CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL REGIONAL BENCH AT HYDERABAD

Division Bench – Court No. – I

Excise Appeal No. 26270 of 2013

(Arising out of Order-in-Original No.8/2013-C.Ex. dt.29.01.2013 passed by Commissioner of Customs, Central Excise & Service Tax, Guntur)

M/s Madhucon Granites Ltd
Sy.No.989/1, 989/1&2, 992, Chimakurthy,
Prakasam Dist., AP – 523 226 **......Appellant**

VERSUS

Commissioner of Central Excise & Service Tax, Guntur
PB No.331, CR Building, Kannavarithota,
Guntur, Andhra Pradesh – 522 004 **......Respondent**

Appearance
Shri Y. Sreenivasa Reddy, Advocate for the Appellant.
Shri M. Anukathir Surya, AR for the Respondent.

Coram: **HON'BLE MR. A.K. JYOTISHI, MEMBER (TECHNICAL)**
HON'BLE MR. ANGAD PRASAD, MEMBER (JUDICIAL)

FINAL ORDER No. A/30182/2026

Date of Hearing: 09.12.2025
Date of Decision: 07.04.2026

[Order per: A.K. JYOTISHI]

M/s Madhucon Granites Ltd (hereinafter referred to as the appellant) are in appeal against the Order-in-Original dt.29.01.2013, whereby, certain demands of Central Excise duty as well as Customs duty has been confirmed by the Adjudicating Authority.

2. The issue, in brief, is that the appellants are 100% Export Oriented Unit (EOU) engaged in manufacture of granite slabs, dimensional blocks and other articles of granite. The appellant had also imported as well as domestically procured capital goods, raw materials, inputs, etc., in terms of Notification No. 52/2003-Cus dt.31.03.2003 and Notification No. 22/2003-CE dt.31.03.2003 during the period from 01.04.2006 to 31.08.2007. The department felt that they had cleared certain consignments to DTA without payment of applicable duty and also certain consignments were cleared to their sister concern, which was also an EOU without following the prescribed

procedure and some differences were also noticed in respect of goods sent by them to their sister concern and received by them.

3. On adjudication, the demands were confirmed in respect of Central Excise duty payable on goods manufactured and cleared to DTA, Central Excise duty on goods manufactured and cleared from the appellant to another EOU, as also on goods procured by the appellant without payment of duty of Central Excise and Customs in terms of aforesaid exemption notifications. The Commissioner, while adjudicating, inter alia, held that they had cleared cut, dressed and dimensional processed granite to DTA after working/ processing and it was not merely cut and dressed granite and hence it was classifiable under CETH 6802 and chargeable to duty. Further, in the case of transfer of goods from appellant to their sister concern, which was also an EOU, the appellant had not followed procedure prescribed under Para 6.13 of HBP and the recipient unit has also not accounted for entire quantity of goods transferred by the appellant nor recipient units have added the value of these receipts in the formula for arriving at Net Foreign Exchange (NFE). He also observed that though claimed by the appellant that they had obtained post facto approval, no such evidence was produced before him.

4. Learned Advocate for the appellant has mainly contested that the non-payment of duty on rough granite block was on account of the fact that the said goods were covered under CETH 2516 and not under CETH 6802 as adopted by the adjudicating authority and he did not pay duty as there was no Central Excise duty on goods under CETH 2516. Insofar as transfer of goods from one EOU to another EOU, it is his submission that goods were transferred to their sister concern and were duly accounted for, though the department is not agreeing based on certain observations regarding non-addition in the NFE, etc. He has further submitted that even though initially they had not followed the requisite procedure nor obtained any prior approval for such clearance from one 100% EOU to another 100% EOU as provided in the policy, they later on obtained post facto approval from the Development Commissioner, who is the regulatory authority for EOU, and therefore, the matter stands regularized.

5. Learned Advocate has further contested that the product being quarried by them from the mines are only roughly cut and trimmed and

cannot be considered as product falling under Chapter 68. As far as clearance of small size granite blocks, which were treated as rejects, to DTA by issuing VAT invoices but without payment of Excise duty, he was under the impression that said product was falling under CETH 2515, as they were not polished blocks. According to the learned Advocate, even the calculation of excise duty demand is not correct as cess has been added third time, which is against settled position, as held by various Coordinate Benches including Sarla Performance Fibers Ltd Vs CCE, Ahmedabad [2010 (253) ELT 203 (Tri-Ahmd)]. Similarly, while Notification No. 23/2003-CE dt.31.03.2003 allowed payment of 50% of Customs duty in case of clearance of goods from EOU to DTA, the demand has been made on full rate of duty. His another submission is that they had declared these removal of blocks from EOU unit to another EOU unit in the monthly returns and even though the notification requires that such removals should be as per the conditions stipulated, no specific conditions were notified. Therefore, when the goods sent to another EOU are accounted for to the satisfaction of the jurisdictional officer, the conditions are deemed to have been fulfilled and no demand can be made for failure to follow the conditions unless they are substantial. He has relied on the following case laws.

a) Mangalore Chemicals & Fertilizers Ltd Vs Dy. Commissioner [1991 (8) TMI 83 (SC)]
b) CST Vs Convergys India Pvt Ltd [2010 (20) STR 166 (P&H)]
c) Adfert Technologies Pvt Ltd Vs UOI [2019 (11) TMI 282 (P&H)] upheld by Hon’ble Supreme Court in UOI Vs Adfert Technologies Pvt Ltd [2020 (3) TMI 188 (SC)]

6. Learned Advocate has vehemently opposed the observations that shortage was notified at the Hosur EOU on the grounds that movements were made under transit forms given by the mining authorities and e-way bills and details of receipts by Hosur unit and there is no difference as mentioned in the findings. Further, as per Circular No. 88/98-Cus dt.02.12.1998, the Range Officer should have called the details of receipt of goods by Hosur unit and the demand cannot be made for such procedural infractions. He has also pointed out that while on one hand, department has demanded Central Excise duty on the goods cleared by them and on the other hand, denied exemption on inputs procured under the aforesaid two

exemption notifications. This amounts to double jeopardy, in as much as when the demand is made on finished goods, demand on inputs, which were used for manufacture of such goods is not allowed, as held in the following case laws.

a) APG Food Products [2013 (297) ELT 210 (Tri-Del)]
b) Sesa Sterlite Ltd Vs UOI [2016 (337) ELT 366 (Madras)]
c) Oudh Sugar Mills Ltd Vs CCE, Lucknow [2013 (295) ELT 127 (Tri-Del)]

7. He has also submitted that demand has been made in term of B-17 bond and the Legal Undertaking executed before the Development Commissioner where the conditions are that in case goods are not properly accounted for or not used in manufacture of goods under bond then only the said bonds can be enforced. In their case, the goods procured duty free were actually put to intended use in their EOU. He has also pointed out that demand has been made against appellant without referring the matter and without consulting the Development Commissioner, which is in violation of instructions of CBEC, which are as under.

a) Circular No. 21/1995-Cus dt.10.03.1995
b) Circular No. 122/1995-Cus dt.28.11.1995
c) Circular No. 4/2005-Cus dt.31.01.2005

8. Learned AR, on the other hand, has reiterated the findings of the Commissioner and has also pointed out that in the appellant's own case, the Bangalore Bench, vide order dt.09.06.2010, as reported in [2010 (6) TMI 686], inter alia, held that dimensional granite blocks exported by EOU from its quarries were not the export products as specified in LOP prior to 04.05.2005. It also observed that they were entitled for certain exemption benefit under Notification No. 2/1995 subject to conditions of entitlement, except permission from DC, as regards the DTA clearances.

9. Heard both sides and perused the records.

10. We find that essentially there are two broad issues involved in the present appeal.

a) Whether the clearances made by the appellant in DTA are classifiable under Chapter 25, as claimed by them or under Chapter 68, as confirmed by the adjudicating authority.
b) Whether the clearances from the appellant's unit to sister unit, which was also a 100% EOU is proper and therefore, no demand can be made on such clearance or otherwise.

11. We find that essentially the appellants are contesting that the clearances made by them to DTA as well as EOU were not classifiable under CETH 6802 and since they were classifiable under CETH 2516, no excise duty was payable thereon at the time of clearance to DTA. Insofar as classification is concerned, we find that the appellants are claiming that they have only roughly trimmed or cut the blocks quarried from the mines and the emerging goods were dimensional cut and dressed granite blocks/slabs, which are well within the purview of CETH 2516. Therefore, since the appellant's granite was not polished granite block, it will not fall under CETH 6807 and there being rough granite blocks, which are produced by mere sawing dimensionally and rough dressing, it will fall under CETH 2505. They have relied on certain trade notices issued by Bombay-I collectorate i.e., Trade Notice No.7/87 dt.30.01.1987 [1987 (28) ELT T.10] and Bombay-II Collectorate's Trade Notice No. 66/86 dt.22.12.1986-1987 (27) ELT T.20]. They have submitted that they have not carried out any sizing or polishing or any other process for converting of stone blocks into slabs. They have also submitted that the department itself in the past in respect of certain SCNs., has held that their product would be classifiable under Chapter 25 and therefore, they cannot now take a stand that the same would be now covered under Chapter 68.

12. Insofar as clearances to another EOU are concerned, we find that basic ground has been that there is procedural breach and the quantity cleared from appellant's EOU to another EOU has not been fully accounted for. Per contra, the appellants have claimed that it was cleared under certain statutory permissions issued by the Mining department and the entire quantity has been received at recipient EOU. Further, even though they had not got permission for such clearance, they obtained post facto approval from the Development Commissioner for DTA clearance as also for clearance to EOU. Thus, this was merely a procedural breach which cannot lead to

demand in terms of B-17 bond. We also find force in their contention that there is no allegation that duty free imported materials or indigenously procured raw materials have not been actually used in their factory in relation to production of granite. Further, there is no allegation that the appellants themselves have not met NFE. Therefore, under the circumstances, denying them the benefit of notifications would not be proper.

13. Therefore, we find that the issue, as regards classification, has to be redetermined as it has bearing on payment of Central Excise duty at the time of clearances to DTA as also to EOU, if applicable. This would require appreciation of the manner in which their goods have been cleared and if it was cleared after polishing and proper sizing, then it will be classifiable under Chapter 68, otherwise, it may remain classifiable under Chapter 25. To this extent, the appellants will be required to satisfy the adjudicating authority so as to arrive at the proper classification.

14. Insofar as demand of Central Excise duty on clearances to another EOU, we find that it is merely a procedural breach and they have also obtained post facto approval and therefore, the same cannot become a basis for demanding the duty. However, there is some dispute regarding accountal of the total clearances, which will have a bearing on the duty liability. Therefore, to that extent, appellants will have to satisfy the receipt of the entire quantity by their sister concern (EOU).

15. Insofar as demand for non-fulfilment of condition under Notification No. 52/2003-Cus dt.31.03.2003 and Notification No. 22/2003-CE dt.31.03.2003, there is no allegation that such imported goods were not used by them in their unit for production or processing of the goods. However, there are many conditions subject to which these benefits are extended and the appellants will have to satisfy that all the conditions including achievement of NFE, etc., have been fulfilled barring the irregularity of clearance to another EOU without any approval of competent authority. Subject to his satisfaction, the adjudicating authority can decide whether B-17 bonds can be invoked for non-fulfilment of the conditions or otherwise. Moreover, certain provisions, which are built-in in the said notifications, will have to be taken into account for computing the duty

liability, as pointed out by the appellants in their submissions. Penalties, etc., will also have to be redetermined in case duty liability is established.

15. Therefore, in view of the above discussion and findings, the impugned order is set aside and the matter is remanded back to the adjudicating authority to decide the matter afresh keeping in view the above observations. The appellant is required to submit all the relevant details and evidence in support of their defence within a period of two months before the adjudicating authority, who shall decide the matter within a further period of two months.

16. Appeal allowed by way of remand.

(Pronounced in the Open Court on 07.04.2026)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

(ANGAD PRASAD)
MEMBER (JUDICIAL)

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