of imported goods as demand within limitation period is not challenged. It is evident that test reportdtaed 21.01.2021 and query response dated 17.02.2021 issued by Geological survey of India, Jaipur does not test dolomite content of the imported goods. It also does not test CaCO3, MgCO3 also which are very important minerals to determine the imported goods as dolomite or not. Further chemical test report has clearly noted that CaO is ranging from 32 % to 36% and MgO is ranging from 17% to 19 % (approx) which is in terms of Mineral yearbook 2017 and 2020 is falling under range of dolomite. Refence can also be made to IS 10346 (2004) Flux grade Dolomite which provides (CaO + MgO) content can be with in range of 46 to 52, CaO content as 30 and MgO content as 19 or 20 is considered as Dolomite. Further various test reports shown to us as extracted from decision in case of Nitco limited Vs Commissioner of customs, Ahmedabad in appeal No. 10277 of 2023 wherein in respect of same investigation, even department laboratory and Geological survey of India, Nagpur based on similar parameters has concluded that goods are Dolomite.

5.2 As regard to reliance on foreign suppliers website we find that the department cannot rely upon general descriptions from the supplier's website, while ignoring detailed mineralogical composition data. 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. In any case, foreign supplier website costamar provides for mineralogical composition of goods as Dolomite 92 % to 95%, MgO 19 % and CaO 32% which is reproduced below:

Characteristics

PHYSICAL & MECHANICAL PROPERTIES		MINERALOGICAL COMPOSITION (% wt)		CHEMICAL ANALYSIS (% wt)	
Apparent Density (kg/m^3)	2810	Calcite	8,0	CaO	32,00
Open Porosity (% vol)	0,6	Dolomite	92,0	MgO	19,60
Water Absortion (% wt)	0,2	Quartz		SiO_2	0,20
Dynamic Modulus Of Elasticity (GPa)		Micas		FeO_3	<0,05
Compressive Strength (MPa)	137,7	Chlorite		Al_2O_3	<0,05
Flexual Strenght (MPa)	7,4	Feldspars		K^2O	<0,01
Compressive Strength After Frost Resistance Cycles (MPa)	138,3	Epidote		Na_2O	0,01
Abrasion Resistance (mm)	2,20	Chromite		MnO	<0,01
Impact Strength (Joule)	6	Fe Oxodes, ecc		LOI	46,90
		Clay Minerals			
		Serpentine			
		Pyroxenes			

DOLOMITIC MARBLE

Home About COSTAMAR Office & Factory Volakas Quarry Marble & More Granite & Other Stone Products Stock List & Special Offers Projects Contact

5.3 As regards to reliance of revenue on email correspondence, we find that the email correspondences do not suggest that the assessee has any mala fide intention. It has not been established that the assessee has instructed to mis-declare the goods in the supplier invoice. In fact based on composition of goods even the instruction of the assessee is absolutely correct that the correct description of the goods is dolomite and not marble.

5.4 We find that department has relied upon statement of Mr.Sajith Kumar to reclassify the goods. It is settled position of law that statement cannot be relied upon to determine classification of goods. In fact in this case, composition of goods shows it is dolomite and department has also not challenged composition of goods.

5.5 We find that there is no suppression by appellant in the present case. Analysis reports issued by foreign supplier are on record which clearly provides chemical and mineral analysis of imported goods i.e. dolomite is ranging from 92% to 99%. There is no dispute that predominantly, imported goods are nothing but dolomite. Some of illustrative analysis reports issued by foreign suppliers are as under:

(10)

Costa mar

MARBLE · GRANITE

DIMIOU G. & CO.
Above Industrial Area of Drama
66100 Drama Greece
VAT No: EL 999522853

312

386

MINERALOGICAL ANALYSIS

PHYSICAL & MECHANICAL PROPERTIES

We declare that the materials under our invoice No. 2088/02-07-2019 are DOLOMITE according to the below mineralogical analysis

DOLOMITE

PHYSICAL & MECHANICAL PROPERTIES

APPARENT SPECIFIC DENSITY, kg/m^3 (DIN 52102)	OPEN POROSITY COEFFICIENT, % vol (DIN 52102)	WATER ABSORPTION COEFFICIENT, % wt (DIN 52103)	DYNAMIC MODULUS OF ELASTICITY, GPa (DIN 1048 Teil 5)	COMPRESSIVE STRENGTH, MPa (DIN 52105)
2846	0,49	0,17	30	125

FLEXURAL STRENGTH, MPa (DIN 52112)	COMPRESSIVE STRENGTH AFTER FREEZE/THAW CYCLES, MPa (DIN 52104 & 52105)	ABRASION RESISTANCE, mm (DIN 52108)	IMPACT STRENGTH, cm (UNI-U 32.07.248.0)
14	66	3,51	55

MINERALOGICAL COMPOSITION, % wt

CALCITE	3,00	DOLOMITE	97,00	QUARTZ	
MICAS		CHLORITE		FELDSPAR	
EPIDOTE		CHROMITE		Fe OXIDES etc.	
CLAY MINERALS		SERPENTINE		PYROXENES	

CHEMICAL ANALYSIS, % wt

CaO	34	MgO	18,00	SiO_2	0,50
Fe_2O_3	0,07	Al_2O_3	0,12	K_2O	0,01
Na_2O	0,03	MnO	<0,01	LOI	45,80

MARBLE - GRANITE
DIMIOU G. & CO.
Above Industrial Area of Drama
66100 Drama Greece
VAT No. 999522853

MINERALOGICAL ANALYSIS

PHYSICAL & MECHANICAL PROPERTIES

We declare that the materials under our invoice No. 2254/11-08-2020 are DOLOMITE according to the below mineralogical analysis

DOLOMITE

PHYSICAL & MECHANICAL PROPERTIES

APPARENT SPECIFIC DENSITY, kg/m^3 (DIN 52102)	OPEN POROSITY COEFFICIENT, % vol (DIN 52102)	WATER ABSORPTION COEFFICIENT, % wt (DIN 52103)	DYNAMIC MODULUS OF ELASTICITY, GPa (DIN 1048 Teil 5)	COMPRESSIVE STRENGTH, MPa (DIN 52105)
2046	0,40	0,17	30	125
FLEXURAL STRENGTH, MPa (DIN 52112)	COMPRESSIVE STRENGTH AFTER FREEZE/THAW CYCLES, MPa (DIN 52104 & 52105)	ABRASION RESISTANCE, mm (DIN 52108)	IMPACT STRENGTH, cm (UNI-U 32.07.248.0)	
14	66	3,51	55	

MINERALOGICAL COMPOSITION, % wt

CALCITE	3,00	DOLOMITE	97,00	QUARTZ	
MICAS		CHLORITE		FELDSPAR	
EPIDOTE		CHROMITE		Fe OXIDES etc.	
CLAY MINERALS		SERPENTINE		PYROXENES	

CHEMICAL ANALYSIS, % wt

CaO	34	MgO	18,00	SiO_2	0,50
Fe_2O_3	0,07	Al_2O_3	0,12	K_2O	0,01

MINERALOGICAL ANALYSIS

PHYSICAL & MECHANICAL PROPERTIES

We declare that the materials under our invoice No. .... are DOLOMITE according to the below mineralogical analysis

DOLOMITE

PHYSICAL & MECHANICAL PROPERTIES				
APPARENT SPECIFIC DENSITY, kg/m³ (DIN 52102)	OPEN POROSITY COEFFICIENT, % vol (DIN 52102)	WATER ABSORPTION COEFFICIENT, % wt (DIN 52103)	DYNAMIC MODULUS OF ELASTICITY, GPa (DIN 1048 Teil 5)	COMPRESSIVE STRENGTH, MPa (DIN 52105)
2846	0,49	0,17	30	125
FLEXURAL STRENGTH, MPa (DIN 52112)	COMPRESSIVE STRENGTH AFTER FREEZE/THAW CYCLES, MPa (DIN 52104 & 52105)	ABRASION RESISTANCE, mm (DIN 52108)	IMPACT STRENGTH, cm (UNI-U 32.07.248.0)	
14	66	3,51	55	

MINERALOGICAL COMPOSITION, % wt					
CALCITE	3,00	DOLOMITE	97,00	QUARTZ	
MICAS		CHLORITE		FELDSPAR	
EPIDOTE		CHROMITE		Fe OXIDES etc.	
CLAY MINERALS		SERPENTINE		PYROXENES	

CHEMICAL ANALYSIS, % wt					
CaO	34	MgO	18,00	SiO_2	0,50
Fe_2O_3	0,07	Al_2O_3	0,12	IGO	0,01
Na_2O	0,03	MnO	<0,01	LOI	45,80

MARBLE SACHANAS

KUJ-70
17

We, Marble Sachanas S.A declare that the goods loaded under invoice no: 77 – dated 04/07/2019 have the below Properties.

Ιδιότητες / Properties

Όνομα κατά EN 12440: Θάσου Λευκό

ΦΥΣΙΚΟΜΗΧΑΝΙΚΕΣ ΙΔΙΟΤΗΤΕΣ	PHYSICAL MECHANICAL PROPERTIES	M.O / AV.*
Φαινόμενη πυκνότητα (EN 1936), kg/m³	Apparent density (EN 1936), kg/m³	2840
Ανοικτό πορώδες (EN 1936), % κ.ο.	Open porosity (EN 1936), % vol.	0,7
Υδατοαπορρόφηση σε ατμοσφαιρική πίεση (EN 13755), % κ.β.	Water absorption at atmospheric pressure (EN 13755), % wt.	0,2
Αντοχή σε μονοαξονική θλίψη (EN 1926), MPa	Uniaxial compressive strength (EN 1926), MPa	164
Αντοχή σε κάμψη υπό συγκεντρωμένο φορτίο EN 12372), MPa	Flexural strength under concentrated load (EN 12372), MPa	18,5
Φορτίο θραύσης στην οπή αγκύρωσης (EN 13364), N	Breaking load at dowel hole (EN 13364), N	2250
Αντίσταση σε τριβή (EN 14157 - B), mm³	Abrasion resistance (EN 14157 - B), mm³	24313
Ενέργεια θραύσης (EN 14158), Joule	Rupture energy (EN 14158), Joule	4
Αντίσταση σε παγετό (EN 12371) : Αντοχή σε κάμψη υπό συγκεντρωμένο φορτίο (EN 12372) μετά από 48 κύκλους αντίστασης σε παγετό, MPa	Frost resistance (EN 12371): Flexural strength under concentrated load (EN 12372) after 48 frost resistance cycles, MPa	15,7

* Οι τιμές είναι ενδεικτικές του τύπου πετρώματος στην περιοχή και δεν σχετίζονται με συγκεκριμένα λατομεία.
* The values are indicative of the stone type in the region and are not connected to certain quarries.

ΧΗΜΙΚΗ ΑΝΑΛΥΣΗ (% σε ξηρά ουσία) **CHEMICAL ASSAY (% in dry substance)**

SiO_2	Al_2O_3	Fe_2O_3	CaO	MgO	MnO	TiO_2	K_2O	Na_2O	LOI
<0.10	<0.10	<0.10	30.40	19.90	<0.05	<0.10	0.26	1.38	46.31

Τύπος κατά EN 12407 / EN 12670: Δολομιτικό Μάρμαρο

ΟΡΥΚΤΟΛΟΓΙΚΗ ΣΥΣΤΑΣΗ	MINERALOGICAL COMPOSITION	
Δολομίτης	Dolomite	99%
Ασβεστίτης	Calcite	

Ως επουσιώδη συμμετέχουν ο μοσχοβίτης, ο φλογοπίτης, ο χαλαζίας και ο απατίτης.

HDFC BANK L
Harsha Bhavan, C.P., N. Del
003DC051
001057
IMPO

MARBLE SACHANAS

S42

We, Marble Sachanas S.A declare that the goods loaded under invoice no: 86 – dated 23/07/2019 have the below Properties.

Ιδιότητες / Properties

Όνομα κατά EN 12440: Θάσου Λευκό

ΦΥΣΙΚΟΜΗΧΑΝΙΚΕΣ ΙΔΙΟΤΗΤΕΣ	PHYSICAL MECHANICAL PROPERTIES	M.O / AV.*
Φαινόμενη πυκνότητα (EN 1936), kg/m^3	Apparent density (EN 1936), kg/m^3	2840
Ανοικτό πορώδες (EN 1936), % κ.ο.	Open porosity (EN 1936), % vol.	0,7
Υδαταπορρόφηση σε ατμοσφαιρική πίεση (EN 13755), % κ.β.	Water absorption at atmospheric pressure (EN 13755), % wt.	0,2
Αντοχή σε μονοαξονική θλίψη (EN 1926), MPa	Uniaxial compressive strength (EN 1926), MPa	164
Αντοχή σε κάμψη υπό συγκεντρωμένο φορτίο EN 12372), MPa	Flexural strength under concentrated load (EN 12372), MPa	18,5
Φορτίο θραύσης στην οπή αγκύρωσης (EN 13364), N	Breaking load at dowel hole (EN 13364), N	2250
Αντίσταση σε τριβή (EN 14157 - B), mm^3	Abrasion resistance (EN 14157 - B), mm^3	24313
Ενέργεια θραύσης (EN 14158), Joule	Rupture energy (EN 14158), Joule	4
Αντίσταση σε παγετό (EN 12371): Αντοχή σε κάμψη υπό συγκεντρωμένο φορτίο (EN 12372) μετά από 48 κύκλους αντίστασης σε παγετό, MPa	Frost resistance (EN 12371): Flexural strength under concentrated load (EN 12372) after 48 frost resistance cycles, MPa	15,7

* Οι τιμές είναι ενδεικτικές του τύπου πετρώματος στην περιοχή και δεν σχετίζονται με συγκεκριμένα λατομεία.
* The values are indicative of the stone type in the region and are not connected to certain quarries.

ΧΗΜΙΚΗ ΑΝΑΛΥΣΗ (% σε ξηρά ουσία) **CHEMICAL ASSAY (% in dry substance)**

SiO_2	Al_2O_3	Fe_2O_3	CaO	MgO	MnO	TiO_2	K_2O	Na_2O	LOI
<0.10	<0.10	<0.10	30.40	19.90	<0.05	<0.10	0.26	1.38	46.31

Τύπος κατά EN 12407 / EN 12670: Δολομιτικό Μάρμαρο

ΟΡΥΚΤΟΛΟΓΙΚΗ ΣΥΣΤΑΣΗ	MINERALOGICAL COMPOSITION	
Δολομίτης	Dolomite	99%
Ασβεστίτης	Calcite	1%

Ως επουσιώδη συμμετέχουν ο μοσχοβίτης, ο φλογοπίτης, ο χαλαζίας και ο απατίτης.

5.6 We find that goods supplied by foreign supplier Marble Sachanas S A was tested by department in case of Nitco limited Vs Commissioner of customs, Ahmedabad in appeal No. 10277 of 2023 also and based on same parameter it was found that imported goods are dolomite in respect of imports by other importers. We have also recorded some of test reports in decision in case of Nitco Ltd. Some of test reports are extracted as under:

			No.1953 I)		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 CaCO3= 57.12% and MgCO3 = 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%

29.13 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%.

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
Analyed 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

Thus, from above test reports it is evident that even department has based on parameters of CaO and MgO has concluded that goods are dolomite. In present case also CaO is ranging from 32 to 36% and MgO is ranging from 17 to 19%. Thus, in present case, goods can be considered as dolomite. In any case, appellant were bonafide in treating the goods as dolomite. In any case, it cannot be treated as case of wilful suppression or mis-declaration. In view of above extended period under section 28(4) of Customs Act is not invokable in the present case as there is no suppression or mis-statement.

5.7 Without prejudice to above, we find that demand of customs duty of past imports under Annexure B and C to SCN is also not sustainable on the ground that goods were not tested by department in respect of past imports in respect of which demand is made in Annexure-B and C to SCN. 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. Further, foreign suppliers analysis reports clearly provides dolomite as 92% to 99%. Further, goods from very same foreign suppliers were tested and found as dolomite by other customs laboratories and Geological survey of India, Nagpur. Reliance is placed upon decision in case of ***Shalimar Paints Ltd. v. Commissioner — 2001 (134) E.L.T. 285 (Tribunal)*** wherein Hon'bleCestat held has under:

> ***"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."*

Above decision was affirmed by Hon'ble Supreme court in case of ***[Commissioner v. Shalimar Paints Ltd. - 2002 (145) E.L.T. A242].***

5.8 In case of Commissioner of customs (preventive) Vs Marks ***Marketing*** P Ltd. Reported as 2017 (346) ELT 144 (Tri - Del) wherein Hon'bleCestat held as under:

> ***"9.*** *We find no merit in the above statement of the Revenue. Admittedly, the change in the classification of the present import of fabrics is based upon the test result by the chemical examiner whereas it is not disputed that no such test results were carried out in respect of previous imports.* ***The law on the issue is well settled. The test reports of the samples drawn from a particular consignment cannot be applied to the previous consignments****. Merely because the deponent of the statement has agreed before the Customs that the previous consignment may be of the same composition, by itself does not establish that the previous consignments were admittedly of the same composition. The expression used by the deponent is 'may be' and he himself was not sure of the same fact. The composition of the fabrics may vary or change from the consignment to consignment inasmuch as there is not much difference in the wool content of the fabrics. Revenue has not given us any reason as to why the ratio of Tribunal's decision in the case of Shalimar Paints (supra) which stands upheld by the Hon'ble Supreme Court, is not applicable to the facts of the present case.*

Apart from the decision of Shalimar Paints, we note that there are number of other precedent decisions holding to the same effect."

5.9 We find that in the present case department has not discharged the burden of prove with regards to change of classification of goods in respect of Annexure-B and C. We have dealt with similar issue in case of Nitco limited Vs Commissioner of customs, Ahmedabad in appeal No. 10277 of 2023 wherein we held as under:

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 NavinChimanlalSutariaVs. 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.

5.10 In view of above we agree with the submission of appellant that a claim of the classification or claim of exemption notification cannot be treated as a mis-declaration. We find that goods are not liable for confiscation under Section 111(m) of the Customs Act, 1962, therefore redemption fine under Section 125 of the Customs Act, 1962, is not imposable. Thus penalty is not imposable under Section 114A of the Customs Act, 1962 and penalty on Mr.Sajith Kumar, import executive is also not imposable.

5.11 As per our above discussion and finding, the demand of customs duty as per Annexure-A1 and A2 to SCN as recorded in para 26 of impugned order is confirmed along with interest as same is not contested by appellant. Customs duty demand under Annexure B and C to SCN as recorded in para 26 of impugned order is set aside as same is beyond limitation period as extended period is not invocable in the present case. Redemption fine and penalty is not sustainable and the same is accordingly set aside. Penalty on Mr.Sajith Kumar, import executive is also not imposable.

6. The Appeal No.10261/2024 is partly allowed in the above terms and Appeal No.10262/2024 is allowed, with consequential relief, if any, in accordance with law.

(Pronounced in the open court on 25.10.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Bharvi