IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

WEST BLOCK NO.2, R.K. PURAM, NEW DELHI-110066

BENCH-DB

COURT –I

Excise Appeal No. E/726/2011-[DB]

[Arising out of Order-in-Appeal No. 527(DKV)CE/JPR-I/2010 dated 14.12.2010 passed by the CCE Jaipur].

Agarwal Marbles India Pvt. Ltd. …Appellant

Vs.

C.C.E. Jaipur-I … Respondent

Present for the Appellant: Mr. Kumar Vikram (Advocate)
Present for the Respondent: Mr. M.R. Sharma, D.R.

Coram: HON'BLE JUSTICE (DR.) SATISH CHANDRA, PRESIDENT
HON'BLE MR. V. PADMANBHAN, MEMBER (TECHNICAL)

Date of Hearing/Decision: 09/06/2017

FINAL ORDER NO. 54075 /2017

PER: JUSTICE (DR.) SATISH CHANDRA

The present appeal has been filed against the order-in-appeal No. 527/2010 dated 09.12.2010. The brief facts of the case are that the appellant was engaged in the manufacture of Marble Slabs and Tiles falling under sub-heading No. 25151220 and 68101990 of the First Schedule of Central Excise Tariff Act, 1985.

2. On 17.04.2008, a search was conducted at the business premises of the appellant. On final verification the shortage of the marbles was found. So a demand was raised for Rs. 76,388/- on

the marble slabs by alleging clandestine clearance. The same was confirmed by the impugned order. Being aggrieved, the appellant is before the Tribunal.

3. With this background, we heard Mr. Kumar Vikram and Mr M.R. Sharma, the Ld. Counsel for the parties.

4. After hearing both the parties, it appears that in para 7(a), the Commissioner (Appeals) observed ***"I observe that burden to prove clandestine removal of the goods is on the Department and the same has not been discharged by the way of collecting supporting evidence to prove the impugned short found goods were clandestinely cleared."***

5. In the light of above observation made by the Commissioner (Appeals), we are of the view that the demand is not sustainable. Hence, we modify the order and relief the demand of Rs. 76,388/-. The appellant will get relief.

6. The second issue in the appeal is pertaining to the classification of the Agglomerated Marbles, where the demand is raised for Rs. 6,29,254/-.

7. After hearing both the parties and after perusing the records, it appears that the issue is squarely covered. As per the ratio laid down in the case of ***CCE Vadodara vs Kedia Agglomerated Marbles Ltd. 1995 (77) ELT 710 (Tri.)*** is covered in view of the Revenue. Thus, this background raised by the appellant is dismissed.

8. In the result, the appeal filed by the appellant is partly allowed. In the light of the above discussion, the AO will decide the issue of the penalty. Regarding the penalty, the matter is remanded to the original authority. The appeal is disposed of in above terms.

[Dictated and pronounced in the open Court]

(V. PADMANBHAN)
MEMBER (TECHNICAL)

(JUSTICE (DR.) SATISH CHANDRA)
PRESIDENT

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