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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/726 & 727/2008 - CU[DB] Date 19/01/2009

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

To :
M/S R.K.MARBLE PVT. LTD.

MARKRANA ROAD, MADANGANJ KISHANGARH,
AJMER (RAJ.)
M/S R.K.MARBLE PVT. LTD.

Appellant

Vs

C.C.E. JAIPUR I

Respondent

I am directed to transmit herewith a certified copy of **Final order No.** c/18-19/09 **CU[DB]** dated 15.01.09 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

C.C.E. JAIPUR I

N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME, JAIPUR 302005.

2. Adv. / Consult

MR.BIPIN GARG

B-1/1289,A-VASANT KUNJ, 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 -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)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

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

COURT-III

Date of hearing/decision: 15.1.2009

Customs Appeal Nos.726 & 727 of 2008

Arising out of the order in original No.22/2008/CC dated 11.11.2008 and No.21/2008/CC dated 5.11.2008 passed by the Commissioner, Customs , Jaipur.

For Approval and Signature:

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

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

Appellants — Respondent

R.K. Marble Pvt. Ltd. vs. C.C.., Jaipur

Appearance:

Shri Bipin Garg, Advocate and Shri Atul Gupta, Company Secretary for the appellants
Shri Sunil Kumar, Authorized Departmental Representative (DR) for the Revenue

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

Order No. C/18-19/09

Per M. Veeraiyan:

These two appeals by the same appellant involved substantially the same issues and are accordingly being taken up together for disposal.

2. Heard both sides.

3. The relevant facts, in brief, are as follows:

a) The appellant imported rough marble blocks, which require specific import licence. They were having licence dated 20.8.08 issued in pursuance of Policy Circular No.13 dated 30.6.08, enabling them to import rough marble blocks, subject to "floor price of US $ 325 per M.T."

b) The appellant imported Rough Marble Blocks and filed 10 bills of entry for clearing the said imported consignments. Appeal No.C/727/08 relates to 8 bills of entry [No.1000 dated 24.9.08 and No.1002 to 1008 dated 27.9.08] by which, they imported a total quantity of 792.81 MTs. declaring CIF value of Rs.97,52,216/-. The prices declared were varying with a minimum of 229.10 US $ PMT and a maximum of 301.72 US $ PMT in each case being less than the floor price of US $ 325. In appeal No.C/726/08, two bills of entry No.996 dated 23.9.08 and 999 dated 24.9.08 are involved relating to import of 105.84 MTs with a declared value of Rs.12,08,369/-. As against of 85 MTs. of the declared quantity relating to bill of entry No.999, the actual quantity was found to be 104.76 MTs. The prices declared in these bills of entry were Rs.250.72 US $ and 302.72 US $, each less than Rs.325, the floor price fixed.

c) Commissioner having found that the import was in violation of the condition of the licence, confiscated the goods. He also held that prices declared were on the lower side and enhanced the prices to Us $ 357 PMT, the average weekly price found in respect of imports in other ports in India.

d) Accordingly, in the order dealt with in appeal No.C/727/08, he confiscated the goods but allowed the same to be redeemed on payment of redemption fine Rs.50 lakhs; enhanced the value from Rs.1,00,46,733/- to Rs.1,24,04,099/- for the purpose of assessment and imposed penalty to Rs.12,50,000/-. In the order relating to Appeal No.C/726/08, he confiscated the goods including (the goods found in excess) but allowed the same to be redeemed on payment of redemption fine of Rs.10 lakhs and imposed penalty of Rs.2.5 lakhs. He enhanced the value to Rs.20,23,655/- for the purpose of assessment.

4.1 The learned Advocate submits that they have been issued the licence originally by the DGFT in pursuance of the Policy Circular dated 30.6.08 and they have filed the Bills of entry in September 2008 but by revised Policy

Circular dated 31.10.08, the floor price for the impugned goods have been reduced to US $ 275 PMT; such revision was necessitated as the prevailing market prices were considerably reduced during intervening period. Since, they have not yet cleared the goods from the Customs, they should be allowed the benefit of revised lower floor price for the consignment and the licence should be held valid and the goods should not be confiscated.

4.2 He relies on para 2.26 of Exim Policy relating to 2000-2009, which reads as follows:

> ***2.26 Clearance of Goods from Customs***
>
> ***Goods already imported/shipped/arrived, in advance, but not cleared from Customs may also be cleared against an Authorisation issued subsequently.***

He also submits that the 'Authorisation' means 'a permission/licence in terms of Section 2(g) of FT (D & R) Act to import or export and the 'Licence' means ' a licence to import or export and includes a customs clearance permit and any other permission issued or granted under this Act'.

4.3 He submits that the Policy Circular dated 31.10.08 and the endorsement/amendment made in the licences issued to them could not be placed before the adjudicating authority. He also submits that the substantial quantity of goods imported are still lying with the Customs and they are incurring heavy demurrage, therefore, he is not contesting that there is violation of licesing conditions but seeks leniency as international price of the rough marble price has come down substantially necessitating reduction in floor price.

4.4 He also submits that consenting for adoption of contemporaneous import price should not be taken as consent for taking average weekly price as adopted by the Commissioner. If there are varying contemporaneous prices, the lowest price should have been adopted. He seeks setting aside the enhancement of the assessable value.

5. Learned SDR reiterates the findings of the Commissioner. He also points out in respect of one bill of entry as against 85 MTs. declared the quantity found was 104 MTs. and the explanation offered for such excess quantity should not be accepted. He seeks upholding the order of the Commissioner.

6. We have carefully considered the submissions from both sides. We find that the licence dated 20.8.08 has the validity period of 24 months. It has been issued in pursuance of the Policy Circular dated 30.6.08 which contained the condition that floor price should be US $ 325 PMT. There is an amended Policy Circular dated 31.10.08 reducing the said floor price to US $ 275 PMT. Apparently, this reduction has caused the price of the commodity in the international market. The goods have been imported during the currency of the Policy Circular dated 30.6.08 and bills of entry have been filed before amendment dated 31.10.08. The Advocate is not contesting the finding that there is violation of licensing conditions. The learned Advocate made submission that lower floor price has been fixed because of reduction in international prices and therefore, the prices declared by them should be accepted. Commissioner has wrongly adopted the value of the weekly average of the price for the commodity. In a situation where the prices were apparently coming down, we do not find any justification for enhancement of the prices declared by the appellant especially based on average prices. Therefore, we hold that the prices declared by the appellant should be accepted for assessment purpose. Having accepted the declared prices for assessment, it is clear that the said prices are below the floor price of US $ 325 which was ruling during the period of import and during the time of filing bills of entry. Since the violation of the Policy is not being disputed, we take into account the attending circumstances for fixing lower redemption fine and penalty.

6.1 The appeal No.C/726/08 is disposed of follows:

i) The confiscation of the impugned goods for violation of condition of licence and for having mis-declared the quantity is sustained but the redemption fine imposed is reduced from Rs.10 lakhs (rupees ten lakhs) to Rs.1,50,000/- (rupees one lakh fifty thousand only).

ii) Penalty is reduced from Rs.2,50,000/- (rupees two lakhs fifty thousand) to Rs.75,000/- (rupees seventy five thousand only).

iii) The value per metric tonne shall be as declared by the appellant for the entire quantity including the excess quantity.

6.2 Appeal No.C/727/08 is disposed of as follows:

i) The confiscation of the impugned goods for having imported in violation of the condition of the licence is upheld.

ii) The redemption fine is reduced from Rs.50 lakhs (rupees fifty lakhs) to Rs.10,00,000/- (rupees ten lakhs only);

iii) Penalty imposed is reduced from Rs.12,50,000/- to Rs.3 lakhs (rupees three lakhs only).

iv) The value for assessment shall be as declared by the appellants.

7. Dasti order may be issued as the goods are lying with the Customs.

(Dictated and pronounced in open Court)

(M. Veeraiyan)
Member (Technical)

(P.K. Das)
Member (Judicial)

scd/