CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL BANGALORE

REGIONAL BENCH - COURT NO. 2

Central Excise Appeal No. 21675 of 2014

[Arising out of Orders-in-Original No. 05-06/2014 dated 28.01.2014 passed by the Commissioner of Central Excise, Bangalore – I Commissionerate]

M/s. Hindustan Granites
Unit II, 100% EOU, Sy. No. 31 & 32
Hosur Road, Attibele
Bangalore – 562 107 **....... Appellant(s)**

VERSUS

Commissioner of Central Excise, Bangalore - I
P.B. No. 5400, C.R. Building,
Queen's Road, Near Bangalore GPO
Bangalore – 560 001 .... **Respondent(s)**

WITH

Central Excise Appeal No. 21692 of 2014

[Arising out of Orders-in-Original No. 05-06/2014 dated 28.01.2014 passed by the Commissioner of Central Excise, Bangalore – I Commissionerate]

M/s. Hindustan Granites
Unit II, 100% EOU, Sy. No. 31 & 32
Hosur Road, Attibele
Bangalore – 562 107 **......... Appellant(s)**

VERSUS

Commissioner of Central Excise, Bangalore - I
P.B. No. 5400, C.R. Building,
Queen's Road, Near Bangalore GPO
Bangalore – 560 001 .... **Respondent(s)**

AND

Central Excise Appeal No. 22330 of 2014

[Arising out of Order-in-Original No. 10/2014 dated 07.04.2014 passed by the Commissioner of Central Excise, Bangalore – I Commissionerate]

M/s. Hindustan Granites
Unit II, 100% EOU, Sy. No. 31 & 32
Hosur Road, Attibele
Bangalore – 562 107 **........ Appellant(s)**

VERSUS

Commissioner of Central Excise, Bangalore - I
P.B. No. 5400, C.R. Building,
Queen's Road,Near Bangalore GPO
Bangalore – 560 001 .... **Respondent(s)**

APPEARANCE:

Mr. Jathin Christopher, Advocate for the Appellant

Mr. Rajashekar B.N.N., Superintendent (AR) for the Respondent

CORAM:

HON'BLE MR. P.A. AUGUSTIAN, MEMBER (JUDICIAL)
HON'BLE MR. PULLELA NAGESWARA RAO, MEMBER (TECHNICAL)

Final Order Nos. 20449 - 20451 / 2026

Date of Hearing: 07.10.2025
Date of Decision: 25.03.2026

PER: P.A. AUGUSTIAN

The issue in the present appeals is regarding demand of Central Excise duty and denying exemption of Basic Customs Duty (BCD) on Domestic Tariff Area (DTA) clearances by Export Oriented Unit (EOU).

2. The brief facts are the Appellant is a 100% EOU and is manufacturing 'polished granite slabs' and 'marble slabs'. Appellant have imported granite blocks and consumables duty free under 100% EOU scheme. Appellant also procured semi-finished granites slabs and consumables from other EOU or on inter-unit transfer. The imported as well as locally procured raw-materials and consumables were received in their factory at Attibele for manufacture of polished granite slabs. Alleging that polished granite slabs, manufactured out of imported /locally procured slabs were cleared into DTA without payment of basic customs duty leviable on such goods under Section 3(5) of the Customs Tariff Act, 1975, investigation commenced and show cause notices were issued. Based on the above said allegation, Adjudication authority confirmed the demand. Aggrieved by said orders, present appeals are filed. Appeal Nos. E/21692/2014 pertains to the period from October 2011 to December 2011, E/21675/2014 pertains to the period from January 2012 to October 2012 and E/22330/2014 pertains to the period from November 2012 to October 2013.

3. When the appeals came up for hearing, Learned Counsel for the Appellant submits that the Appellant is a 100% EOU for which LOP was granted by the Development Commissioner, SEZ Cochin vide Letter No. l/19/2003:PER:EOU:CSEZ dated 21.03.2003 as amended by Letter No. l/19/2003:EOU:CSEZ dated 30.9.2008. The unit has been importing Marble Blocks since 2005 and after processing the same into Marble Slabs, the same are exported. They procure granite blocks from indigenous sources and almost 90% of the finish granite slabs are exported on an average during the period 2005-2008 and only about 10% to 12% of finished granite slabs have been cleared to the DTA. During the period from 2008-2012, on an average about 25% of finished granite slabs have been cleared to the DTA. During the course of investigation, the statements of the executives of the Company were recorded. All of them have consistently stated that the Granite Slabs cleared to the DTA were manufactured only from Granite Blocks procured from the DTA. As far as Marble slabs are concerned, during the process of manufacture of Marble Slabs, waste Marble Slabs i.e., the slabs which have defects /cracks /patches /moulds /moles /colour variation /fissures etc., and which are unfit for the export market are cleared to the DTA after obtaining permission from the Development Commissioner, CSEZ, from time to time.

4. The Learned Counsel further submits that when the waste was accumulated, the Appellant had approached the Hon'ble Supreme Court, and Hon'ble Supreme Court vide its Order in IA No. 1 & 2 in TC (C) No. 165/2006 with I.A. Nos. 2, 4, 5, 6, 7, & 10 in TP (C) No. 579/2006 & SLP (C) No. 9881/2006 passed a detailed order on the basis of a petition filed by the Appellant. In this Order, Hon'ble Apex Court, inter alia ordered that, "……it is stated on behalf of Hindustan Granites that they have accumulated waste which they are entitled to sell in DTA under the un-amended policy. It is contended on behalf of Hindustan Granites that they have fulfilled the Benchmark of net Foreign Exchange Earnings, therefore they were entitled to sell the accumulated waste in the DTA under Para 6.8 (h) on payment of full duty. On this point Hindustan Granites can also make the representation

giving facts and figures regarding the quantity of waste which has accumulated, and it will be open to DGFT, if possible, to decide the question regarding sale of the said waste in the DTA". Thus, the clearances of Waste Marble to the DTA were based on the specific orders of the Hon'ble Apex Court, DGFT, the Development Commissioner and that too on the basis of norms fixed by the Board of Approval as communicated by Development Commissioner, CSEZ.

5. Learned Counsel further submits that the Appellant had achieved positive NFE as indicated and Learned Counsel further submits that the payment of duty on Granite Slabs cleared to DTA during the period December 2008 to January 2009 was the subject matter of correspondence between the Superintendent of Customs, EOU-III and Appellant. In his letter C. No. VIII/40/29/2003-EOU-III dated 9.11.2009, the said Superintendent EOU-III pointed out that the rates of duty applied while clearing the goods to DTA is not as per Sl. No. 2 of the table mentioned in Notification No. 23/2003-CE dated 31.3.2003, as amended, which has resulted in short payment of duty of Rs. 3,92,362/. In response, Appellant vide their letter dated 5.12.2009 clarified that the said granite slabs are manufactured out of Granite Blocks procured locally (approximately 85% of the procurement are local and the balance is imported) and Sl. No. 2 of the said Notification No. 23/2003-CE dated 31.3.2003 does not get attracted. The Superintendent of Customs, EOU-III vide his letter dated 16.3.2009 addressed to Appellant pointed out that there is short payment of duty amounting to Rs. 10,63,987/-, since the differential Excise duty payable is 8.24%. In his further letter dated 25.1.2010 the said Superintendent of Customs, EOU-III directed Appellant to pay the said amount and accordingly the same was paid. The said Superintendent of Customs, EOU-III has clearly indicated that only Central Excise duty of 8.24% is required to be paid in as much as the granite slabs cleared to the DTA has been manufactured from locally procured Granite Blocks. Further Learned Counsel draws our attention to the copy of the excise invoice and AR-1s which was produced as part of the appeal memorandum and submits that being a 100% EOU, assessment at the time of clearance of granites

slabs to the DTA was done by Inspector of Customs (EOU-III), Customs Division, Bangalore.

6. As regards the allegation of non-compliance with the exemption Notification No. 23/2003-CE dated 31.03.2003 in Sl. No. 3 of the Notification, Learned Counsel draws our attention to entry 3 and Entry 3A of the Exemption Notification which is reproduced as below:

Entry 3	Entry 3A
(23/2003-CE dated 31 Mar 2003)	(26/2008-CE dated 5 May 2008)
In excess of amount equal to aggregate of duties of Excise leviable under Section 3 of the Central Excise Act or under any other law for the time being in force on like goods produced or manufactured in India other than in an export-oriented undertaking, if sold in India.	In excess of an amount equal to the aggregate of duties of excise leviable under Section 3 of the Central Excise Act, 1944 or under any other law for the time being in force on like goods produced or manufactured in India other than in an export-oriented undertaking, if sold in India.
Condition - 3	Condition – 3A

7. Learned Counsel further submits that the Department has not placed any positive evidence on record to show that the said granite slabs cleared to DTA were manufactured from imported granite blocks. On the contrary, Appellant submitted evidence to prove that it is not related to granite blocks which were imported. Further, there is no prohibition in the said Notification No. 23/2003-CE dated 31.3.2003 that if they have to avail the exemption, they have to exercise the option available under Entry 3A and not Entry 3. The Appellants fully satisfy the conditions mentioned in Entry 3 as well as the conditions mentioned in Condition 3 of the said Notification. The learned counsel also draws our attention to the details of the granite blocks imported, and procured from the DTA, granite slabs purchased locally, finished granite slabs

exported and cleared to the DTA on payment of duty. The data relating to granite blocks imported and procured from the DTA in Cubic Meters (CBM) has been compiled from the computer system (Tally Package) maintained by the Appellants. The values adopted for the same have been taken from Audited Balance Sheets of the Company for the relevant years and the finding in the impugned order is based on the data relating to granite slabs purchased locally and finished granite slabs exported and cleared to the DTA has been compiled from the computer system (Tally Package) maintained by the Appellants. The values adopted for the same have been taken from Audited Balance Sheets of the company for the relevant years. The appellants also submit that the finished granite slabs have been exported by processing granite blocks imported as well as procured from the DTA. The granite slabs purchased locally have been subjected to value addition and exported. While compiling the above data, Learned Counsel submits that:-

i. Granite Blocks imported /purchased in DTA are in Cubic Meters
ii. Granite Slabs procured locally, exported and cleared to DTA are in Sq. Feet
iii. For the period from 2003-04 to 2004-05 the conversion rate adopted for export of slabs for one Dollar is = Rs. 45/-
iv. For the period from 2003-04 to 2004-05 the value per Sq. Ft. of a granite slab adopted for export of slabs is US$5 (Rs. 225/-)

8. As regards the allegation that the Appellant had utilized imported blocks for the manufacture of granite slabs for clearance through DTA, the Learned Counsel submits that such finding is not supported by any admissible evidence and it is contradictory to the factual position. Learned counsel submits that the data available on record shows the following:

a. Out of 3,806 CBM of Granite Blocks imported 8,56,350 Sq. Ft of Granite Slabs can be manufactured. This figure includes wastages which would normally be 20% minimum. Only the balance of 6,85,080 Sq. Ft Granite Slabs can be exported.

b. As against the above quantity of 6,85,080 Sq. Ft of Granite Slabs which could be produced out of imported Granite Blocks, the Appellants have directly exported 27,79,034 Sq. Ft. of Granite Slabs and 58.80 CBM Granite Blocks totally valued at Rs. 79,45,74,590/-. In addition, from the quantity manufactured by the Appellants, 3,59,956 Sq. Ft of Granite Slabs valued at Rs. 10,47,40,953/- have been supplied to third party exporters (Merchant Exporters). This is supported by documents such as Bills of Lading; Shipping Bills and Commercial Invoices, Specimen copies of which are being submitted with this Appeal Memorandum.

c. The Appellant Company have cleared to the DTA on payment of duty 60,98,207 Sq. Ft of Granite Slabs (Export Rejects) valued at Rs. 29,10,45,832/-. But in spite of making specific submissions, there is no finding in this regard.

9. Learned Counsel further submits that law is settled that when there are two notifications or when there are two entries in a Notification, the Notification which is beneficial can be availed by the Appellant. In this connection, Learned Counsel relied on the following decisions to substantiate that the Appellant is eligible for the benefit of Notification No. 23/2003-CE dated 31.03.2003.:

1. ***M/s Winsome Yarns Ltd. Vs. CCE & ST, Chandigarh - II (2013 (293) E.L.T 407 (Tri. Del)***
2. ***Mangalam Alloys Ltd. Vs. CC, Ahmedabad – 2010 (255) E.L.T. 124 (Tri.-Ahmd.)***
3. ***Parashuram Cement Ltd. Vs. CCE, Lucknow – 2009 (238) E.L.T. 196 (Tri.-Del.)***
4. ***Cipla Ltd. Vs. CC, Chennai – 2007 (218) E.L.T. 547 (Tri.-Chennai)***
5. ***Modi Xerox Ltd. Vs. CCE, Meerut - 1997 (94) E.L.T. 139 (Tribunal)***

10. As regards the condition 4; "by way of informing the proper officer" Learned Counsel submits that it is not a vesting condition to operate as mandatory but directory in nature. In this regard, Learned

Counsel draws our attention to the judgment of Hon'ble Supreme Court in the matter of **M/s. Mangalore Chemicals and Fertilizer Ltd. Vs. Deputy Commissioner-1991 (55) E.L.T 437 (SC)** in which they have *inter alia* observed that "there are conditions and conditions, some may be substantive, mandatory and based on considerations of policy and some others may merely belong to the area of procedure. It will be erroneous to attach equal importance to the non-observance of all conditions irrespective of the purpose they were intended to serve as complied conditions.

11. As regards under valuation, it is alleged that while removing the granites slabs to DTA, Appellant had adopted value for payment of duty arbitrarily and not in accordance with Customs Valuation Rules. In this regard, Learned Counsel submits that clearance documents /invoice of M/s. Hindustan Marbles Granites (HMG) were mentioning the description as random slabs and the value of the sale invoices were also for random slabs. These facts were also admitted by Shri. Shyamsundar, General Manager while recording the statement on 10.01.2012. In this regard, Learned Counsel submits that being a 100% EOU, all the assessments at the time of clearance to DTA were done by the Inspector of Customs, EOU-III, Customs Division, Bangalore. As far as clearance of Granite Slabs to DTA are concerned, the duty has been paid on the basis of the values declared in the commercial invoices issued by Appellant. The Monthly Returns in form ER-2 has been regularly filed by the Appellant and the same is acknowledged by the Range Officer. Learned counsel also draws our attention to specimen copies of Monthly Returns in form ER-2 which have been submitted to the Ld. Commissioner. However, adjudication authority has re-determined the assessable value by adopting the value of similar goods available in India under Rule 9 r/w Rule 5 of the Customs Valuation Rules, 2007. Such method of valuation is unsustainable. Learned counsel further submits that as per Rule 9(2)(i) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, no value shall be determined under the provisions of this Rule on the basis of (i) the selling price in India of the goods produced in India.

12. Learned Counsel further submits that Granite Slabs manufactured by the Appellant are from locally procured Granite Blocks and only a part of such Granite Slabs is cleared to M/s. HMG and rest of the granite slabs are sold to third parties. To substantiate the same, learned counsel draws our attention to copies of such invoices indicating sale of identical goods to third parties which would show that the prices at which Appellant sold Granite /Marble Slabs are at par with the prices at which Appellant sold identical goods to M/s. HMG during the relevant period.

13. Learned counsel further submits that while assessing the value, Adjudication Authority adopted valuation of similar goods under Rule 9 r/w Rule 5 of the Customs Valuation Rules, 2007. However, as per the show cause notice, it is specifically mentioned that "in the instant case, it appears that the random granite slabs although are not alike in all respect, but they have similar characteristics and are used for the same purpose. Similar goods being imported by other third parties from the same countries of origin and therefore comparison adopted for such value to the impugned goods". In this regard, the Learned Counsel submits that the prices at which the Appellant sold both marbles and granites slabs to M/s. HMG are almost at par with the prices of identical marbles and granites slabs sold, cleared to third parties. Further as per the evidence on record, quantum of marbles and granite slabs purchased by M/s. HMG from Appellant is only 10% of their total turnover and rest 90% of their requirement is purchased from other suppliers of marbles and granites slabs. The learned Counsel further submits that Appellant is a proprietary firm of which Shri. Anand Reddy, M.G. is the sole proprietor. Whereas M/s. HMG is a partnership firm of which Shri. Anand Reddy M.G and Shri. Vishwanath Reddy M.G. are the partners of which the former is the Managing Partner. A partnership firm and a proprietary firm are two different legal entities in the eyes of law. In this connection, the Appellants would like to refer to and rely upon CBEC Circular No. 06/1992 dated 29.5.1992 issued under Section 37B of the Central Excise Act, 1944 and submits that if there are common partners /directors, each of the firm /Company have to be treated as

separate and distinct legal entities. It is now settled law that each of the firms /companies though they may have common partners or directors they have to be treated as having a distinct identity of their own and as separate legal entities. In this regard, learned counsel draws our attention to the following judgments:

1. **Rang Udgoy Vs. CCE, Ahmedabad -1996 (83) ELT 648 (T) Confirmed by Supreme Court - 1999 (106) ELT A66 (SC)**
2. **Padma Packages Pvt. Ltd. Vs. CC, Coimbatore - 1997 (90) ELT 175 (T)**
3. **Vivomed Labs Pvt. Ltd. Vs. CCE - 1991 (53) ELT 152 (T) Confirmed by Supreme Court - 1992 (62) ELT A119 (SC)**
4. **G.D. Industrial Engineerings, Faridabad Vs. CC & CE, Chandigarh 1983 (14) ELT 1994 (T)**
5. **Shakti Engineering Works Vs. CCE -1989 (40) ELT 95 (T)**
6. **SKN Gas Appliances Vs. CCE, New Delhi - 2000 (120) ELT 732 (T)**
7. **Surface Graphics Pvt. Ltd. Vs. CCE, Mumbai III - 2000 (119) ELT 622 (T)**
8. **Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes) Ernakulam Vs. Kelukutty-1986 (24) ELT 186 (SC)**

14. As regards the evidence relied by the respondent to allege under-invoicing by relying upon Screen Shots from the Customs EDI System, learned counsel submits that said twelve Screen Shots relate to import of 'Polished Granite Slabs' from China during the period 16.12.2011 to 10.10.2012, full description of the goods in the EDI statements have not been given. Apart from this, the Department has not provided copies of the 6(six) Bills of Entry nor enclosed copies of commercial invoices to indicate the correct description of polished granite slabs or random slabs imported by the said importer. In the absence of such commercial invoices and in the absence of the proper description of the imported polished granite slabs by the said parties, the information contained in the said documentary evidence is not

comparable with the values at which the Appellants have cleared the impugned granite slabs into the DTA /HMG. Learned Counsel relied on large number of decisions in support of their claim, which are as under:

1. **M/s. Eicher Tractors Ltd. Vs. CC, Mumbai – 2000 (122) E.L.T. 321 (S.C).**
2. **GKN Sinter Metals Limited Vs. CC, Pune – 2008 (232) E.L.T. 692 (Tri.-Mumbai)**
3. **Rashesh & Co. Vs. CC (I), Mumbai – 2008 (227) E.L.T. 573 (Tri.-Mumbai)**
4. **Balakishan Dass & Sons Vs. CC, New Delhi – 2001 (129) E.L.T. 706 (Tri.-Del.) affirmed by the Hon'ble Supreme Court as reported in 2001 (133) E.L.T. A164 (S.C)]**
5. **CC, Calcutta Vs. South India Television (P) Ltd. – 2007 (214) E.L.T. 3 (SC)**

15. Learned Counsel further submits that when similar allegations were made by the Respondent in appellant's own case regarding valuation, as per Final order No. 20862/2025 dated 19.02.2025, this Tribunal held that:

> *"15. As regards the activity whether it amounts to manufacture, Learned Counsel relied on the judgment of Hon'ble Supreme Court in the matter of M/s Aman Marble Industries, wherein it does not amount to manufacture till 01.03.2006. As regarding valuation also, we find that impugned order is considering Rule 8 of Customs Valuation Rules, 1988, whereas while issuing the show cause notice, Section 4 of the Central Excise Act read with Rule 11 of the Central Excise Valuation (Determination of price of excisable goods) Rules, 2000 was invoked. Though the Adjudication authority has held that the reliance on the Customs Valuation Rules, 1988 is as per the decision of this Tribunal, we could not find any such direction in the Final Order issued by this Tribunal directing the Adjudication authority to conduct de-novo adjudication based on the Customs Valuation Rules, 1988. As regarding valuation, even if it is assumed that this Tribunal had directed Adjudication Authority to carry out*

valuation of the goods as per the provisions of Customs Valuation Rules, 1998, no value shall be determined under the provisions of said Rule on the basis of selling price of goods in India. However, the Adjudicating authority adopted the value by adopting the price for sales in DTA without any admissible evidence. Further there is no admissible evidence to hold that the price adopted by the Appellant was regarding the goods cleared by the Appellant through DTA. When DTA clearance are available on record, no attempt was made to find out the rate of sale of such goods to ascertain the value of goods allegedly cleared by the Appellant through alleged clandestine removal. Even if an attempt was made adopted to Customs Valuation Rules as held in the matter of M/s Eicher Tractors Ltd., if the transaction value can be determined under Rule 4(1) and does not fall under any of the exceptions in Rule 4(2), there is no question of determining the value under the subsequent Rules."

16. Learned Counsel further submits that Appellant is an EOU, and all DTA clearances are under supervision of Development Commissioner, Cochin Export Processing Zone ("DC-CSEZ"). Therefore, to allege misapplication of Exemption Notification, would tantamount to assailing the sanction accorded to DTA clearances by DC-CSEZ from time to time. Further, in every instance where a condition is imposed, it merits to examine whether the condition is mandatory or directory. It is submitted that where there is no opportunity for Proper Officer to refuse permission, if application had been filed, then the condition is directory as Proper Officer is to be 'intimated' about the exemption with no authority to 'approve or reject' the claim for exemption. Since the exemption being related to substantive benefit to allow DTA clearances out of DTA procurement, issue is covered by the ratio of the judgment in **Government of Kerala Vs. Mother Superior Adoration Convent (2021) 126 taxmann.com 68 (SC)**. Relevant para is reproduced below:

"24. This being the case, it is obvious that the beneficial purpose of the exemption contained in Section 3(1)(b) must be given full effect to, the line of authority being application to the facts of these cases being the line of authority which deals with beneficial exemptions as opposed to exemptions generally in tax statutes. This being the case, a literal formalistic interpretation of the statute at hand is to be eschewed. We must first ask ourselves what the object sought to be achieved by the provision and construe the statute in accord with such object. And on the assumption that if any ambiguity arises in such construction, such ambiguity must be in favour of that which is exempted. Consequently, for the reasons given by us, we agree with the conclusions reached by the impugned judgements of the Division Bench and the Full Bench."

17. The Learned Authorised Representative (AR) for the Revenue reiterated the finding in the impugned order and submits that the Appellant was required to pay differential duty arising out of non-payment of basic customs duty on DTA clearance of polished granites, since they failed to comply with the conditions. As per Conditions No. 3A(iii) and (iv) of Notification No. 23/2003-CE dated 31.03.2003, since the polished granite slabs cleared into DTA by the Appellant are not produced or manufactured wholly from the raw materials produced or manufactured in India as the Appellant continued to have duty free imports of rough granite blocks /slabs. Further Appellant has not exercised option in terms of Para 6.8 (i) of the Foreign Trade Policy for availing this exemption by informing in writing to the jurisdictional Deputy/Assistant Commissioner of Customs or Central Excise. Further, Appellant has to exercise option before effecting the first clearance in domestic tariff area on or after 01.06.2008 to avail the exemption of BCD available in the Notification. But Appellant has not exercised any such option during the financial years 2011-12 or 2012-13 before making first DTA clearance. As per 6.13 of FTP, goods supplied by one unit of EOU/EHTP/STP/BTP to another unit shall be treated as imported goods for second unit for payment of duty, on DTA sale by second unit. Hence, they are not eligible for the benefit of the above Notification since Appellant have not fulfilled the conditions of the said Notification. Further, it also appeared that once there is specific heading for granite and granite articles and concessions thereof under Sl. No. 3A of the

Notification No. 23/2003 CE dated 31.03.2003 as amended, it is not open to Appellant to claim benefit under general heading at sl. No. 3 of the above Notification as specific entry will prevail over general entry. Hence, Appellant is not eligible for the exemption from payment of BCD under Sl. No. 3 and/or 3A of the said Notification as claimed by them.

18. As regards the valuation, Learned AR draws our attention to the finding in the impugned order and submits that since the Appellants are related persons, the transaction value cannot be accepted as admissible evidence. Learned AR further submits that the transaction value is not acceptable due to vast difference between the sale prices of Appellant and M/s. HMG's customers. It is also observed that there are other importers who imports similar granite slabs during the relevant period. Similar in appearance may not be exactly correspondences to the technical specification. In view of the above, Rule 5 of the Customs Valuation Rules was not applied to determine the value of impugned goods. Thus, Adjudication Authority proceeded to Rule 9 of the Valuation Rules, which is the residual method based on best-judgement.

19. As regards reliance on the data /information in the form of screen shot prints of Bills of Entry, it is provided only as an opportunity to have a reasonable perception of price of imported contemporaneous goods, from which it could be easily made out that the unit price adopted by the Appellant is very low and thus there exists under-valuation causing undue loss of revenue. Hence, Adjudication rightly took the contemporaneous import price as the one applicable to the DTA clearance of the Appellant to M/s. HMG in the overall circumstances of the case which should be most reasonable and appropriate in terms of Rule 9 of the Customs Valuation Rules.

20. Heard both sides and perused the records.

21. We find that as regards denying exemption from BCD on DTA clearance by EOU, Appellant is a 100% EOU and manufacturing 'polished granite slabs' and 'marble slabs'. As regards clearance of marble slabs to DTA, we find that as per the evidence on record, it was

allowed on the basis of the directions given by the Hon'ble Supreme Court vide its order dated 31.01.2007, DGFT Order F. No. 01/92/180/282/AM-06/PC ll dated 07.02.2007 and taking into account the total exports, total imports and the NFE achieve and also on the basis of input-output norms prevalent in the Year 1995-96. Further we find that the payment of duty on Granite Slabs cleared to DTA during the period December 2008 to January 2009 was the subject matter of correspondence. When specifically informed that the rates of duty applied while clearing the goods to DTA is not as per Sl. No. 2 of the table mentioned in Notification No. 23/2003-CE dated 31.03.2003, Appellant clarified that the said granite slabs are manufactured out of Granite Blocks procured locally and Sl. No. 2 of the said Notification No. 23/2003-CE dated 31.3.2003 does not get attracted. Further we find that during the impugned period, though the details of granite blocks imported, procured from the DTA, granite slabs purchased locally, finished granite slabs, exported and cleared to the DTA on payment of duty, the respondent has not placed any positive evidence on record to show that the said granite slabs cleared to DTA were manufactured from imported granite blocks. Further we find that the Appellants were maintaining Audited Balance Sheets of the Company for the relevant years. The finding in the impugned order is based on the data relating to granite slabs purchased locally and finished granite slabs exported and cleared to the DTA has been computed from the computer system (Tally Package) maintained by the Appellants. In the impugned order, there is no correlation between the import of granite with export and DTA clearance. Thus, the allegation that the Appellant had utilized imported blocks for the manufacture of granite slabs for clearance through DTA is not supported by any admissible evidence and it is contradictory to the factual position. As regards violation of the condition, following the ratio of the judgment in the matter of **M/s. Mangalore Chemicals and Fertilizer Ltd. (supra)** and considering that Appellant being an EOU, all DTA clearances are carried out under the supervision of Development Commissioner and Customs authorities, condition '4' "by way of informing the proper officer" is not a vesting condition to operate as a mandatory but directory in nature. Further we find that though it is alleged that the Appellant carried out illegal clearance from 100% EOU by violating Exemption Notification, there is no proceedings initiated by DGFT. Further, we find that the Appellant has also complied with the export obligation. Thus, Appellant is eligible for the benefit of Notification as claimed.

22. As regards undervaluation, we find that being a 100% EOU, all the assessments at the time of clearance of Marble Slabs to the DTA were done by the Inspector of Customs, EOU-III, Customs Division, Bangalore. As far as clearance of Granite Slabs to DTA are concerned, the duty has been paid on the basis of the values declared in the commercial invoices issued by Appellant. The Monthly Returns in form ER-2 has been regularly filed by the Appellant and the same is acknowledged by the Range Officer. Further we find that quantum of marbles and granite slabs purchased by M/s. HMG from Appellant is only 10% of their total turnover and rest 90% of their requirement is purchased from other suppliers of marbles and granites slabs and no attempt was made by the Respondent to compare the value of such procurements. Considering the facts and circumstances of the case, allegation of undervaluation is also unsustainable.

23. In view of the above discussion the impugned orders are liable to be set aside. Accordingly, impugned orders are set aside, and the appeals are allowed with consequential relief, if any, as per law.

(Order pronounced in Open Court on 25.03.2026)

(P.A. AUGUSTIAN)
MEMBER (JUDICIAL)

(PULLELA NAGESWARA RAO)
MEMBER (TECHNICAL)

Iss..