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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066

EXCISE APPEAL BRANCH

Appeal No. E/1647/2008 - EX[DB] Date 12/08/2009
E/1125/2008-EX

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
M/S ORIENTAL TRIMEX LTD.
D-3, SITE-V, KASNAUPSIDC INDUSTRIAL AREA,GREATER NOIDA,DISTT. GAUTAM BUDH NAGAR.

M/S.ORIENTAL TRIMEX LTD.,
26/25,BAZAR MARG, OLD RAJINDER,
N.DELHI-60

M/S ORIENTAL TRIMEX LTD. Appellant

Vs

C.C.E. NOIDA Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 507-508/2009-**EX[DB]** dated 10-8-09 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(Excise Appeal Branch)

Copy to :
1. Respondent
   C.C.E. NOIDA
   C-56/42, SECTOR-62, NOIDA-201307
2. Adv. / Consult
   MR.V. LAXMIKUMARAN
   B-6/10, SAFDARJUNG ENCLAVE, NEW DELHI-110029

3 C.D.R
~~4 J.C.D.R.~~
5 Bar association, CESTAT, New Delhi
6 Director Publications, Customs, Excise. I.P. Estate, New Delhi
7 M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3
8 Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9 Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
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Assistant Registrar
(Excise Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Excise Appeal Nos. E/1125/2008 and
Appeal No. E/1647/2008

[Arising out of Order-in-original No.04-11/Coommr/Noida/2008 dated 28.2.2008 and Order-in-Original No. 16/Commissioner/Noida/08 dated 29.4.2008 passed by the Commissioner of Central Excise, Noida.]

Date of Hearing:16.06.2009

Date of Decision: 10.8.2009

For approval and signature:

Hon'ble Mr. M. Veeraiyan, Member (Technical)

Hon'ble Mr. P.K. Das, Member (Judicial)

1.	Whether Press Reporters may be allowed to see CESTAT (Procedure) Rules, 1982.	Yes
2.	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	: Yes
3.	Whether Their Lordships wish to see the fair copy of the Order?	: No.
4.	Whether Order is to be circulated to the Departmental authorities?	: Yes

M/s. Oriental Trimex Ltd. ...Appellants
(Rep. by Shri V.Lakshmikumaran, Advocate)

Vs.

Commissioner of Central Excise, Noida ...Respondent
(Rep. by Shri K.P. Singh, DR)

CORAM:

Hon'ble Mr. M. Veeraiyan Member (Technical)
Hon'ble Mr. P.K. Das, Member (Judicial)

FINAL **Order No...507-508/09-EX dated:**

Per P.K. Das:

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

2. The relevant facts of the case as per record, in brief, are that the appellants were purchasing marble blocks and marble slabs for processing thereon. The blocks were subjected to processing of sizing to make it rectangular and cut into slabs of uniform thickness by using Gangsaw machines. The slabs got cracks and pin holes in some cases and pasted fiber glass sheets on one side and resin is applied to fill-in holes the cracks on the other side of the slabs for smooth transportation. The final products are rough marble slab, cut to size marble slabs (polished stroke by rough) and marble tiles (polished). In view of the decision of the Hon'ble Supreme Court in the case of Aman Marble Industries Pvt. Ltd. Vs. CCE 2003 (157) ELT 393 (SC), the appellant claimed that prior to 01.3.2006 the processes undertaken by them do not amount to manufacture and no duty was paid. From 01.3.2006, Note 6 was inserted to Chapter 25 of CETA, 1986. The appellants claimed the classification of the products would come under sub-heading no.25251220 and 25151290 and availed concessional rate of duty under Notification No. 4/2006-CE dated 1.3.2006. On 5.7.2006, the Central Excise Officers visited the appellants factory and examined the processes undertaken by the appellants. They had recorded the statements of the representative of the appellants. Show cause notices were issued time to time proposing demand of duty and imposition of penalty. Commissioner confirmed the demand of duty for the entire period from April 2005 to September 2007 and imposed penalties along with interest.

3. In the impugned orders, Commissioner held that after introduction of 8-digit classification code from 1st March 2005 in the Central Excise Tariff Act, 1985 the decision of the Hon'ble Supreme Court in the case of Aman Marble Industries Vs. CCE, 2003 (157) ELT 393 (S.C.), would not apply and the products are not classifiable under Chapter 25 of the Tariff. Rough Marble Slabs/Polished Marbles are classifiable under sub-heading no. 68029100, Polished Marble Tiles are classifiable under sub-heading no. 68022110 and Granite Blocks and Granite Tiles are classifiable under sub-heading no. 68022310 and 68029300 of the Tariff respectively.

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

(A) <u>FROM APRIL 2005 TO FEBRUARY 2006 (i.e. PRIOR TO 01.3.2006)</u>

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

(b) It is well settled by the various decisions that the processes do not amount to manufacture prior to 1.3.2006:-

(i) Associated Stone Industires (Kotah) Ltd. Vs. CCE, 1992 (60) ELT 639, affirmed as reported at (2003) to SCC 771 (cutting into marble slabs and tiles)

(ii) Rajasthan SEB Vs. Associated Stome Industries (2000) 6 SCC 141 (cutting and polishing of stones into slabs)

(iii) Aman Marbles Industries Vs. CCE 2003 (157) ELT 393 (SC) (Cutting into marble slabs)

(iv) Bell Granito Ceramica Ltd. Vs. CCE, 2006 (198) RLT 161 (Polishing of tiles)

(v) Anmol Granites Vs. Union of India, 2006 (199) ELT 769 (Raj.) cutting & polishing of granites into slabs.

(vi) Calcutta High Court in the case of Oriental Tiles Ltd. Vs. Union of India vide its judgment dated 18.05.2006. (cutting of marble into slabs and polishing).

(c) The Central Government introduced 8 digit classification in Central Excise Tariff with effect from 01.3.2005. CBEC vide Circular no. 808/5/2005-CX. Dated 25.2.2005 clarified that Government had no intention to vary the duty structure on goods while transition from 6 digits to 8 digits.

(d) In view of the above CBEC Circular, the Department cannot change its stand post 1.3.2005 and the decisions are applicable even in 8 digit tariff.

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

(B) FROM 01.3.2006 AND NOTIFICATION No. 4/2006-CE: DATED 1.3.2006.

(a) Note-6 was inserted in Chapter 25 of the Tariff w.e.f. 01.3.2006 providing that the process of cutting or sawing or sizing of polishing or any other process for converting of stone blocks into slabs or tiles shall amount to manufacture.

(b) The marble slabs processed by the appellants are classifiable under sub-heading No. 25151220 and eligible for concessional rate of duty under notification No. 4/2006-CE dated 01.3.2006.

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

(d) CBEC vide Circular F.No. 134/2/06-CX 4 dated 3.9.2008 clarified that when the marble slabs still have uneven surface as when it was cut or sawn, the application of glass fibre net or resin /hardner on the marble slabs shall not take these marble slabs out of Chapter 25. Such marble slabs shall continue to be classified in Chapter 25 and the concessional rate of duty under notification no.4/06-CE shall be available to them.

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

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

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

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

5. Ld. DR on behalf of the Revenue reiterates the findings of the Commissioner. He submits that the Commissioner classified the goods under chapter 68 for the entire period. He submits that the process undertaken by the appellants is not merely cutting by saw. He submits that besides cutting a number of processes were being undertaken by them on the raw materials received by them. The process undertaken by them are sizing, surfacing, applying fibre paste, filling of resin, cutting in sizes, edge trimming, polishing, etc., and such processes are clearly beyond the process of cutting of crude or roughly trimmed marble. He also submits that Shri S.C. Anand, DGM (Operation) in his statement dated 6.7.2006 stated that the stone blocks are subjected to the processes like sizing and surfacing of the faces before being cut into slabs of uniform thickness by Gangsaw machine. It is his submission that on physical examination of the goods, it was found that the goods were

neither in crude form nor merely cut by sawing etc. So, it would not come within the purview of Chapter 25.

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

7. After considering the submissions of both the sides and on perusal of the records, we find that the main contention of the ld. DR is that in the present case, marble blocks were not simply sawn but more processes were undertaken viz. sizing, edging, trimming and polishing for making the cut to size, polished marble slabs and polished marble tiles. So, the case laws relied upon by the Ld. Advocate are not applicable after 1.3.2005. As such, the case laws relied upon by the appellants are discussed below:-

(a) The Tribunal, in the case of Associated Stone Industries (Kotah) Ltd. Vs. CCE – 1992 (60) ELT 639

(Tribunal) held that the marble slabs that are merely sawn from the marble blocks cannot be called as distinct commodity. The end product, which would come into existence after the activity is completed, would still be called "marble". Thus, the original identity continues despite the several processes undergone. In the trade circles, marble slabs or the marble tiles that are manufactured after cutting the edges, trimming, polishing, and other processes, continue to be known as marble. It has been held that marble blocks and slabs after cutting edging, trimming, polishing and other processes, it does not amount to manufacture as there is no transmission of marble into any other commodity.

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

> "2. We have gone through the judgement and order passed by the CEGAT. It cannot be held that cutting, edging, trimming, polishing and

> other processes on the marble slabs amount to a process of manufacture as it does not bring in a distinct product. Hence, this appeal is dismissed. There shall be no order as to costs."

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

(d) The Hon'ble Rajasthan High Court in the case of Anmol Granites Vs. Union of India reported in 2006 (199) ELT 769 (Rajasthan) allowed writ petition, wherein, the issue was involved as to whether cutting and polishing of granite slabs and tiles from block amounts to manufacture and the end-product becomes subject to charge of excise duty under the Central Excise Act, 1944.

(e) The Tribunal in the case of NITCO Tiles Ltd. Vs. CCE, Mumbai-II reported in 2004 (165) ELT 50 (Tribunal-Mumbai) held that marble slabs obtained by cutting, polishing and fibre glass reinforcement of marble slabs does not amount to manufacture as no new distinct commodity having emerged.

(f) The Tribunal in the case of R.K. Marble Pvt. Ltd. Vs. CCE, Jaipur-II vide Final Order No.839/2008-Ex dated 5.8.2008 held as under:-

> "3. Contention of revenue is that as per chapter note 1 of Chapter 25 of the Central Excise Tariff, this chapter covers the products which are in the crude state or which have been washed, crushed, ground etc. but not the products which have been roasted, calcined or subjected to processing beyond that mentioned in each heading, while in the present case, the slabs, in question, are processed by applying resin and reinforced with the fibre netting and, therefore, the same are not covered under Chapter 25. The Chapter 68 of the Tariff specifically covered the articles of stone, plaster, cement etc. and Heading No. 6802.21 covers 'other monumental or building stones'. The contention is that as the appellant undertaken the process of dressing of Marble Blocks, Sawing Process, Netting Process, Crack Filling & Resin Treatment and Tiling process, therefore, the processes undertaken by the appellant amount to manufacture as the marble slabs will not remain the marble in the crude form. In these circumstances, the goods, in question, are rightly classifiable under Chapter 68 of the Central Excise Tariff. We find, the appellant are engaged in the manufacture of Marble Slabs and clearing the same under the Chapter 25 of the Central Excise Tariff. During the process of slitting, of the blocks into slabs,

> in 10% to 12% marble slabs there are some cracks. The appellant undertakes the process such as applying Resin, Sawing and also applying fibre netting at the back and also filling the cracks. The Revenue's contention is that the process undertaken by the appellant amounts to manufacture and the resultant product is classifiable under Chapter 68 of the Tariff. We find that this issue came before the Tribunal in the case of Nitco Tiles Ltd. (Supra), whereas the Tribunal held that the process of polishing, Resin coating and fibre glass reinforcement of marble slabs does not amount to manufacture. In the present case, the appellants are undertaking the similar processes. Therefore, the ratio of above decision is applicable, in the facts of the present case. In view of the above decision, the impugned order is set aside. The appeal is allowed.

8. The Commissioner observed that the case of Associated Stone Industries (Kotah) Ltd. (supra) and Aman Marbles Ltd. (supra) are not applicable in the present case as the said cases pertain to the period prior to 01.3.2005 (i.e. date of introduction of 8 digit Tariff). We are unable to accept the finding of the Commissioner. We find that ratio of the above decisions are squarely applicable in this case. The activities carried out by the appellants on the marble blocks and slabs do not amount to manufacture even after introduction of 8 digit classification code in the Tariff on 01.3.2005, unless by Section Note or Chapter Note of the Tariff or by wording of the relevant

heading or sub-heading, the said process has been specified as "manufacture".

9. We find that Note 6 was inserted in Chapter 25 of the Tariff with effect from 1.3.2006, as under:-

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

It is observed by the Commissioner in the impugned order that Note 6 to Chapter 25 is clarificatory in nature. It is also observed that even if note 6 was not in existence before 1.3.2006, the processes undertaken by the appellants rendered their product classifiable in a Chapter other than 25. We find that as per Section 2 (f) (ii) of Central excise Act, 1944, "manufacture" includes any process, which is specified in relation to any goods in the Section or Chapter Notes of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) as amounting to "manufacture". So, the process specified in Note 6 of Chapter 25 of the Tariff cannot be clarificatory nature. We agree with the submission of the Ld. Advocate that the activities carried out by the appellant prior to 1.3.2006 do not amount to manufacture.

10. The Commissioner observed that heading No.2515 and 2516 cover Marble and Granite respectively in crude or roughly trimmed

form or merely cut into blocks/slabs. But, if the same are carried out those process, it would come under the expression "worked monumental or building stone" classifiable under heading no. 6802. Reliance was placed on Note 2 of Chapter 68 of Tariff. For the convenience, the relevant portion of Chapter 68 is reproduced below:-

CHAPTER 68

Articles of stone, Plaster Cement, Asbestos, Mica or similar materials

Notes:

1. This Chapter does not cover:

   (a) goods of Chapter 25;

   xxx xxx xxx

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

   xxx xxx xxx

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

6802 21 10 Marble blocks tiles"

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

> " The heading therefore covers stone which has been further processed than mere shaping into blocks, sheets or slabs by splitting, roughly cutting or squaring, or squaring by sawing (square or rectangular faces).
> The heading thus covers stone in the forms produced by the stone-mason, sculptor, etc.

12. It is not the case of department that the goods in question are monumental or building stone or the stone in the form produced by stone-mason, sculptor, etc. So, the classification of goods under Chapter 68 and demand of duty after 1.3.2006 are not justified.

13. It is seen that the CBEC vide Circular No.134/02/2006-Cx4 dated 3.9.2008 clarified as under:-

"A question has arisen as to whether marble slabs on which resin and hardner are applied on one side and fibre net on the other side would be covered by the exemption under notification no.4/06-CE dated 1.3.2006.

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

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

14. In view of the above discussions and Board Circular dated 3.9.2008, we hold that the activities carried out by the appellants prior to 1.3.2006, would not amount to manufacture. From 1.3.2006, the goods in question are classifiable under Chapter 25 and benefit of Notification No.4/2006-CE dated 3.2.2006 are admissible. Hence, the demand of duty and penalty are not sustainable. The impugned orders are set aside. The appeals are allowed with consequential relief.

[Pronounced in open court on 10. 8.2009.]

(M. Veeraiyan)
Member (Technical)

(P.K. Das)
Member (Judicial)

ckp