CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

Customs Appeal No. 87326 of 2016

(Arising out of Order-in-Appeal No. 140 & 141 (Gr.III)/2016 (JNCH) Appeals) dated 12.05.2016 passed by the Commissioner of Customs (Appeals-II), Mumbai II)

Bajrang Marble Co. **.....Appellant**
Ground Floor, Marble market, Plot no. 126,
Sector 23, Kalamboli, Navi Mumbai

VERSUS

Commissioner of Customs, Nhava Sheva **.....Respondent**
JNCH, Post Uran, District Raigad

AND

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APPEARANCE:

Shri B.R. Tripathi, Advocate for the appellant
Shri Krishna M Azad, (AR) for the respondent

CORAM:
HON'BLE SHRI AJAY SHARMA, MEMBER (JUDICIAL)
HON'BLE SHRI M M PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER No: 85827-85828/2026

DATE OF HEARING : 30.04.2026
DATE OF DECISION : 01.07.2026

Per: AJAY SHARMA

This appeal has been filed by the Appellant challenging the impugned Orders-in-Appeal dated 12.5.2016 passed by the Commissioner of Customs (Appeals-II) Mumbai-II, JNCH, Nhava Sheva. By the impugned order, the learned Commissioner modified the Orders-in-Original by reducing the redemption fine and penalties under the Customs Act, 1962 to Rs. 2 lakhs & Rs. 1 lakh respectively [*in appeal arising out of O-I-O No. 2/2015-16 AM(l)dated 12.4.2016]*and Rs.1.5 lakhs & Rs. 50,000/- respectively [*in appeal arising out of O-I-O No. 208/2015-16 AM(l) dated 18.2.2016]*. The prayer in the appeals before us is for setting aside the imposition of fine and penalty.

2. The appellant imported *'Honed Polished Marble Slabs (Thickness 20MM-2MM), Honed Polished Marble Slabs (Thickness 20MM – 1MM)* vide Bills of Entry No. 3552711 and 3552720 both dated 11.12.2015. The consignments were given out of charge on the same day but were put on hold by the Preventive Unit of Customs.

3. A 100% physical examination was conducted under Panchnama dated 18.12.2015 and 21.12.2015 respectively. During examination, measurement of marble slabs were recorded by adopting the method of taking *maximum length and maximum breadth* of each slab. Based on this method, excess surface area of around 13% was reported, which is marginally higher than the tolerance limit of 10% without any fine & penalty

as prescribed by the Standing Order No. 22/2010 dated 16.4.2010.

4. Consequently, the declared transaction value was rejected u/r.12 of the Customs Valuation Rules, 2007 and re-determined u/r.4 thereof. A total differential customs duty of Rs.4,90,570/- was demanded across the Bills of Entry in issue u/s.28(4) of the Customs Act, 1962 alongwith applicable interest. Additionally a Redemption fine of Rs.25 lakhs and penalty of Rs.12.50 lakhs was also imposed in the Orders-in-Original.

5. It has been brought to our notice that vide letter dated 5.1.2016, address to Deputy Commissioner (Preventive) R&I Division, the Appellant stated that they accepted the measurement report and to avoid any further delay, agreed to pay the differential duty. However, vide a subsequent communication dated 26.02.2016, the Appellant sought to resile from this position, claiming that the acceptance was made only to avoid further delay and not as a concession on merits. Significantly, neither the letter dated 05.01.2016 nor any contemporaneous document records that the acceptance was made *'under protest'*.

6. The request of the appellant dated 26.2.2016 for re-examination & re-measurement of the marble slabs by a trade expert was rejected by the lower authority. The Commissioner of Customs (Appeals-II) partially modified the orders by reducing the redemption fine and penalties to Rs.2 lakhs and Rs.1 lakh

respectively in the first appeal, and to Rs. 1.5 lakhs and Rs. 50,000/- respectively in the second appeal. Aggrieved by the confirmation of fine and penalty even in the reduced form, the Appellant has filed the present appeals.

7. The primary issue before us is whether the confirmed redemption fine under Sections 111(l) and (m) ibid and the penalty u/s. 114A thereof are legally sustainable in the facts of the present case, particularly where the excess surface area arises from differing methods of measurement of non-uniform marble slabs, and particularly when the Appellant is not contesting the differential customs duty?

8. The learned Counsel for the Appellant submits, which is also supported by the grounds of appeals before us, that from the very inception the Appellant was ready and willing to pay the differential duty on account of the surface area variation. The contest is limited to the levy of redemption fine and penalty, which the Appellant submits is unwarranted in the absence of any fraudulent intent or deliberate mis-declaration. It was further submitted that the slabs were not uniform rectangles or squares, that some slabs had suffered breakage, and that the variance in measurement is an inevitable consequence of the method adopted by Customs, measuring maximum length by maximum breadth, as against the actual surface area of irregular slabs. The marginal variation of around 3% after deducting the 10% tolerance limit prescribed by the Standing Order dated

16.4.2010 is mainly due to different methods of measurement. The grace or the tolerance limit prescribed by the Standing Order dated 16.4.2010 itself shows that variations in measurement of area is inevitable in marble industry. Though excess quantity has been found herein but that doesn’t amount to any mis-declaration.

9. The learned Authorised Representative for Revenue reiterated the findings of the impugned order and submits that the excess of 13% beyond the declared surface area exceeds the 10% tolerance under Standing Order No. 22/2010, and that the Appellant's own letter dated 05.01.2016 constitutes an unqualified acceptance of the excess quantity. Therefore the imposition of fine and penalty was justified.

10. We have heard learned Counsel for the appellant and learned Authorised Representative on behalf of Revenue and perused the case records. We have carefully considered the letter dated 05.01.2016. The Appellant therein unequivocally stated acceptance of the measurement report and payment of differential duty. There is no contemporaneous notation or endorsement indicating that this acceptance was made *'under protest'* or subject to any reservation. The subsequent communication dated 26.02.2016 purporting to qualify the earlier acceptance is, in our view, a *post hoc* attempt to resile from earlier acceptance. In law, a protest must be contemporaneous and explicit; it cannot be introduced by way of

a subsequent communication after the fact. We therefore uphold the rejection of the request for re-measurement.

11. We note that the Panchnama-based measurement was carried out by taking the *maximum length and maximum breadth* of each slab, a methodology that necessarily overstates the actual surface area of non-rectangular or broken slabs by treating them as perfect rectangles. The admitted existence of broken and irregular slabs in the consignment lends credibility to the Appellant's contention that part of the measured excess is attributable to the measurement methodology itself rather than to any actual over-shipment. The very existence of Standing Order No. 22/2010, which grants a 10% tolerance *[loading of value without any fine and penalty]* for variations in measurement of marble slabs, is a formal recognition by the Department itself that measurement variation in this commodity is inherent and unavoidable. While the excess in the present case of 13% marginally exceeds this threshold (resulting in a net excess of approximately 3% beyond the permitted tolerance), we are satisfied that this marginal overage is *reasonably attributable to different methods of measurement* and does not evidence wilful misstatement or fraudulent intent. The Standing Order dated 16.4.2010 is an administrative instruction which though is binding on the department but not on us.

12. Admittedly there is excess surface area and the appellant since beginning are inclined to pay duty on the same but that

doesn't attract confiscation u/s. 111(l) & (m) ibid and the penalty u/s. 114A ibid because bonafide mistakes do not automatically amount to mis-declaration or suppression. Penal consequence like confiscation generally require deliberate defiance of law, conscious disregard of obligation or dishonest conduct, which we are unable to find in the facts of this case. Section 111(l) & (m) ibid are particularly intended to prevent duty evasion and mis-declaration with intent to evade customs duty which, in our view, is not the case herein. Marginal difference in surface area due to different methods of measurement doesn't always amounts to false declaration or to prevent duty evasion. The invocation of these provisions requires a finding of deliberate mis-declaration, wilful misstatement, or suppression of facts with intent to evade customs duty. These are not strict liability provisions and penal consequences of this nature require an element of *mens rea*, deliberate defiance of law, conscious disregard of obligation, or dishonest conduct.

13. In the facts of this case, we find that: (i) the excess surface area is marginal and is at least partly attributable to the measurement methodology adopted; (ii) the Appellant were ready and willing to pay the differential duty on account of surface area variation from the very inception; and (iii) there is no evidence of the Appellant having made a knowingly false declaration or having attempted to smuggle or evade duty. These facts are wholly inconsistent with mis-declaration or suppression. Accordingly, the ingredients of Sections 111(l),

111(m), and 114A are not satisfied in the present case, and the imposition of redemption fine and penalty is not legally sustainable.

14. For the reasons stated above, we are of the view that the excess surface area of marble slabs detected in the present case is the result of measurement methodology and does not constitute a mis-declaration, misstatement, or suppression of facts within the meaning of Sections 111(l), 111(m), and 114A of the Customs Act, 1962. Since from the very inception that appellant had accepted the differential customs duty liability, no further penal liability arises on the facts of this case.

15. Accordingly, the appeals are allowed. The impugned Orders-in-Appeal dated 12.05.2016, confirming the redemption fine and penalty *(even as reduced)*, are set aside.

(Pronounced in open Court on 01.07.2026)

(AJAY SHARMA)
MEMBER (JUDICIAL)

(M. M. PARTHIBAN)
MEMBER (TECHNICAL)

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