IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
EAST REGIONAL BENCH : KOLKATA

Customs Appeal No.301/2010

(Arising out of Order-in-Appeal No.73/PAT/CUS/Appeal/2010 dated 29.06.2010 passed by the Commissioner (Appeals) of Central Excise, Customs & Service Tax, Patna)

M/s Usha International

Applicant (s)/Appellant (s)

Vs.

Commissioner of Customs, Patna

Respondent (s)

Appearance:
Shri N.K.Chowdhury, Advocate for the Revenue (s)
Shri S.N.Mitra, AC(AR) for the Respondent (s)

CORAM:
HON'BLE SHRI P. K. CHOUDHARY, JUDICIAL MEMBER
HON'BLE SHRI BIJAY KUMAR, TECHNICAL MEMBER

Date of Hearing/Decision : 11.06.2018

ORDER NO. FO/76251/2018

Per Shri P. K. Choudhary :

The appellant having I.E.C. No.0288014707, imported 'Marble Slabs' from M/s. Godavari Marble Industries Pvt. Ltd., manufacturer exporter, Katmandu, Nepal. The goods were imported through Land Customs Station, Raxaul were classified under Customs Tariff Item No. 6802 21 10 and the import was made availing the benefit of Notification No.4/2006-CE dated 01.03.2006 and Notification No.78/2006-Cus dated 08.08.2006. Show Cause Notice dated 21.08.2007 was issued for classifying goods under Tariff Item No.68022190 and demanding Additional customs duty @ 16% alongwith Central Excise Education Cess and Central Education Secondary & Higher Education Cess and also Additional Customs duty

@ 4%. It is the case of the Revenue that the appellant have wrongly classified the imported goods under Tariff Item No. 68022190 and thereby availed the benefit of Exemption Notification No. 4/2006-CE dated 01.03.2006 resulting in short payment of duty amounting to Rs.8,13,879/-. The Adjudicating Authority classified the goods i.e. Marble Slabs (Polished) under sub-heading No.6802 21 90 of the Customs Tariff Act, 1975 and passed the following order:

" *Having regards to the facts of the case, and discussions and findings made above, I pass the following orders:-*

(a) *The Goods, i.e. Marble Slabs (Polished), imported by the Importer as detailed in Annexure-A to the Notice is classifiable under sub heading no.6802 21 90 of the Customs Tariff Act, 1975;*

(b) *I confirm the demand of Additional Customs Duty @ 16% Ad Valorem leviable under Section 3(1) of the CTA, 75 amounting to Rs.5,81,735/-, which is payable by the Importer on the import of Marble Slabs (Polished), as mentioned in Annexure-A to the Notice and the above amount of Rs.5,81,735/- should be recovered from the Importer under the provisions of Section 28(1) of the CA, 62;*

(c) *I confirm the demand of Central Excise Education Cess leviable under Section 91 of the Finance (No.2) Act, 2004m amounting to Rs.11,635/-, which is payable by the Importer on the import of Marble Slabs (Polished), as mentioned in Annexure-A to the Notice, and the above amount of Rs.11,635/- should be recovered from the Importer from them under the provisions of Section 28(1) of the CA' 62;*

(d) *I confirm the demand of Central Excise Secondary and Higher Education Cess leviable under Section 136 of* *the Finance Act, 2007, amounting to Rs.5,077/- which is payable by the Importer on the import of Marble Slabs (Polished), as mentioned in Annexure-A to the Notice, and the above amount of Rs.5,077 should be recovered from them under the provisions of Section 28(1) of the CA'62;*

(e) *I confirm the demand of Customs Education Cess leviable under Section 91 of the Finance (No.2) Act, 2004, in the case of Goods specified in the first schedule to the CTA'75, amounting to Rs.11,969/- which is payable by the Importer on the import of Marble Slabs (Polished), as mentioned in Annexure-A to the Notice, and the above amount of Rs.11,969/- should be recovered from them under the provisions of Section 28(1) of the Ca'62;*

(f) *I confirm the demand of Customs Secondary and Higher Education Cess leviable under Section 136 of the Finance Act, 2007, in the case of Goods specified in the first schedule to the CTA'75, amounting to Rs.5,229/-, which is payable by the Importer on the import of Marble Slabs (Polished), as mentioned in Annexure-A to the Notice, and the above amount of Rs.5,229/- should be recovered from them under the provisions of Section 28(1) of the CA'62;*

(g) *I confirm the demand of Additional Customs duty to Countervail Local Taxes leviable; @4% under the provisions of Section 3(5) of the CTA,'75 amounting to Rs.1,98,234/-, which is payable by the Importer on the import of Marble Slabs (Polished), as mentioned in Annexure-A to the Notice, and the above amount of Rs.1,98,234/- should be recovered from them under the provisions of Section 28(1) of the CA,'62.*

(h) *Interest at the applicable rate should be recovered from the importer under the provisions of Section 28AB/28AA of the CA,'62;*

(i) *Penalty of Rs.8,00,000 (Rs. Eight Lakhs only) is imposed upon M/s Usha International, 16 F, Judges Court Road, Kolkata-700 027 under the provisions of Section 112 of the CA, '62;*

(j) *Penalty of Rs.10,000/- (Rs. Ten Thousand only) is imposed upon Shri Ashok Kumar Sinha, Customs House Agent, Land Customs Station, Main Road, Raxaul, under the provisions of Section 112 of the CA,'62."*

2. On appeal the Commissioner (Appeals) upheld the adjudication order to the extent of classification of imported goods under Chapter sub-heading No.68022190 and denying the benefit of Notification No. 4/2006-CE dated 01.03.2006 and Notification No.78/2006-Cus dated 08.08.2006 and confirming the demand of duty along with interest. However, he set aside the penalties imposed on the appellants under Section 112 of the Customs Act, 1962.

3. Ld. Advocate appearing on behalf of the appellants reiterates the grounds of appeal and submits that initially the goods were imported, classifying the goods under Chapter sub-heading 6802 21 10 and the same was accepted by the department and assessment was made and goods were allowed to be cleared. The bills of entry pertains to the period of 25.02.2007 to 18.07.2007 and the show cause notice was issued on 21.08.2007. He also drew the attention of the bench to Notification No. 4/2006-CE dated 01.03.2006 in Sl.No.2 which granted payment of concessional rate of duty @ Rs.30/- per square mtr. for

Marble Slabs and Tiles falling under Chapter sub-heading 2515 12 20, 2515 12 90 or 6802 21 10. In the Tariff against Chapter sub-heading 6802 21 10 goods have been described as Marbles Blocks/Tiles. It is his submission that the tariff and the notification should be read as a whole, only interpretation can be drawn is that the Marble Blocks and Slabes have been treated on the same footing. Ld. Counsel relied upon various decisions.

4. Ld. D.R. for the department reiterates the discussions and findings of the lower authorities.

5. Heard both sides and perused the appeal records.

6. We find that the appellant imported polished marble slabs and classified under Customs Tariff Heading No. 6802 21 10 under concessional rate CVD @ Rs.30/- per square mtr. vide Sl.No.2 of the Notification No. 4/2006-CE dated 01.03.2006. Show Cause Notice was issued to the appellants pressing demand of duty alongwith interest and penalty on the ground that the goods are to be classified under Chapter Heading No.68022190 and demanding Additional customs duty @ 16% and denied the concessional rate of duty under Notification No.4/2006-CE (supra).

7. We find that the Notification No. 4/2006-CE dated 01.03.2006 extended concessional rate of CVD @ Rs.30/- per square mtr. on marble slabs and it is classified under Chapter sub-heading No.6802 21 10. We also find that the Ministry of Finance, Department of Revenue vide DOF No.334/1/2012-Tru dated 16.03.2012 clarified that the benefit of CVD is available to Polished Marble Slabs of Chapter

sub-heading No.6802 21 90 under Notification No.4/2006-CE (supra). It is also clarified that the relevant exemption entry is being amended to specifically include Chapter sub-heading No.6802 21 90 vide Notification No.12/2012-Central Excise dated 17.03.2012. We also find that he issue is no more resintegra and is covered by the decision of the Akash Stone Industries Ltd. vs. Commr. Of Cus. (Port-Import), Chennai [2014(302) ELT 475(Tri.-Chennai)]. Paragraph 5 of the Tribunal's decision is reproduced:

> *"**5.** After considering the submissions by both sides, we find that Ministry's letter D.O.F. No. 334/3/2012-TRU, dated 16-3-2012, is relevant for the purpose of understanding the issues, as reproduced below :-*
>
> *"13. Classification of Natural marble Slabs subjected to processes of resin filling, fibre netting and Polishing :*
>
> *13.1 Marble slabs and tiles are classified under Chapter 25 or Chapter 68 of the Central Excise Tariff depending on the extent to which they have been finished. Polished marble slabs are classifiable under Heading 6802 21 90 which attracts the general effective rate of 10% ad val. Concessional excise duty of Rs. 30 per square meter is applicable to marble slabs and tiles falling under Heading Nos. 2515220, 25151290 or 6802 21 10 in terms of Notification No. 4/2006-C.E., dated 1-3-2006. Representation were received by the Board that the benefit of this exemption is not being extended to polished marble slabs of Heading 68022190 as the latter does not find specific mention in the exemption entry even though covered by the description. It is pertinent to mention that the Board has examined similar issues in the past on more than one occasion and clarified that the benefit of exemption will be available to goods as long as they are covered by the description. It is clarified that the benefit of concessional rate of Rs. 30 per square metre is available to polished marble slabs of Heading 68022190 under the said notification. For the removal of doubts, however, the relevant exemption entry is being amended to specifically include CETH 6802 21 90. (Notification No. 12/2012-C.E., dated 17th March, 2012 refers)."*

> *clearly clarified that the polished marble slabs and tiles are classifiable under C.T.H. No. 68022190 would be eligible for the benefit of exemption under the said notification."*

8. In view of the above decision and settled position of law the appeal filed by the appellant is allowed.

(Operative Portion of the order already pronounced in the open court)

S/d.
(BIJAY KUMAR)
MEMBER (TECHNICAL)

S/d.
(P. K. CHOWDHARY)
MEMBER (JUDICIAL)

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