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

Appeal No. C/76 /2006 - CU[DB] Date 10/10/2008

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

To :
COMMISSIONER OF CUSTOM,JAIPUR

COMMISSIONER OF CUSTOMS, NCRB, STATUE
CIRCLE, JAIPUR

COMMISSIONER OF CUSTOM,JAIPUR Appellant

Vs

M/S AMIT MARBLES PVT. LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No.** C/365/08-CUS. DATED 01.10.08 passed by the Tribunal under Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax

Assistant Registrar
(Customs Appeal Branch)

**Copy to :**

1. Respondent
   M/S AMIT MARBLES PVT. LTD.
   D-12, RAJOURI GARDEN, NEW DELHI.
2. Adv. / Consult
   MR.REENA KHAIR, ADV.,
   C/O M/S AMIT MARBLES PVT. LTD.
   D-12, RAJOURI GARDEN, NEW DELHI.
3. S.D.R
4. J.C.D.R.
5. Bar association, CESTAT, New Delhi
6. M/s Deeparchi Publications, M-93, Marg, 46, Saket, New Delhi 110017
7. M/s Centax Publictions (P) Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New - 3
8. Excise & Customs cases, B-37, Sector -I, NOIDA - 201301 Gautam Budh Nagar, (U.P.)
9. Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10. Nidheshak publications, I.P.Estate, new Delhi
11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
12. Commercial Laws of India Pvt Ltd Post Bag No. 1033, No.70(Old No. 88), Thyagaraya Road, T. Nagar,Chennai
13. Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
14. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-15
15. Office Copy
16. Guard file

Assistant Registrar
(Customs Appeal Branch)

# CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

**COURT-I**

**Date of hearing/decision:1.10.2008**

**Customs Appeal No.76 of 2006**

Arising out of the order in appeal No.35 (MPM)Cus/JPR-I/2005 dated 18.11.2005 passed by the Commissioner (Appeals I),Customs & Central Excise, Jaipur.

For Approval and Signature:

Hon'ble Mr. Justice S.N. Jha, President
Hon'ble Mr. M. Veeraiyan, Member (Technical)

| | | |
|---|---|---|
| 1 | Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982? | No |
| 2 | Whether it should be released under Rule 27 of 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? | Seen |
| 4 | Whether Order is to be circulated to the Departmental authorities? | Yes |

Appellant — Respondent

C.C., Jaipur vs. M/s Amit Marbles Pvt. Ltd.

Appearance:

Shri L.B. Yavad, Authorized Departmental Representative (DR) for the Revenue and Shri A. Kathari, C.A. for the respondent

Coram: Hon'ble Mr. Justice S.N. Jha, President
Hon'ble Mr. M. Veeraiyan, Member (Technical)

Final Order No. C/365/08

Per M. Veeraiyan:

This is an appeal by the Department against the order of the Commissioner (Appeals) No. 35 (MPM)Cus/JPR-I/2005 dated 18.11.2005.

2. Heard both sides.

3. The respondents imported goods described as rough marble slabs and claimed classification under 2515.11. The original authority based on test reports from Mines and Geology Department, Rajasthan Government held that same are classifiable under 2515.20. Commissioner (Appeals), however reversed the decision and accepted the classification proposed by the respondents.

4. Learned DR took us through the three reports of the Mines and Geology Department dated 23.8.98, 1.12.98 and 20.9.05 and sought classification of the items under 2515.20 and setting aside the order of the Commissioner (Appeals). Learned Advocate for the respondent reiterated the findings of the Commissioner (Appeals).

5. We have carefully considered the submissions. The Chapter heading 2515 reads as under:

| Hdg. No. | Sub-hdg. No. | | Description of Articles |
|---|---|---|---|
| 25.15 | | | Marble, travertine, ecaussine and other calcareous monumental or building stone of an apparent specific gravity of 2.5 or more, and alabaster, whether or not roughly trimmed or merely cut, by sawing or otherwise, into blocks or slabs of a rectangular (including square) shape. |
| | | - | Marble and travertine |
| | 2515.11 | -- | Crude or roughly trimmed |
| | 2515.12 | - - | Merely cut, by sawing or otherwise, into blocks or slabs of a rectangular (including square ) shape. |
| | 2515.20 | - | Ecaussine and other calcareous monumental or building stone, alabaster. |

To come under 2515.20 as claimed by the Department it should be established that the imported material first of all falls under the category of "Ecaussine and other calcareous monumental or building stone, alabaster". In the test reports of the Mines and Geology Department, the nature and qualities of the imported items have been variedly described as follows:

> *"Thus, on the basis of colour, texture the rock ~~may be termed~~ commercially can be used as marble".*
> *"The rock takes good polish and commercially it can be used as marble.*
> *"Thus, on the basis of the texture and structure, the rock may be termed as oolitic limestone".*
> *"The rock may be termed as crystalline limestone/marble."*

6. None of the reports specifically indicate that the imported goods can come under any of the categories mentioned under 2515.20. The reports have used the terms 'marble and limestone' to describe the imported goods. The report also confirms that the imported goods can take polish. In other words, the report does not preclude classification of the imported items as marble. It is not disputed that the goods imported are rough and not polished though capable of being polished and therefore, the decision of the Commissioner (Appeals) in accepting the claim of the respondent and upholding the classification under 2515.11 cannot be faulted with.

7. The appeal by the Department is rejected.

(Dictated and pronounced in the open Court)

(Justice S.N.Jha)
President

(M. Veeraiyan)
Member (Technical)

scd/