



**OFFICE OF THE PRINCIPAL COMMISSIONER
OF CUSTOMS MUNDRA COMMISSIONERATE**
Custom House, Mundra (Kachchh)
MUNDRA PORT & SPL ECONOMIC ZONE,
MUNDRA-370421

PHONE No: 02838-271165/66/67/68,
FAX No.02838-271169/62



सत्यमेव जयते

A	FILE NO.	GEN/ADJ/ADC/923/2022-ADJN.
B	ORDER-IN-ORIGINAL NO	MCH/ADC/MK/102/2023-24
C	PASSED BY	MUKESH KUMARI, ADDITIONAL COMMISSIONER OF CUSTOMS, CUSTOMS HOUSE, MUNDRA.
D	DATE OF ORDER	30.06.2023
E	DATE OF ISSUE	11.07.2023
F	SCN NUMBER & DATE	GEN/ADJ/ADC/923/2022-ADJN. DATED 16.11.2022
G	NOTICEE / PARTY / IMPORTER	M/S UNITED NATURAL STONES (100% EOU), (FORMERLY KNOWN AS M/S EURASIA MARBLE PVT. LTD.,) F - 325 TO 327 & G1 296 TO 298, RIICO INDL. AREA, BHAMASHAH, KALADWAS, UDAIPUR. SHRI ASHOK KUMAR, PARTNER OF M/S UNITED NATURAL STONES (100% EOU), (FORMERLY KNOWN AS M/S EURASIA MARBLE PVT. LTD.,) F - 325 TO 327 & G1 296 TO 298, RIICO INDL. AREA, BHAMASHAH, KALADWAS, UDAIPUR. M/S MULTI MARBLE PVT. LTD., B/H SUKHER INDL. AREA, SUKHER, UDAIPUR. SHRI SANJEEV MODI, AUTHORIZED SIGNATORY OF M/S MULTI MARBLE PVT. LTD., B/H SUKHER INDL. AREA, SUKHER, UDAIPUR.
H	DIN NUMBER	20230771M000000444A5E

1. The Order – in – Original is granted to concern free of charge.
2. Any person aggrieved by this Order – in – Original may file an appeal under Section 128 A of Customs Act, 1962 read with Rule 3 of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. 1 to

The Commissioner of Customs (Appeal), MUNDRA
4th floor, HUDCO Building, IshwarBhuvan Road,
Navrangpura, Ahmedabad- 380009.

3. Appeal shall be filed within Sixty days from the date of Communication of this Order.
4. Appeal should be accompanied by a Fee of Rs. 5/- (Rupees Five Only) under Court Fees Act it must accompanied by (i) copy of the Appeal, (ii) this copy of the order or any other copy of this order, which must bear a Court Fee Stamp of Rs. 5/- (Rupees Five Only) as prescribed under Schedule – I, Item 6 of the Court Fees Act, 1870.
5. Proof of payment of duty / interest / fine / penalty / deposit should be attached with the appeal memo.
6. While submitting the appeal, the Customs (Appeals) Rules, 1982 and other provisions of the Customs Act, 1962 should be adhered to in all respect.
7. An appeal against this order shall lie before the Commissioner (A) on payment of 7.5% of the duty demanded where duty or duty and penalty or Penalty are in dispute, where penalty alone is in dispute.

BRIEF FACTS OF THE CASE :

M/s United Natural Stones (100% EOU) (formerly known as M/s. Eurasia Marble Pvt. Ltd), F-325 to 327 & G1-296 to 298, RIICO Industrial Area, Bhamashah, Kaladwas, Udaipur (Raj)

(hereinafter referred to as "M/s United" for the sake of brevity) having IEC No. 1312006340 is engaged in manufacture & export of Marble Slabs, Granites Slabs, Tiles (Cut to size) & Blocks as mentioned in Letter of Permission LOP No. PER(35)1999/EOB/52/99 Dated 17.07.1999 issued by Secretariat for Industrial Assistance, EOU-MRI Section, Department of Industrial Policy and Promotion, New Delhi subject to fulfilment of certain conditions. Further, letter No. 12-119/99-100%EOU/9658 dated 14.12.2001 and letter No. 12-119/99-100%EOU/243 dated 08.01.2002 were issued to M/s. Eurasia Marble Pvt. Ltd., (100% EOU) by the Assistant Development Commissioner, Noida Export Processing Zone, Noida for change of location from Jaipur to F-325 to 327 8& GI-296 to 298, RIICO Industrial Area, Bhamashah, Kaladwas, Udaipur (Raj) and inclusion of additional items for export products viz. Marble Slabs/Tiles, Granites Slabs/tiles (Cut to size), Dressed Marble Blocks, Dressed Sand Stone Blocks, Marble Monuments, Sand Stone Monument & Dressed Granite Blocks. Further, LOP No. PER(35)1999/EOB/52/99 Dated 17.07.1999 was changed and taken-over by M/s United Natural Stones(100% EOU), F-325 to 327 8& GI-296 to 298, RIICO Industrial Area, Bhamashah, Kaladwas, Udaipur (Raj) vide Letter No. 12-119/99-100%EOU/4471 dated 25.06.2012 issued by the Assistant Development Commissioner, Noida Special Economic Zone, Noida. The "M/s United" had executed B-17 bonds with jurisdictional Deputy/Assistant Commissioner of Central Excise & Customs, wherein they had, interalia, undertaken to observe all the provisions of the Customs Act, 1962, Central Excise Act, 1944 and the Rules and Regulations made there under, failing which they had undertaken to pay the Customs and Central Excise duties along with the interest on the same, on demand being so made. In pursuance of acceptance of said Bond, "M/s United" had been granted permission under Section 58 and 65 of Customs Act, 1962 for private bonded warehouse vide Licence No. EOU/UDR/02/2012 dated 16.08.2012 issued under file C.No. V(EOU)30/UDR/UNS/238/12/8633 by the jurisdictional Deputy/ Assistant Commissioner of Central Excise & Customs subject to the fulfilment of certain conditions.

2.1 Information received by the officers of Directorate of Revenue Intelligence, Zonal Unit, Ahmedabad (hereinafter referred to as DRI) indicated that "M/s United" registered as an EOU was engaged in evasion of duty by diverting of rough marble blocks classifiable under Customs Tariff Heading 25151210, imported duty free by availing exemption under Notification No: 52/2003 dated 31.03.2003. Information further indicated that the goods imported by "M/s United" under Bill of Entry No: 8748306 dtd. 19.05.2022 through Mundra port was likely to be diverted to M/s Multi Marble Pvt. Ltd., Udaipur (hereinafter referred to as "M/s Multi" for the sake of brevity).

2.2 As per foreign Trade Policy, No DTA sale at concessional duty shall be permissible in respect of marble. Further, the Policy Circular No 74(RE-08)/2004-2009 26.03.2009 was issued by the Directorate General of Foreign Trade from File No. 01/92/180/244/AM09/PC-VI, wherein Guidelines for import of Marble by EOUs were issued. As per Policy Circular dated 26.03.2009, DTA sale of marble by EOUs at concessional rate of duties as well as full duties under FTP Para 6.8(a) and Para 6.8(h) respectively, are not allowed. Further, it has also been decided by Board of Approval that EOUs cannot sale of marble in DTA under Para 6.9(b) of FTP. Thus, no route available for DTA sale of marble to EOUs. However, as it was pointed out by Association of marble exporters / Importers that in spite of provisions as mentioned above, clandestine DTA sale of imported marble from EOUs still takes place. The matter was considered and to ensure that no clandestine DTA sale of imported marble is done by EOUs, it was decided that EOUs must mention quality of marble i.e. colour, type and name etc. in the relevant documents to be submitted at the time of both import as well as export of marble.

3.1 Acting upon the said information, simultaneous searches were conducted on 28.05.2022 and 29.05.2022 at the factory premises of M/s United Natural Stones and M/s Multi Marble Pvt. Ltd. as soon as the goods covered under the said Bill of Entry No. 8748306 dtd. 19.05.2022 were unloaded/ diverted to the other unit i.e. M/s. Multi Marble Pvt. Ltd. Incriminating

documents pertaining to "M/s United" and "M/s Multi" along with electronic gadgets of concern persons were seized under Panchnamas dated 28.05.2022 and 29.05.2022.

3.2 During the course of search in the factory premises of "M/s United", it was found that there was no electricity connection in the factory since last one & half month. Further, the goods imported by "M/s United" vide Bill of Entry No. 8748306 dtd. 19.05.2022 were not found in their registered EOU premises i.e. M/s United Natural Stones, F-325 to 327 & GI-296 to 298, RIICO Industrial Area, Bhamashah, Kaladwas, Udaipur (Raj). On inquiry, Shri Raj Kumar Sharma, Accountant of "M/s United" in presence of Panchas stated that they had neither received goods imported by "M/s United" vide Bill of Entry No. 8748306 dtd. 19.05.2022 in their factory premises nor, any documents for import of goods. Shri Raj Kumar Sharma in presence of panchas informed that all the activities related to import & export were looked by Shri Ashok Kumar and Shri Bhagwan Lai Dangi.

3.3 During the search in the factory premises of "M/s Multi", on inquiry with the drivers of truck/trailer, who transported the goods from Mundra to Udaipur, it was found that goods imported by "M/s United" vide Bill of Entry No. 8748306 dtd. 19.05.2022 was unloaded in the factory premises of M/s Multi Marble Pvt. Ltd. behind Sukher Industrial Area, Sukher, Udaipur, Rajasthan. Further, during the search, the said goods were found in the premises of M/s Multi Marble Pvt. Ltd. behind Sukher Industrial Area, Sukher, Udaipur, Rajasthan. On inquiry, Shri Sanjeev Modi, Authorised Signatory of "M/s Multi" in presence of Panchas accepted that they have received the 9 imported Marble Blocks in their factory, which were imported by M/s. United Natural Stones at Mundra port.

4. SEIZURE OF GOODS IMPORTED BY M/s. UNITED NATURAL STONE AT PREMISES OF M/s MULTI MARBLE PVT. LTD

The goods imported by "M/s United" vide Bill of Entry No. 8748306 dtd. 19.05.2022 at NIL rate of duty claiming exemption under Notification No. 52/2003 dated 31.03.2003 being registered 100% EOU were diverted without payment of duty and same were found in the factory premises of M/s Multi Marble Pvt. Ltd. behind Sukher Industrial Area, Sukher, Udaipur, Rajasthan. The said 9 imported Marble Blocks having Weight 164580 Kgs. valued at Rs. 11,54,119/- were seized vide Seizure Memo F.No. DRI/AZU/CI/UNS/2022 dated 29.05.2022 under the reasonable belief that the said goods were liable for confiscation under the provisions of Customs Act, 1962.

The said seized goods valued at Rs. 11,54,119/- seized vide Seizure Memo F.No. DRI/AZU/CI/UNS/2022 dated 29.05.2022 were handed over to Shri Sanjeev Modi, Authorised Signatory of M/s. Multi Marbles Pvt. Ltd. behind Sukher Industrial Area, Sukher, Udaipur, Rajasthan under Supratnama dated 29.05.2022 for the storage/for safe custody and not to deliver the same to any person or otherwise dispose of or deal with the same without an order in writing from DRI.

5. SCRUTINY OF RECORDS/DOCUMENTS RELATED TO IMPORTS

5.1 During the scrutiny of import documents viz. Bill of Entry No. 8748306 dtd. 19.05.2022, Commercial Invoice, Packing list etc. related to import of goods by "M/s United", it appears that "M/s United" had imported 164.58 MT of Blocks of Rough Marble from by declaring total value of 14812.20 US\$ i.e. @90 US\$ Per MT. Thus, it was noticed that "M/s United" has imported the rough marble blocks below the minimum import price as prescribed in Notification No. 99 (RE-2013)/2009-14 dated 20.11.2014 & Notification No. 27 (RE-2015)/2015-20 dated 17.09.2016 issued by DGFT.

5.2 As per Notification No. 99 (RE-2013)/2009-14 dated 20.11.2014 issued by the Director General Of Foreign Trade (DGFT), the floor price under policy for issue of import licences of Rough Marble and Travertine Blocks is as under:-

Floor Price- Licenses for import of crude or roughly trimmed marble and travertine blocks or merely cut, by sawing or otherwise into blocks of a rectangular (including

square) shape shall be subject to a floor price of US\$ 325 per Metric Ton (MT), which shall be endorsed on all licenses.

5.3 Further Director General of Foreign Trade (DGFT) vide Notification No. 27 (RE-2015)/2015-20 dated 17.09.2016 removed the quantitative restrictions on import of Rough Marble Blocks w.e.f. 01.10.2016 and as such import of the same was made free on the condition that the GIF value is US\$ 200 or above per MT. Thus, from 01.10.2016, "M/s United" was required to import rough marble blocks at US\$ 200 or above Per MT GIF value. However, from 01.10.2016, the customs duty on import of rough marble blocks was also raised from 10% to 40%. After implementation of GST w.e.f. 1st July 2017, the Customs duty @ 40%, Surcharge @10% and IGST @12% was made applicable on import of rough marble blocks.

5.4 As per Para 2.08 of Foreign Trade Policy, 2015-20, the export or import of which is 'Restricted' may be exported or imported only in accordance with an Authorization/Permission or in accordance with the Procedures prescribed in a Notification/Public Notice issued in this regard.

6. In view of the facts discussed in foregoing Paras and material evidence available on record, it transpires that assessable value of 'Rough Marble block' declared by "M/s United" at the time of clearance of the goods in the Bill of Entry No. 8748306 dtd. 19.05.2022 was below the Floor Price and same should be re-assessed/re-determined at the minimum price of US\$ 200 Per MT as per Notification No. 27(RE-2015)/2015-20 dated 17.09.2016 Issued by the Director General of Foreign Trade (DGFT). Thus, it appears that the total assessable value of 'Rough Marble block' assessed by the customs authority as **Rs. 11,54,119/-** (as detailed in **Annexure-A** to this Notice) at the time of clearance of the goods in the Bill of Entry No. 8748306 dtd. 19.05.2022 is required to be re-determined as **Rs. 25,64,710/-** mentioned in **Annexure-A** to this Notice. Since the goods i.e. "Rough Marble block imported duty free by "M/s United" by availing exemption under Notification No. 52/2003 dated 31.03.2003 vide Bill of Entry No. 8748306 dtd. 19.05.2022 were diverted in the domestic market, the Customs duty @ 40/o and IGST @12% should be demanded on the re-determined value of goods, which comes to **Rs. 14,56,755/-** (as detailed in **Annexure-A** to this Notice).

7. In view of the facts discussed in the foregoing paras and evidences available on record, it appears that "M/s United" have imported duty free rough marble blocks vide Bill of Entry No. 8748306 Dated 19.05.2022 without observing the conditions of Notification No. 27(RE-2015)/2015-20 dated 17.09.2016 issued by Director General of Foreign Trade (DGFT) and FTP 2015-20. Thus, "M/s United" have contravened the provisions of Notification No. 27 (RE-2015)/2015-20 dated 17.09.2016 issued by Director General of Foreign Trade (DGFT) and FTP 2015-20. "M/s United" required to export the said imported duty free marble blocks after processing into marble slabs/dressed marble blocks to fulfil their export obligations but instead of it, they diverted these imported duty free marble blocks vide Bill of Entry No. 8748306 dtd. 19.05.2022 in the domestic market without issue of any Invoice/bill with an intention to evade the customs duty. The said duty free imports were made by them by availing the benefit of Notification No. 52/2003-Cus. dated 31.03.2003, under 100% EOU - scheme, on the condition that the resultant product manufactured out of said marble blocks was to be exported in terms of the FTP 2015-2020. However "M/s United" sold the imported raw material as such in the local market without the cover of any Invoice, without payment of duty and also suppressed the fact from the department about any such clearance of the said goods in local market, with intent to evade the applicable Customs Duty leviable thereon. Thus, for the above reasons, Section 28(4) of the Customs Act, 1962 is evocable for the recovery of the said customs duty evaded in this manner. Therefore, "M/s United" is liable to pay the Customs duty amounting to **Rs. 14,56,755/-** leviable on the diverted quantity of 164.580 MT of Rough marble blocks classifiable under Customs Tariff Heading 25151210, valued at **Rs. 25,64,710/-**, as detailed in Annexure-A to this Investigation Report, by enforcing the B-17 Bond.

executed by them as required under Notification No. 52/2003-Cus. dated 31.03.2003 as amended read with Section 28(4) of the Customs Act, 1962. Thus, "M/s United" have also violated the conditions of Notification No. 52/2003-Customs dated 31.03.2003, Foreign Trade Policy 2015-2020 & Customs Act, 1962. The contravention of the provisions of the said notifications, the Foreign Trade Policy and provisions of Customs Act, 1962 appears to have rendered the such Imported 164.580 MT rough marble blocks valued at **Rs. 25,64,710/-** (re- determined) vide Bill of Entry No. 8748306 dtd. 19.05.2022 as detailed in Annexure-A to this Investigation Report liable to confiscation under Section 111(o) of the Customs Act, 1962 for being imported without observing the conditions of the notifications.

8. Though "M/s United" a 100% EOU unit could not sell imported rough marble blocks into Domestic Tariff Area (DTA), they systematically defrauded the Govt, exchequer by diverting 164.580 MT rough marble blocks, Imported duty free and value at Rs.25,64,710/-, in to domestic market without the cover of invoices and without payment of applicable customs duty, in violation of conditions of Notification No. 53/2003-CUs. Dated 31.03.2003 and Import Export Policy 2015-2020, which resulted evasion of duty of Rs. 14,56,755/-. Further they have also failed to comply with conditions of Notification No. 27(RE_2015)/2015-20 Dated 17.09.2016 Issued by Director General of Foreign Trade (DGFT) LOP No. PER(35)1999/EOB/52/99 dated 17.07.1999, provisions of the Customs Act 1962 read with Chapter 6.0 of the Foreign Trade Policy and Notification no. 52/2003-Customs dated 31.03.2003, as amended time to time and therefore they have rendered themselves liable for penal action under Section 112(a), 112(b) and Section 114A of the Customs Act, 1962.

9. In view of the facts discussed in the foregoing paras and evidences available on record, it appears that Shri Ashok Kumar, Partner of "M/s United" looked all the day to day affairs of the company, and was responsible for the aforesaid diversion of the imported goods in local market without the cover of invoices and without payment of applicable customs duty, in violation of conditions of Notification No. 52/2003-Cus. dated 31.03.2003 and Import Export Policy 2015-2020, as discussed hereinabove. Shri Ashok Kumar had knowingly involved himself in evasion of Customs duty amounting to **Rs. 14,56,755/-** leviable on 164.580 MT Imported Marble Block valued at **Rs. 25,64,710/-** Imported duty free vide Bill of Entry No. 8748306 dtd. 19.05.2022, as detailed in **Annexure-A** to the Investigation Report. The said acts on the part of Shri Ashok Kumar was done with the sole intention to evade of Customs duty. This fact has been corroborated by the evidences as detailed in preceding paras. The acts of omission and commission on the part of Shri Ashok Kumar, Partner of "M/s United" constitute an offence of the nature as discussed above which have rendered the goods liable to confiscation under the provisions of Section 111 (o) of the Customs Act, 1962. He, therefore, knowingly concerned himself in diversion of the goods which he knew or had reasons to believe that the same were liable to confiscation under the provisions of Customs Act, 1962 and thereby rendered himself liable for penal action under Section 114A/112(a), 112(b) of Customs Act, 1962. Shri Ashok Kumar, Partner of "M/s United" was actively involved in day today business and had consciously indulged in illicit diversion of goods imported in ECU thus it appears that he had knowingly caused to made, signed or used, the declaration, and documents presented for Import which were false or incorrect as discussed supra, in the transaction of his business for the purposes of Customs Act 1962, hence he is also liable for penal action under Section 114AA of Customs Act, 1962.

10. In view of the facts discussed in the foregoing paras and evidences available on record, it appears that M/s. Multi Marbles Pvt. Ltd. and Shri Sanjeev Modi, Authorised Signatory of "M/s. Multi" has involved himself in the conspiracy of diversion of imported Marble Block. Shri Sanjeev Modi had full knowledge about the Marble Block classifiable under Customs Tariff Heading 25151210 imported by "M/s United" vide Bill of Entry No. 8748306 dtd. 19.05.2022, in as much as they were imported duty free. The said acts on the part of M/s. Multi Marbles Pvt. Ltd.

and Shri Sanjeev Modi, Authorised Signatory of "M/s. Multi" was done with the sole intention to aid and abet "M/s United" to evade of Customs duty. This fact has been corroborated by the evidences as detailed in preceding paras. It therefore appears that M/s. Multi Marbles Pvt. Ltd. and Shri Sanjeev Modi by adopting the said modus have aided and abetted "M/s United" in diversion of goods in the import of the aforesaid firm, which resulted in evasion of huge Customs duty. All the aforesaid acts of omission and commission on the part of M/s. Multi Marbles Pvt. Ltd. and Shri Sanjeev Modi have rendered the imported goods liable for confiscation under Section 111(m) of the Customs Act, 1962. Further, they have consciously dealt with the said goods which they knew or had reasons to believe, were liable to confiscation under the Customs Act, 1962. Further, It also appears that and Shri Sanjeev Modi have been actively involved in day to day business, thus he was responsible for all acts of omission and commission of the "M/s. Multi". Thus, M/s. Multi Marbles Pvt. Ltd. and Shri Sanjeev Modi have rendered himself liable for penalty under Section 112(a), 112(b) and 14AA of the Customs Act, 1962.

11. Now, therefore, M/s United Natural Stones (100% EOU) (formerly known as M/s. Eurasia Marble Pvt Ltd), F-325 to 327 & GI-296 to 298, RICO Industrial Area, Bhamashah, Kaladwas, Udalpur (Raj), is hereby called upon to show cause to the Additional Commissioner of Customs, having office at 1st Floor, New Port User Building, Mundra Port and SEZ Mundra, 370 421 as to why:

- (i) The value of **Rs. 19,54,119/-** declared by them/assessed at the time of clearance of goods viz. 164.580 MT of Blocks of Rough Marble classifiable under Customs Tariff Heading 25151210, imported by them under Bill of Entry No. 8748306 dtd. 19.05.2022, as detailed in **Annexure-A** to this Investigation Report may be rejected under Rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and **re-determined as Rs. 25,64,710/- (Rs. Twenty Five Lac Sixty Four Thousand Seven Hundred Ten Only)**, as detailed in **Annexure-A** to this Investigation Report as per Notification No. 27 (RE-2015)/2015-20 dated 17.09.2016 issued by the Director General of Foreign Trade (DGFT);
- (ii) 164.580 MT of Blocks of Rough Marble classifiable under Customs Tariff Heading 25151210 valued at **Rs. 25,64,710/- (re-determined)** Imported duty free under Bill of Entry No. 8748306 dtd. 19.05.2022, as detailed in **Annexure-A** to this Investigation Report which were seized on 29.05.2022 may be confiscated under Section 111 (o) of the Customs Act, 1962 read with conditions of Notification No. 52/2003-Cus. dated 31.03.2003.
- (iii) The Customs duty amounting to **Rs. 14,56,755/- (Rs. Fourteen Lac Fifty Six Thousand seven Hundred Fifty Five Only)** involved on the goods imported duty free under Bill of Entry No. 8748306 dtd. 19.05.2022, as detailed in **Annexure-A** to this Investigation Report and diverted in DTA (including on goods seized on 29.05.2022) may be demanded and recovered from them by enforcing the B-17 Bond executed by M/s United Natural Stones under Notification No. 52/2003-Cus. dated 31.03.2003 as amended read with Section 28(4) of the Customs Act, 1962;
- (iv) Interest at the applicable rate on the duty evaded should not be recovered in terms of conditions of B-17 Bond executed by them under Notification No. 52/2003-Cus. dated 31.03.2003 as amended, read with Section 28 AA of the Customs Act 1962
- (v) Penalty should not be imposed upon them under the provisions of Section 112(a) and 112(b) of the Customs Act, 1962 for goods mentioned at (ii) above.
- (vi) Penalty should not be imposed upon them under the provisions of Section 114A of the Customs Act, 1962 for duty mentioned at (iii) above.
- (vii) Penalty should not be imposed upon Shri Ashok Kumar, Partner of M/s United Natural Stones (100% EOU) (formerly known as M/s. Eurasia Marble Pvt Ltd), F-325 to 327 & GI-296

to 298, RIICO Industrial Area, Bhamashah, Kaladwas, Udaipur (Raj) under Section 112(a), 112(b) and 114AA of the Customs Act, 1962 separately for his role as discussed in para supra.

(viii) Penalty should not be imposed upon M/s Multi Marble Pvt. Ltd. behind Sukher Industrial Area, Sukher, Udaipur, Rajasthan under Section 112(a), 112(b) and 114AA of the Customs Act, 1962 separately for their role as discussed in para supra.

(ix) Penalty should not be imposed upon Shri. Sanjeev Modi, Authorised Signatory of M/s Multi Marble Pvt. Ltd. behind Sukher Industrial Area, Sukher, Udaipur, Rajasthan under Section 112(a), 112(b) and 114AA of the Customs Act, 1962 separately for their role as discussed in para supra.

12. Also gone through the Corrigendum to the Show Cause Notice Issued on 09.02.2023.

13. Vide Para 18 of the Impugned Show Cause Notice Dated 16.11.2022, it was informed that reply should reach within 30 (Thirty) Days or within such extended period as may be allowed by the adjudicating authority; if no cause is shown against the action proposed above within 30 days from the receipt of this SCN or if they do not appear before the adjudicating authority as and when the case is posted for hearing, the case is liable to be decided ex-parte on the basis of facts and evidences available on record.

14. **WRITTEN SUBMISSION**

M/s Multi Marbles Pvt. Ltd., Vide their letter Dated 18.12.2022, wherein, interalia acknowledge receipt of the Show Cause Notice and requested for time for submission of their reply; vide letter Dated 31.01.2023 interalia requested for adjournment; vide letter Dated 31.01.2023 interalia requested for adjournment; vide letter Dated 14.02.2023 interalia requested for adjournment; vide letter Dated 14.03.2023 interalia requested for adjournment.

15. **PERSONAL HEARING**

Personal Hearing in respect of the Show Cause Notice Dated 16.11.2022, was Fixed on Dated 02.02.2023, Dated 15.02.2023 and on Dated 14.03.2023, but none of the noticee turned up to attend the Hearing as well as failed to submit their defence.

16. **DISCUSSION & FINDING**

16.1. I gone through the Show Cause Notice, wherein alleged that,

- (i) The value of **Rs. 11,54,119/-** declared by them/assessed at the time of clearance of goods viz. 164.580 MT of Blocks of Rough Marble classifiable under Customs Tariff Heading 25151210, imported by them under Bill of Entry No. 8748306 dtd. 19.05.2022, as detailed in **Annexure-A** to this Investigation Report may be rejected under Rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and **re-determined as Rs. 25,64,710/- (Rs. Twenty Five Lac; Sixty Four Thousand Seven Hundred Ten Only)**, as detailed in **Annexure-A** to this Investigation Report as per Notification No. 27 (RE-2015)/2015-20 dated 17.09.2016 issued by the Director General of Foreign Trade (DGFT);
- (ii) 164.580 MT of Blocks of Rough Marble classifiable under Customs Tariff Heading 25151210 valued at **Rs. 25,64,710/- (re-determined)** imported duty free under Bill of Entry No. 8748306 dtd. 19.05.2022, as detailed in **Annexure-A** to this Investigation Report which were seized on 29.05.2022 may be confiscated under Section 111 (o) of the Customs Act, 1962 read with conditions of Notification No. 52/2003-Cus. dated 31.03.2003.
- (iii) The Customs duty amounting to **Rs. 14,56,755/- (Rs. Fourteen Lac; Fifty Six Thousand seven Hundred Fifty Five Only)** involved on the goods imported duty free under Bill of Entry No. 8748306 dtd. 19.05.2022, as detailed in **Annexure-A** to this

- Investigation Report and diverted in DTA (including on goods seized on 29.05.2022) may be demanded and recovered from them by enforcing the B-17 Bond executed by M/s United Natural Stones under Notification No. 52/2003-Cus. dated 31.03.2003 as amended read with Section 28(4) of the Customs Act, 1962;
- (iv) Interest at the applicable rate on the duty evaded should not be recovered in terms of conditions of B-17 Bond executed by them under Notification No. 52/2003-Cus. dated 31.03.2003 as amended, read with Section 28 AA of the Customs Act 1962
 - (v) Penalty should not be imposed upon them under the provisions of Section 112(a) and 112(b) of the Customs Act, 1962 for goods mentioned at (ii) above.
 - (vi) Penalty should not be imposed upon them under the provisions of Section 114A of the Customs Act, 1962 for duty mentioned at (iii) above.
 - (vii) Penalty should not be imposed upon Shri Ashok Kumar, Partner of M/s United Natural Stones (100% EOU) (formerly known as M/s. Eurasia Marble Pvt Ltd), F-325 to 327 & GI-296 to 298, RIICO Industrial Area, Bhamashah, Kaladwas, Udaipur (Raj) under Section 112(a), 112(b) and 114AA of the Customs Act, 1962 separately for his role as discussed in para supra.
 - (viii) Penalty should not be imposed upon M/s Multi Marble Pvt. Ltd. behind Sukher Industrial Area, Sukher, Udaipur, Rajasthan under Section 112(a), 112(b) and 114AA of the Customs Act, 1962 separately for their role as discussed in para supra.
 - (ix) Penalty should not be imposed upon Shri Sanjeev Modi, Authorised Signatory of M/s Multi Marble Pvt. Ltd. behind Sukher Industrial Area, Sukher, Udaipur, Rajasthan under Section 112(a), 112(b) and 114AA of the Customs Act, 1962 separately for their role as discussed in para supra.

17. I find that an opportunity to the noticees were given as per Para 18 of the Show Cause Notice as well as Personal Hearing in respect of the Show Cause Notice Dated 16.11.2022, was Fixed on Dated 02.02.2023, Dated 15.02.2023 and on Dated 14.03.2023. Therefore, I am satisfied that, the principle of natural justice as provided in Section 122A of the Customs Act, 1962 have been complied with.

Further none of the Noticees as well as Co-Noticee but none of the noticee turned up to attend the Hearing as well as failed to submit their defence therefore, I proceed to decide the case on the basis of documentary evidences available on records **EX-PARTE**.

18. The case booked based on Intelligence by the Directorate of Revenue Intelligence that "M/s United" registered as an EOU was engaged in evasion of duty by diverting of rough marble blocks classifiable under Customs Tariff Heading 25151210, imported duty free by availing exemption under Notification No: 52/2003 dated 31.03.2003. Information further indicated that the goods imported by "M/s United" under Bill of Entry No: 8748306 dtd. 19.05.2022 through Mundra port was likely to be diverted to M/s Multi.

18.2 As per foreign Trade Policy, No DTA sale at concessional duty shall be permissible in respect of marble. Further, the Policy Circular No 74(RE-08)/2004-2009 26.03.2009 was issued by the Directorate General of Foreign Trade from File No. 01/92/180/244/AM09/PC-VI, wherein Guidelines for import of Marble by EOUs were issued. As per Policy Circular dated 26.03.2009, DTA sale of marble by EOUs at concessional rate of duties as well as full duties under FTP Para 6.8(a) and Para 6.8(h) respectively, are not allowed. Further, It has also been decided by Board of Approval that EOUs cannot sale of marble in DTA under Para 6.9(b) of FTP. Thus, no route available for DTA sale of marble to EOUs. However, as it was pointed out by Association of marble exporters / importers that in spite of provisions as mentioned above, clandestine DTA sale of imported marble from EOUs still takes place. The matter was considered and to ensure that no clandestine DTA sale of imported marble is done by EOUs, it was decided that EOUs must mention

quality of marble i.e. colour, type and name etc. in the relevant documents to be submitted at the time of both import as well as export of marble.

18.3.1 During the course of search in the factory premises of "M/s United", it was found that there was no electricity connection in the factory since last one & half month. Further, the goods imported by "M/s United" vide Bill of Entry No. 8748306 dtd. 19.05.2022 were not found in their registered EOU premises i.e. M/s United Natural Stones, F-325 to 327 & CI-296 to 298, RIICO Industrial Area, Bhamashah, Kaladwas, Udaipur (Raj). On Inquiry, Shri Raj Kumar Sharma, Accountant of "M/s United" in presence of Panchas stated that they had neither received goods imported by "M/s United" vide Bill of Entry No. 8748306 dtd. 19.05.2022 in their factory premises nor, any documents for import of goods. Shri Raj Kumar Sharma in presence of panchas informed that all the activities related to import & export were looked by Shri Ashok Kumar and Shri Bhagwan Lai Dangl.

18.3.2 During the search in the factory premises of "M/s Multi", on inquiry with the drivers of truck/trailer, who transported the goods from Mundra to Udaipur, it was found that goods imported by "M/s United" vide Bill of Entry No. 8748306 dtd. 19.05.2022 was unloaded in the factory premises of M/s Multi Marble Pvt. Ltd. behind Sukher Industrial Area, Sukher, Udaipur, Rajasthan. Further, during the search, the said goods were found in the premises of M/s Multi Marble Pvt. Ltd. behind Sukher Industrial Area, Sukher, Udaipur, Rajasthan. On Inquiry, Shri Sanjeev Modi, Authorised Signatory of "M/s Multi" in presence of Panchas accepted that they have received the 9 imported Marble Blocks in their factory, which were imported by M/s. United Natural Stones at Mundra port.

18.4 The 9 imported Marble Blocks having Weight 164580 Kgs. valued at Rs. 11,54,119/- imported by "M/s United" vide Bill of Entry No. 8748306 dtd. 19.05.2022 at NIL rate of duty being registered 100% EOU were diverted without payment of duty and found in the factory premises of M/s Multi were seized and are liable for confiscation under the provisions of Customs Act, 1962.

19. Further, the Value so declared at the time of import of goods by "M/s United", had imported 164.58 MT of Blocks of Rough Marble from by declaring total value of 14812.20 US\$ i.e. @90 US\$ Per MT.

19.1 Whereas, minimum import price has been prescribed for import of rough marble blocks as per the Notification No. 99 (RE-2013)/2009-14 dated 20.11.2014 & Notification No. 27 (RE-2015)/2015-20 dated 17.09.2016 Issued by DGFT. According to which the floor price under policy for Issue of Import licences of Rough Marble and Travertine Blocks shall be subject to a floor price of US\$325 per Metric Ton (MT), which shall be endorsed on all licenses.

19.2 Further Director General of Foreign Trade (DGFT) vide Notification No. 27 (RE-2015)/2015-20 dated 17.09.2016 removed the quantitative restrictions on import of Rough Marble Blocks w.e.f. 01.10.2016 and as such Import of the same was made free on the condition that the GIF value is US\$ 200 or above per MT. Thus, from 01.10.2016, "M/s United" was required to import rough marble blocks at US\$ 200 or above Per MT GIF value.

19.3 From 01.10.2016, the customs duty on import of rough marble blocks was also raised from 10% to 40%. After implementation of GST w.e.f. 1st July 2017, the Customs duty @ 40%, Surcharge @10% and IGST @12% was made applicable on import of rough marble blocks.

19.4 As per Para 2.08 of Foreign Trade Policy, 2015-20, the export or import of which is 'Restricted' may be exported or imported only in accordance with an Authorization/Permission or in accordance with the Procedures prescribed in a Notification/Public Notice issued in this regard.

20.1 In view of the facts discussed in foregoing Paras and material evidence available on record, it transpires that, in the case Importer obtained license / permission from competent authority with an undertaking to abide by the Law framed for the same and executed Bond before the Authority before commencement of an Export Oriented Unit, availed the benefit of Duty Free

Import of the Goods and though the Sale of the said Imported Goods in Domestic Tariff Area is not permitted / allowed by any mode; diverted the same with an intend to evade payment of Duty and thereby contravening provisions of the Law framed for the Specific Unit knowingly / intentionally / willingly; such sales to Local Market showing their wish not to abide by law / given undertaking and reason to believe the mala fide intention to evade Duty in connivance with M/s Multi.

20.2 Here in this clear the Importer is 100% Export Oriented Unit, created for the specific purpose with Separate Provisions and with the Approval by the Committee of Various Department and have to perform / operate within the Frame fixed for them / within the approval accorded to them. Under the said provisions Diversion of the Goods in Domestic Market is not permissible and banned as per the Provisions.

Even after these, they transferred the goods without supporting sales documents, shows their intention as well as reasons to believe that the said act is indulging them to consider as the Smuggling of Goods as defined.

Thereby liable for the penal action as per the Provisions of the Customs Act, 1962 as well as the Provisions of the Act and Rules framed by Ministry of Commerce for the 100% Export Oriented Unit.

20.3 I am proceeding with the Provisions of the Customs Act, 1962, whereas further course of action be taken up by the Competent Authority from Ministry of Commerce.

20.3.2 Goods under the gist of the Export Oriented Unit having re-assessed/re-determined at the minimum price of US\$ 200 Per MT as per Notification No. 27(RE-2015)/2015-20 dated 17.09.2016 Issued by the Director General of Foreign Trade (DGFT) assessable value as **Rs.25,64,710/-** of 'Rough Marble block' in the Bill of Entry No. 8748306 dtd. 19.05.2022 having duty involvement of Customs duty @ 40% and IGST @ 12% amounting to **Rs. 14,56,755/-**.

21. The act of the Importer being an 100% Export Oriented Unit intentionally diverted the goods in the Domestic Area without supporting Documents i.e. Invoice, e-way bill-etc., made liable for penal action as proposed under Section 112, 114A of the Customs Act, 1962.

Whereas, on going through, proviso 5 to Section 114A of the Customs Act, 1962, wherein, any penalty has been levied under this section, no penalty shall be levied under Section 112 or Section 114, accordingly imposing penalty under Section 114A of the Customs Act, 1962.

22. After going through all the facts mentioned above. I pass the following order.

ORDER

- (i) I order to re-call Bill of Entry No. 8748306 dtd. 19.05.2022, and rejected the Declared Value of the Imported Goods and order to **re- determined the same as Rs.25,64,710/- (Rs. Twenty Five Lacs Sixty Four Thousand Seven Hundred Ten Only)**, as per Notification No. 27 (RE-2015)/2015-20 dated 17.09.2016 issued by the Director General of Foreign Trade (DGFT) under the provisions of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007;
- (ii) I order confiscation of 164.580 MT of Blocks of Rough Marble classifiable under Customs Tariff Heading 25151210 valued at **Rs. 25,64,710/- (re-determined)** Imported duty free under Bill of Entry No. 8748306 dtd. 19.05.2022 under Section 111 (o) of the Customs Act, 1962 read with conditions of Notification No. 52/2003-Cus. dated 31.03.2003. However, I give an option to redeem the goods on payment of redemption fine of Rs.4,00,000/- (Rupees Four Lacs only) under Section 125 of the Customs Act, 1962 and to be brought back to 100% Export Oriented Unit for further used in the Export Oriented Unit as per prescribed procedure to be followed by the Export Oriented Unit on Conditional Duty Free Imported Goods.

- (iii) I order to recover Customs duty amounting to **Rs. 14,56,755/- (Rs. Fourteen Lacs Fifty Six Thousand seven Hundred Fifty Five Only)** including IGST as per the Provisions of the Customs Act, 1962 read with Section 5 of Integrated Goods and Service Tax Act, 2017 involved on the goods imported duty free under Bill of Entry No. 8748306 dtd. 19.05.2022, from them by enforcing the B-17 Bond executed by M/s United Natural Stones under Notification No. 52/2003-Cus. dated 31.03.2003 as amended read with Section 28(4) of the Customs Act, 1962;
- (iv) I order to recover Interest at the applicable rate on the duty evaded should not be recovered in terms of conditions of B-17 Bond executed by them under Notification No. 52/2003-Cus. dated 31.03.2003 as amended, read with Section 28 AA of the Customs Act 1962 read with Section 50 of the Central Goods and Service Tax Act, 2017.
- (v) I refrain from Imposing Penalty upon M/s United under the provisions of Section 112(a) (i) of the Customs Act, 1962 for goods mentioned at (ii) above **but** imposing Penalty of Rs. 2,00,000/- (Rupees Two Lacs Only) upon M/s United under the provisions of **Section 114A** of the Customs Act, 1962 for duty mentioned at (iii) above.
- (vi) I am Imposing Penalty of Rs. 2,00,000/- (Rupees Two Lacs Only) upon Shri Ashok Kumar, Partner of M/s United Natural Stones (100% EOU) (formerly known as M/s. Eurasia Marble Pvt Ltd), F-325 to 327 & GI-296 to 298, RIICO Industrial Area, Bhamashah, Kaladwas, Udaipur (Raj) under Section 112(a) (i) of the Customs Act, 1962 separately for his role as discussed in para supra.
- (vii) I am Imposing Penalty of Rs. 1,50,000/- (Rupees One Lacs Fifty Thousand Only) upon Shri Ashok Kumar, Partner of M/s United Natural Stones (100% EOU) (formerly known as M/s. Eurasia Marble Pvt Ltd), F-325 to 327 & GI-296 to 298, RIICO Industrial Area, Bhamashah, Kaladwas, Udaipur (Raj) under Section 114AA of the Customs Act, 1962 separately for his role as discussed in para supra.
- (viii) I am Imposing Penalty of Rs. 1,50,000/- (Rupees One Lacs Fifty Thousand Only) upon M/s Multi Marble Pvt. Ltd. behind Sukher Industrial Area, Sukher, Udaipur, Rajasthan under Section 112(b) (i) of the Customs Act, 1962 separately for their role as discussed in para supra.
- (ix) I am Imposing Penalty of Rs. 1,00,000/- (Rupees One Lac Only) upon M/s Multi Marble Pvt. Ltd. behind Sukher Industrial Area, Sukher, Udaipur, Rajasthan under Section 114AA of the Customs Act, 1962 separately for their role as discussed in para supra.
- (x) I am Imposing Penalty of Rs. 75,000/- (Rupees Seventy Five Thousand Only) upon Shri Sanjeev Modi, Authorised Signatory of M/s Multi Marble Pvt. Ltd. behind Sukher Industrial Area, Sukher, Udaipur, Rajasthan under Section 112 (b) (i) of the Customs Act, 1962 separately for their role as discussed in para supra.
- (xi) I am Imposing Penalty of Rs. 50,000/- (Rupees Fifty Thousand Only) upon Shri Sanjeev Modi, Authorised Signatory of M/s Multi Marble Pvt. Ltd. behind Sukher Industrial Area, Sukher, Udaipur, Rajasthan under Section 114AA of the Customs Act, 1962 separately for their role as discussed in para supra.

23. This order is issued without prejudice to any other action which may be required to be taken against any person as per the provision of the Customs Act, 1962 or any other law for the time being in force.


(MUKESH KUMARI)
ADDITIONAL COMMISSIONER
CUSTOMS, MUNDRA

To,

**M/S UNITED NATURAL STONES (100% EOU),
(FORMERLY KNOWN AS M/S EURASIA MARBLE PVT. LTD.,)
F – 325 TO 327 & G1 296 TO 298, RIICO INDL. AREA,
BHAMASHAH, KALADWAS,
UDAIPUR.**

**SHRI ASHOK KUMAR,
PARTNER OF M/S UNITED NATURAL STONES (100% EOU),
(FORMERLY KNOWN AS M/S EURASIA MARBLE PVT. LTD.,)
F – 325 TO 327 & G1 296 TO 298, RIICO INDL. AREA,
BHAMASHAH, KALADWAS,
UDAIPUR.**

**M/S MULTI MARBLE PVT. LTD.,
B/H SUKHER INDL. AREA,
SUKHER,
UDAIPUR.**

**SHRI SANJEEV MODI,
AUTHORIZED SIGNATORY OF M/S MULTI MARBLE PVT. LTD.,
B/H SUKHER INDL. AREA,
SUKHER,
UDAIPUR.**

Copy to :-

1. The Competent Authority, Ministry of Commerce, incharge of M/s United Natural Stones (100% EOU), to take further course of penal action as per the Provisions.
2. The Additional Commissioner of Customs (TRC, EPC), Udaipur, Office of Commissioner of Customs (Prev.), Jodhpur having Office at New Central Revenue Building, Statue Circle "C" Scheme, Jaipur – 302 005.
3. The Deputy Commissioner of Customs (RRA), Custom House, Mundra
4. The Deputy Commissioner of Customs (TRC/EDI), Custom House, Mundra
5. The Deputy Commissioner of Customs (Gr. I), Custom House, Mundra.
6. Guard File.

