TELEGRAM : CEGCANAL
Website : www.cestat.gov.in

REGISTERED / AD
Email : delhi@cestat.gov.in

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

Appeal No. C/819-820 /2005 - CU[DB] &C/234-237&362/2006 Date 20/11/2008

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

To :
M/S STONE MAN MARBLE INDUSTRIES
PLOT NO.3, VILLAGE SAYLI, SILVASSA

M/S STONE MAN MARBLE INDUSTRIES Appellant
Vs
THE COMMISSIONER OF CUSTOMS, JAIPUR Respondent

I am directed to transmit herewith a certified copy of Final order No. C/600-606/08 CU[DB] dated 12.11.08 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
THE COMMISSIONER OF CUSTOMS, JAIPUR
NCRB BUILDING, STATUE CIRCLE, C- SCHEME, JAIPUR
2. Adv. / Consult
Mr.K.K ANAND
A-5,BASEMENT,LAJPAT NAGAR-III NEW DELHI-24
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 -1, 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)

P.T.O

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

Customs Appeals Nos.819-820 of 2005 – Customs Branch
& Customs Appeals Nos.234 to 237 & 362 of 2006-Customs

[Arising out of Order-in-Appeal No.16/MPM/CUS/JPR-I/05 dated 22.06.2005 and 14-15/MPM/CUS/JPR-I/05 dated 6.6.05 in Appeals Nos.819-820 of 2005, Order-in-Appeal No.02-05(MPM)CUS/JPR-I/2006 dated 23.01.2006 in Appeal No.C/234/06, C/235/06, C/236/06, C/237/06-Customs Branch passed by the Commissioner of Customs (Appeals), Jaipur and Order-in-Appeal No.6(MPM)/Cus./JPR-I/2006 dated 25.1.2006 in respect of Appeal No.362 of 2006-Customs Branch passed by the Commissioner of Customs (Appeals-I), Jaipur]

Date of Hearing/ Decision:12.11.08

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. NO

2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? : NO

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

---

Appeals Nos. C/819-820 of 2005 & 362 of 2006 -Customs Branch

(1)M/s. Stone Man Marble Indus.
(2)M/s. Swati Marble & Granites ......Appellants
(3)M/s. Trident Marble Pvt. Ltd.

Vs.

Commissioner of Customs, Jaipur ...Respondent

Appeals Nos.C/234 to 237 of 2006-Customs Branch

Commissioner of Customs, Jaipur ...Appellant

Vs.

(1)M/s. Millenium Marbles Pvt. Ltd.
(2)M/s. Ramdhan Mohanlal & Co. Pvt. Ltd.
(3)M/s.Trident Marbles Pvt. Ltd.
(4)M/s. Hardrock International ...Respondent

Party represented by Shri Hemant Bajaj
Department represented by Shri Sunil Kumar, DR

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

Final Order No.C/600 to 606/08/Dated:12.11.2008

Per M. Veeraiyan:

1.1 Appeals Nos.C/819-820 of 2005 & C/362 of 2006 are by the parties against the orders of the Commissioner (Appeals), wherein the decisions of the lower authority in classifying the imported products under Heading No.2515.20 has been upheld.

1.2 Appeals Nos.C/234 to 237 of 2006 are by the Department against the common order-in Appeal No. Order-in-Appeal No.02-05(MPM)CUS/JPR-I/2006 dated 23.01.2006 by which the decision of the lower authority in classifying the imported product under Chapter Heading No.2515.20 was reversed and the contention of the importers to classify them under Heading No.2515.11 was upheld.

1.3 All the appeals are before the Tribunal for the second time having been remanded by Final Order No.101-108/2002 dated 14.5.2002 in Appeal Nos.C/499 -506 of 2002-C.

1.4 All these appeals involve a common issue and, therefore, are being dealt with by a common order.

2. Heard both sides.

3.1 The relevant facts, in brief, are as follows:-

The importers (in two cases the appellants and in other cases the respondents) imported certain items and they cleared the same as commercial marble and sought classification under Heading No.2515.11. The Department sent samples to CRCL as well as to GSI. The reports of CRCL was in favour of the importers. However, the report of the GSI was not specific in certain respects. The original authority in the first round of litigation decided the issue in favour of the Department and the Commissioner (Appeals) decided in favour of the importers. On appeal by the Department, the Tribunal by Order dated 14.5.2002 remanded the matter with the directions to the Adjudicating Authority to approach GSI again for specific report as to whether the impugned goods are marble or not and then, re-adjudicate the matter following the principles of natural justice.

3.2 In pursuance of the direction of the Tribunal, the Department has approached GSI and got the report dated 13.9.2002, which is generally in favour of the importers. Subsequent clarification dated 7.1.2003 and 7.4.2003 have been received in favour of the Department in respect of other four parties. The decision by the Commissioner (Appeals) in the second round of litigation, is in favour of parties in four cases and is in favour of the Department in ~~two~~ others cases.

4. Ld. DR submits that in the light of the decision of the Hon'ble Supreme Court in the case of Akbar Badruddin Jiwani Vs. Collector of Customs reported in 1990 (47) ELT 161 (SC), the commercial parlance whether the goods can be considered as marble or not is not material .The chemical composition and petro graphic reports, which indicate the state of material, whether they have undergone metamorphic and recrystalisation, would be relevant. The latest clarification obtained from the GSI clearly states that they are lime stones and, therefore, the classification under 2515.20 should be upheld. The cross examination of the experts during the adjudication proceedings also confirm that the said products are lime stones.

5. Ld. Advocate appearing for M/s. Swati Marble Industries and Others submits that the original reports of CRCL is in favour of the importers.

He relies upon the decision of the Tribunal the Final Order No.392-393/2008 in the case of Ramdhan Mohanlal & Co. Pvt. Ltd. in Customs Appeal Nos.714 of 2005 and the decision in the case of CC Vs. Amit Marbles - Final Order NO.C/35/2005 dated 1.10.2008, wherein it has been held that identical products imported are to be classified ony under Heading NO.2515.11.

6.1 We have carefully considered the submissions from both the sides. The matter is before the Tribunal for the second time. The Department was given liberty to seek specific reports from GSI regarding the nature of the products imported. We find that three reports have been obtained. The relevant portion of the three reports are reproduced below:-

PETROGRAPHIC REPORT OF ROCK SAMPLES DATED 13.09.2002

"In response to your letters referred above, regarding the petrographic report of the samples sent by you in 1999, the following points are to be stated:-

1. The petrographic reports of the samples clearly state that these samples are of limestone of sedimentary origin. The minor/incipient recrystallisation noticed in the groundmass of few samples can be attributed to the diagenetic changes during compaction, and does not indicate a metamorphic origin.
2. Determination of specific gravity is a separate test carried out on request and is not done as a part of petrographic study. Moreover the specific gravity of the rock does not form a conclusive factor in identification/classification of the rock.
3. Since the possible commercial use of the rocks was also desired (as mentioned in the purpose of test) in the test memos sent by you, it was stated in most of the cases that by virtue of sufficient hardness the rock can take good polish and can be used as commercial marble.
4. Although in commercial parlance, any carbonate rock sufficiently hard and capable of taking goods polish is termed marble, the study of petrographic characters in the thin section was carried out for the identification of the rock.

5. It can be concluded that on the basis of the petrographic parameters, all the samples submitted by you are of limestone having a sedimentary origin, which can be used commercially as marble."

PETROGRAPHIC REPORT (7.10.2003)

Type of Sample – Rock
Number of samples – 7 (seven)
Samples Nos.(if any) – B.E. Nos.000309, 000234, 000311, 000289, 000248, 000312 & 000226.
Nature of analysis/lost-Complete Petrographic Report.

"Sample No. 1	(B.E. No. 000309 dt 28.8.99 M/s Ram Dhan Mohan Lal & Co. New Delhi Colour Beige)
Identification:	The rock is off white, very fine grained. Under microscope the rock is pure marble containing 30% coarse crystals of calcite with mylonitised carbonates giving rise to fine grained groundmass.
Name of Rock:	Pure marble mylonitised.
Sample No. 2	(B.E. 000234 dt. 16.7.99, M/s The Stonmann Marble Industries, Colour dark grey)
Identification:	The rock is dark grey extremely fine grained with white veins of calcite. Under microscope the rock is very fine grained, composed of carbonates. Carbonate minerals are not identifiable due extreme fine grained nature of the matter. Veins of calcite criss-cross the rock. Some coarse crystals of the calcite also occur independently with the fine groundmass. Some dark fine dust occur throughout the rock giving dark shade to the rock in hand specimen.
Name of Rock:	Limestone with calcite veins.
Sample No. 3	(B.E. 000311 dt. 30.8.99, M/s Trident Marble Pvt. Ltd., Colour Beige)

Identification: The rock is off white, fine grained. Under microscope it is highly pulverized (mylonitised marble with highly deformed calcite crystals, showing preferred orientation, that is drawn into long trains, and showing mylonite cleavage calcite crystal: fine grained groundmass ratio is 60:40.

Rock Name: Pure Marble, fine grained due to mylonitisation.

Sample No. 4 (B.E. 000289 dt. 11.8.99 M/s Millenium Marble (P) Ltd., Colour Beige)

Identification: Characters of the rock in hand specimen and under microscope are same as in Sample nos. 1 and 3. The rock shows more deformation and crystals of calcite vs. fine grained groundmass is 25:75.

Rock Name: Pure Marble, mylonitised.

Sample No. 5 (B.E. No. 000248 dt. 26.7.99 M/s Swati Marble and Granites, Colour Beige)

Identification: The rock is fine grained and off white in colour in hand specimen. Under micro scope it consists of 60% calcite crystals in fine grained carbonate groundmass. The rock is mylonitised marble.

Rock name: Pure Marble, mylonitised.

Sample No. 6 (B.E. No. 000312 dt. 30.8.99 M/s Hard Rock International, Colour Beige)

Identification: The rock is off white and fine grained in hand specimen. Under microscope it is almost entirely fine grained groundmass with only a few coarse crystals of calcite. The fine ground mass is due to the mylonitisation of the coarse calcite crystals. Parallel line may be due to the mylonitic cleavage. Traces of some rounded organic structures are observed.

Rock name:	Pure Marble, mylonitised.
Sample No. 7	(B.E. No. 000226 dt. 8.7.99 M/s Swati Marble and Granites, Colour Beige)
Identification:	In hand specimen the rock is off white and very fine grained. Under microscope it is mylonitisation of the coarse marble. Mylonitic cleavage is observed. A few coarse crystals of calcite are also seen.
Rock name:	Pure Marble, highly mylonitised."

PETROGRAPHIC REPORT OF ROCK SAMPLES DATED 7.4.2003

"In response to the above reference, regarding the petrographic report of the samples, the following points are mentioned in order to clarify the results sent earlier.

Limestone is a very fine grained, dull looking comparatively soft, rock, while marble is coarser grained, hard rock capable of taking good polish on treatment (cutting and polishing), although both the rock types, when pure may be exactly similar in chemical composition. However, in commercial jargon any rock with some carbonate content and hardness, with an aesthetic look, and capable of taking good polish is called 'Marble For Example', the yellow limestone of Jaisalmer district and the green serpentinite (Calcium-magnesium silicate and carbonate) from the Rikhabdev area, Udaipur district, are sold in the market as yellow marble and green marble, respectively.

The samples under question sent in two lots (first in the year 2000 and second in 2002) are hard, bright, shining in hand specimen and show partial crystallinity under microscope. A further detailed study of the physical and petrographic characters show that all these samples except one (sample No.B/E 234) are geologically 'limestone', although they have a physical look of commercial marble and can be so used."

6.2 From the above reports, it is seen that the first report is in support of the claim of the importers and the contents of the first report are not contradicted in the subsequent reports given by way of clarification. The concluding report also confirms that the imported goods are useable as commercial marble.

6.3 Similar issue has been decided by the Tribunal in the case of M/s. Ramdhan Mohan Lal & Co. (Pvt.) Ltd. and M/s. Amit Marbles Pvt. Ltd. (supra) and the relevant portions of the orders is reproduced below:-

> Ramdhan Mohan Lal & Co. (Pvt.(Ltd.)
>
> "6. We have carefully considered the submissions by learned DR and also the written submissions filed on behalf of the appellant. The chemical composition of the lime stone and marble are the same and are not different. The marble is formed by the process of metamorphism of lime stone. The judgement relied upon by the learned DR. In the case of Akbar Badruddin Jiwani also holds that the marble is formed by metamorphism of the lime stone and the product should be subjected to microscopic examination to confirm whether the same is marble or not. The report of CRCL confirms that the imported goods satisfy the physical characteristics of marble. The appellant's claim for retesting has not been allowed. It is not a case whether the department sent the sample only to Geological Survey of India. Having sent the sample to CRCL and having received the report which is in conflict with the report of Geological Survey of India, the refusal to permit retesting and refusal of cross-examination are not justified. Further, the import has taken place in September, 1999. The clarification of the Board has been issued in 2002."

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

Heading No.	Sub heading 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. In the present case, as already noted, the report of CRCL was in favour of the importers. The Board's advice regarding referring the samples to GSI came to be issued in 2002 much after the import in these cases. The reports of the GSI are not specifically in favour of the Department. Even in the expert's opinion given by GSI, it has been submitted that these goods can be used as marble commercially. In the light of this, we are unable to deny the claim of the importers that the impugned goods should be treated as marble and classified under 2515.11. We have taken similar decision in the case of Ramdhan Mohan Lal & Co. (P) Ltd. cited supra.

8. Following the above, (a) we reject the appeals by the Department and (b) we allow the appeals of the importer with consequential relief.

Order dictated & pronounced in open court on 12.11.2008.

(M. Veeraiyan)
Member (Technical)

(P.K. Das)
Member (Judicial)

Ckp.