CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 85480 OF 2021

[Arising out of Order-in-Original No: 76/2020-21/CAC/CC(IMPORT-II)/MKK dated 22nd February 2021 passed by the Commissioner of Customs (Import-II), Mumbai.]

Stonemann Royale Ltd
Plot No. 96, 75/76 Ashok Chamber,
Devji Ratanshi Marg, Masjid (E), Mumbai - 400009 … ***Appellant***

versus

Commissioner of Customs (Import-II)
New Custom House, Ballard Estate, Mumbai - 400001 ***…Respondent***

WITH

CUSTOMS APPEAL NO: 85481 OF 2021

[Arising out of Order-in-Original No: 75/2020-21/CAC/CC(IMPORT-II)/MKK dated 22nd February 2021 passed by the Commissioner of Customs (Import-II), Mumbai.]

Stonemann Royale Ltd
Plot No. 96, 75/76 Ashok Chamber,
Devji Ratanshi Marg, Masjid (E), Mumbai - 400009 … ***Appellant***

versus

Commissioner of Customs (Import-II)
New Custom House, Ballard Estate, Mumbai - 400001 ***…Respondent***

APPEARANCE:

Ms Kiran Doiphode, Advocate for the appellant

Shri Ranjan Kumar, Assistant Commissioner (AR) for the respondent

CORAM:

HON’BLE MR C J MATHEW, MEMBER (TECHNICAL)

FINAL ORDER NO: 86671-86672/2024

DATE OF HEARING:	29/10/2024
DATE OF DECISION:	29/10/2024

In these two appeals challenging order[1] of Commissioner of Customs (Import-II), Mumbai, the dispute arises from import of two consignments of 'rough marble blocks' and 'marble slabs' *vide* bill of entry no. 3304/12.04.2000 for 119.04 MTs and bill of entry no. 106480/01.02.200 for 168 MTs and is before the Tribunal for the third time following remand on the earlier two occasions for re-determination of fine and penalty consistent with settled law on the subject and after taking into account the factual submissions of the importer. It would appear that the declared value of US $ 219.69 per MT in one consignment and of US $ 154 per MT in the other were found to be below the threshold of US $ 300 per MT for import without authority of licence under the Foreign Trade Policy (FTP).

2. According to Learned Counsel for the appellant, in accordance with the directions of the customs authorities, the importer had concurred with enhancement of value to US $ 300 and had discharged differential duties of customs besides bearing fine for redemption upon confiscation of the goods. It was contended that the detriments had been determined on the finding that the goods were prohibited

[1] [order-in-original no. 76 & 75/2020-21/CAC/CC(IMPORT-II)/MKK dated 22nd February 2021]

even though the assessed value was not below the threshold in the Foreign Trade Policy (FTP) and penalty thereon. It was further submitted that on appeal the Tribunal took note of ‘margin of profit’ not having been considered in the adjudication by the lower authority to direct re-adjudication. It was further submitted that, in the second round of adjudication, the original authority retained the fine while enhancing the penalty owing to which the matter was remanded for a fresh adjudication and it was the consequential reduction in penalty which, nonetheless, was higher than the first determination of penalty that brought the dispute before the Tribunal once again.

3. Learned Counsel for appellant submits that the issue of proportionality of fine and penalty has been set out in the decision of the Hon’ble High Court of Bombay in *Marmo Classic v. Union of India [2003 (157) ELT 520 (Bom.)*] endorsing the view of the Tribunal in *Commissioner of Customs (Import) v. Stoneman Marble Industries [2011 (264) ELT 3 (SC)]* while upholding the determination of fine and penalty by the Tribunal. Reliance was also placed on the decision[2] of the Tribunal in *Royale Impex v. Commissioner of Customs, Mumbai (Import-II)* disposing off appeal[3] against order[4] of Commissioner of Customs (Import-II), Mumbai.

4. Learned Authorised Representative submitted that, in the last

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[2] [final order no. A/85901/2023 dated 11th May 2023]
[3] [C/85326/2021]
[4] [order-in-original no. 63/2020-21/CAC/CC (IMPORTII)/MKK dated 22nd January 2021]

round of appeal, the Tribunal had directed determination of fine and penalty which the original authority had complied with.

5. While the issue involved originally was one of valuation which, with the concurrence of the importer, was enhanced to US $ 300 per MT for 'rough marble blocks' and US $ 450 for 'marble slabs' despite which it was held that the goods were liable to confiscation under section 111(d) of Customs Act, 1962 – a provision – intended for proceeding against prohibited goods imported into India. With the enhancement of value, the goods had ceased to be prohibited goods and, in the absence of proposal for confiscation of goods that did correspond to details in entry made under section 46 of Customs Act, 1962, recourse could not be had to section 111 of Customs Act, 1962. In *Commissioner of Central Excise, Nagpur v. Ballarpur Industries Ltd [2007 (215) ELT 489 (SC)]* the Hon'ble Supreme Court has held that

> *'21. Before concluding, we may mention that, in the present case, the second and the third show cause notices are alone remitted. The first show cause notice dated 21-5-1999 is set aside as time-barred. However, it is made clear that Rule 7 of the Valuation Rules, 1975 will not be invoked and applied to the facts of this case as it has not been mentioned in the second and the third show cause notices. It is well settled that the show cause notice is the foundation in the matter of levy and recovery of duty, penalty and interest. If there is no invocation of Rule 7 of the Valuation Rules 1975 in the show*

cause notice, it would not be open to the Commissioner to invoke the said rule.'

6. The fine and penalties are set aside to allow the appeals.

(Dictated and Pronounced in Open Court)

(C J MATHEW)
Member (Technical)

**/as*