प्रधान आयुक्त का कार्यालय, सीमा शुल्क, अहमदाबाद
सीमा शुल्क भवन, आल इंडीया रेडीओ के बाजु मे, नवरंगपुरा ,अह्मदाबाद 380009
दुर भाष (079) 2754 46 30 फैक्स (079) 2754 23 43
OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS, AHMEDABAD
CUSTOMS HOUSE, NEAR ALL INDIA RADIO, NAVRANGPURA, AHMEDABAD 380009
PHONE : (079) 2754 46 30 FAX (079) 2754 23 43

निबन्धित पावती डाक द्वारा / **By SPEED POST A.D.**

फा. सं./ **F.No. VIII/10-35/Pr.Commr./O&A/2022-23**

DIN-20240771MN0000000E11

आदेशकीतारीख/Date of Order :03.07.2024
जारीकरनेकीतारीख/Date of Issue : 03 .07.2024

द्वारापारित :- **शिव कुमार शर्मा, प्रधान आयुक्त**
Passed by :- Shiv Kumar Sharma, Principal Commissioner

मूल आदेश संख्या :

Order-In-Original No: AHM-CUSTM-000-PR.COMMR-27-2024-25 dated 03.07.2024 in the case of M/s. Monark India Pvt. Ltd. (IEC-0511031874), Plot No-884, Phase-V, Udhyog Vihar, Gurgaon-122016 & Others.

1 जिस व्यक्ति(यों) को यह प्रति भेजी जाती है, उसे व्यक्तिगत प्रयोग के लिए निःशुल्क प्रदान की जाती है।

1. This copy is granted free of charge for private use of the person(s) to whom it is sent.

2. इस आदेश से असंतुष्ट कोई भी व्यक्ति इस आदेश की प्राप्ति से तीन माह के भीतर सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण, अहमदाबाद पीठ को इस आदेश के विरुद्ध अपील कर सकता है। अपील सहायक रजिस्ट्रार, सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण, दुसरी मंज़िल, बहुमाली भवन , गिरिधर नगर पुल के बाजु मे, गिरिधर नगर, असारवा, अह्मदाबाद-380 004 को सम्बोधित होनी चाहिए।
2. Any person deeming himself aggrieved by this Order may appeal against this Order to the Customs, Excise and Service Tax Appellate Tribunal, Ahmedabad Bench within three months from the date of its communication. The appeal must be addressed to the Assistant Registrar, Customs, Excise and Service Tax Appellate Tribunal, 2nd Floor, Bahumali Bhavan, Nr. Girdhar Nagar Bridge, Girdhar Nagar, Asarwa, *Ahmedabad* – 380004.

3. उक्त अपील प्रारुप सं. सी.ए.3 में दाखिल की जानी चाहिए। उसपर सीमा शुल्क (अपील) नियमावली, 1982 के नियम 3 के उप नियम (2) में विनिर्दिष्ट व्यक्तियों द्वारा हस्ताक्षर किए जाएंगे। उक्त अपील को चार प्रतियाँ में दाखिल किया जाए तथा जिस आदेश के विरुद्ध अपील की गई हो, उसकी भी उतनी ही प्रतियाँ संलग्न की जाएँ (उनमें से कम से कम एक प्रति प्रमाणित होनी चाहिए)। अपील से सम्बंधित सभी दस्तावेज भी चार प्रतियाँ में अग्रेषित किए जाने चाहिए।

3. The Appeal should be filed in Form No. C.A.3. It shall be signed by the persons specified in sub-rule (2) of Rule 3 of the Customs (Appeals) Rules, 1982. It shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be certified copy). All supporting documents of the appeal should be forwarded in quadruplicate.

4. अपील जिसमें तथ्यों का विवरण एवं अपील के आधार शामिल हैं, चार प्रतियों में दाखिल की जाएगी तथा उसके साथ जिस आदेश के विरुद्ध अपील की गई हो, उसकी भी उतनी ही प्रतियाँ संलगन की जाएंगी (उनमें से कम से कम एक प्रमाणित प्रति होगी)।

4. The Appeal including the statement of facts and the grounds of appeal shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be a certified copy.)

5. अपील का प्रपत्र अंग्रेजी अथवा हिन्दी में होगा एवं इसे संक्षिप्त एवं किसी तर्क अथवा विवरण के बिना अपील के कारणों के स्पष्ट शीर्षों के अंतर्गत तैयार करना चाहिए एवं ऐसे कारणों को क्रमानुसार क्रमांकित करना चाहिए।

5. The form of appeal shall be in English or Hindi and should be set forth concisely and under distinct heads of the grounds of appeals without any argument or narrative and such grounds should be numbered consecutively.

6. केंद्रिय सीमा शुल्क अधिनियम,1962 की धारा 129 ऐ के उपबन्धों के अंतर्गत निर्धारित फीस जिस स्थान पर पीठ स्थित है, वहां के किसी भी राष्ट्रीयकृत बैंक की शाखा से न्यायाधिकरण की पीठ के सहायक रजिस्ट्रार के नाम पर रेखांकित माँग ड्राफ्ट के जरिए अदा की जाएगी तथा यह माँग ड्राफ्ट अपील के प्रपत्र के साथ संलग्न किया जाएगा।

6. The prescribed fee under the provisions of Section 129A of the Customs Act,1962 shall be paid through a crossed demand draft, in favour of the Assistant Registrar of the Bench of the Tribunal, of a branch of any Nationalized Bank located at the place where the Bench is situated and the demand draft shall be attached to the form of appeal.

7. इस आदेश के विरूद्ध सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण में शुल्क के 7.5% जहां शुल्क अथवा शुल्क एवं जुरमाना का विवाद है अथवा जुरमाना जहां शीर्फ जुरमाना के बारेमे विवाद है उसका भुकतान करके अपील की जा शकती है।

7. An appeal against this order shall lie before the Tribunal on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute".

8. न्यायालय शुल्क अधिनियम, 1870 के अंतर्गत निर्धारित किए अनुसार संलग्न किए गए आदेश की प्रति पर उपयुक्त न्यायालय शुल्क टिकट लगा होना चाहिए।

8. The copy of this order attached therein should bear an appropriate court fee stamp as prescribed under the Court Fees Act, 1870.

Subject: Show Cause Notice F.No. VIII/10-35/Commr./O&A/2022-22 dated 07.08.2023 issued by the Commissioner of Customs, Ahmedabad to M/s. Monark India Pvt. Ltd. (IEC-0511031874), Plot No-884, Phase-V, Udhyog Vihar, Gurgaon-122016 & Others.

Brief facts of the case:

M/s. Monark India Pvt. Ltd. (IEC-0511031874), Plot No-884, Phase-V, Udhyog Vihar, Gurgaon-122016 (hereinafter referred to as 'M/s Monark' or 'the Importer' or 'the Noticee' for the sake of brevity) is engaged in Contract manufacturing and supplying of Modular Kitchen, Fittings and Marble for Flooring etc. 'M/s Monark' imports Marble Blocks, Polished Marble Slabs, Modular Kitchen and Fittingsfrom Greece, Turkey, Spain, China and various other countries.

2. Intelligence gathered by the Officers of Directorate of Revenue Intelligence, Zonal Unit, Ahmedabad (hereinafter referred to as DRI) indicated that 'M/s Monark' was importing "Rough Marble Blocks" (classifiable under Customs Tariff Heading-2515) by mis-declaring as 'Rough Dolomite Block'/'Rough Dolomite Block White'/'Rough Dolomite Block Grey' and mis-classifying the same under Customs Tariff Heading No.25181000. By way of this misclassification they were availing the exemption from payment of BCD under Sr.No.120 of Notification No.050/2017-Cus dated 30.06.2017 and also availing the exemption from payment of GST under Notification No.01/2017-Integrated Tax (Rate) dated 28.06.2017. M/s Monark was also importing "Polished Marble Slabs" (classifiable under Customs Tariff Heading 6802) by mis-declaring as 'Polished Dolomite Slabs Thassos' and mis-classifying the same under Customs Tariff Heading No.68022900. Intelligence gathered further indicated that the goods 'Rough Dolomite Block'/'Rough Dolomite Block White'/'Rough Dolomite Block Grey' were actually "Rough Marble Blocks" and same should be classified under Customs Tariff Heading No.25151210, however, the Importer was claiming and availing classification of the product under Customs Tariff Heading No.25181000. In a similar manner, the goods 'Polished Dolomite Slabs Thassos' were actually "Polished Marble Slabs" and same should be classified under Customs Tariff Heading No.68022190, however, the Importer was claiming and availing classification of the product under Customs Tariff Heading No.68022900. Intelligence indicated that, such mis declaration of description and classification is being done with the intention to evade payment of higher rate of Customs Duties including IGST (hereinafter mentioned as Customs Duty) applicable on Customs Tariff Heading No.25151210 in comparison to Customs Tariff Heading No.25181000 and Customs Tariff Heading No.68022190 in comparison to Customs Tariff Heading No.68022900. The intelligence gathered indicated that after processing the Marble Blocks into Marble slabs these are cleared exclusively in Construction/Real Estate sectors as 'Marble slabs'.

3. Customs Duty leviable on Marble Block under Customs Tariff Heading No.25151210 and Polished Marble Slabs under Customs Tariff Heading No.68022190 is 40% w.e.f. 08.09.2016 as per the Taxation Laws (Amendment) Bill, 2016. The Notification No.12/2012-Customs, dated 17.03.2012 was amended by Notification No.48/2016-Customs, dated 08.09.2016, whereby Sr.No.110A of the Notification dated 17.03.2012 was amended and BCD @10% was imposed on goods falling under Customs Tariff Heading No.25151210, the detail as under:

(1)	(2)	(3)	(4)	(5)	(6)
"110A	2515 11 00, 2515 12 10, 2515 1220, 2515 12 90, 2516 11 00, 2516 12 00	All goods	10%	-	-

Further, Notification No.12/2012-Customs, dated 17.03.2012 was again amended by notification No.49/2016-Customs, dated 16.09.2016, wherein serial No.110A, for the entry in column (3), the following shall be substituted, namely:-

"All goods, other than-

(i) Rough Marble and Travertine blocks;

(ii) -----

3.1 The comparative Duty structure of Customs Tariff Heading No.25151210 vis-à-vis Customs Tariff Heading No.25181000 is as under:

For the period from 01/04/2018 to 31/03/2021		
CTH	**25181000**	**25151210**
Effective BCD Rate	5.00%	40.00%
Social Welfare Surcharge	10.00%	10.00%
IGST	5.00%	12.00%
TOTAL DUTY RATE	**10.78%**	**61.28%**
01/2017-Integrated Tax (Rate) Schedule I, Sr. No. 127 - 5% (2518 10 dolomite, Not calcined or sintered) and Schedule II, Sr. No. 51-12% (25151210 Marble and travertine blocks)		

3.2 From the above Duty structure, it emerges that, the import items, when classified under Customs Tariff Heading No.25181000, the Basic Customs Duty (BCD) leviable on such imports was 5% of the Assessable value during the period from 01.04.2018 to 31.03.2021. However, if the import items were classified under Customs Tariff Heading No.25151210, they attracted ad-valorem BCD @40% during the relevant period. Further, import items, when classified under Customs Tariff Heading No.25181000 attract 5% IGST vis-à-vis IGST @ 12% on item classified under Customs Tariff Heading No.25151210 during the period from 01.04.2018 to 31.03.2021.

3.3 The comparative Duty structure of Customs Tariff Heading No.68022190 vis-à-vis Customs Tariff Heading No.68022900 is as under:

For the period from 01/04/2018 to 31/03/2021		
CTH	**68022900**	**68022190**
Effective BCD Rate	10.00%	40.00%
Social Welfare Surcharge	10.00%	10.00%
IGST	18.00%	18.00%
TOTAL DUTY RATE	**30.98%**	**69.92%**

3.4 From the above Duty structure, it emerges that, the import items, when classified under Customs Tariff Heading No.68022900, the Basic Customs Duty (BCD) leviable on such imports was 10% of the Assessable value during the period from 01.04.2018 to 31.03.2021. However, if the import items were classified under Customs Tariff Heading No.68022190, they attracted ad-valorem BCD @40% during the relevant period.

3.5 Further, it was indicated that consignments declared as "Dolomite Blocks" imported by 'M/s Monark' had arrived at ICD Tumb, Dist- Valsad, Gujarat and 'M/s Monark' had filed Bills of Entry No. 8857370 and 8857392 both dated 18.09.2020 before Customs, ICD Tumb, seeking clearance of the said consignments. Therefore, the said consignments were put on hold by DRI, Ahmedabad vide letter F.No. DRI/AZU/CI/INT-11/2019 dated 19.09.2020

written to the Assistant/Deputy Commissioner of Customs, ICD Tumb, Dist-Valsad (Gujarat).

4. Acting upon the said intelligence, search was carried out at the office premises of 'M/s Monark' situated at Plot No-884, Phase-V, Udhyog Vihar, Gurugram-122016 / EWS, New Park Height Gate, Park Drive, Sector–54, DLF Phase-V, Gurugram–122011 by the officers of DRI, Ahmedabad Zonal Unit along with the officers of DRI, Delhi Zonal Unit on 21.09.2020 in presence of independent panchas and Shri Abhishek Kumar Ojha, Sr. Accountant of 'M/s Monark' and withdrew documents related to import of Dolomite Blocks/Slabs under panchnama dated 21.09.2020. During the course of search, Shri Abhishek Kumar Ojha informed that their office premises belongs to M/s. DLF Limited and certain portion at the first floor of the said premises was given to M/s. Monark India Pvt. Ltd. to carry out the site official work of M/s. Monark India Pvt. Ltd. Shri Abhishek Kumar Ojha informed that Shri Salim Dad Khan and Shri Nasim Dad Khan were Directors of M/s. Monark India Pvt. Ltd. and at present they were out of India since March 2020. Shri Abhishek Kumar Ojha also informed that Shri Anurag P. Talukdar, General Manager of M/s. Monark India Pvt. Ltd looked after the entire work of M/s. Monark India Pvt. Ltd and he has been detected with COVID-19 and presently under home quarantine.

4.1 All the containers covered under Bills of Entry No. 8857370 and 8857392 both dated 18.09.2020 imported by 'M/s Monark', kept on hold at ICD Tumb were examined under panchnama dated 28.09.2020 drawn at the premises of M/s Navkar Corporation Ltd., Survey No. 44/1,44/1/2 Village Tumb, Taluka-Umbergaon, Dist-Valsad, Gujarat. During the examination, it was found that each container No.MEDU6302470 & MSCU6086970 were stuffed with 2 Stone Blocks of Grey colour were imported under Bill of Entry No8857392 dated 18.09.2020by declaring as 'Rough Dolomite Blocks Grey Elegante' and each container no. CAXU3119229 & MSCU1695418 were stuffed with 2 Stone block of White colour were imported under Bill of Entry No8857370 dated 18.09.2020bydeclaring as 'Rough Dolomite Blocks White Wave' appears to be Marble Blocks. The representative samples were drawn from all the types of goods. Further, the said goods were detained under the provisions of Customs Act vide Detention memo dated 28.09.2020 (DIN-202009DDZ100005V1261) and handed over to the representative of M/s Navkar Corporation Ltd. under Supratnama dated 28.09.2020, Custodian of the Goods for safe custody.

5.TESTING OF SAMPLES DRAWN FROM THE CONSIGNMENTS BY DRI:

5.1 The representative samples drawn from the consignments imported by 'M/s Monark' under panchnama dated 28.09.2020 were forwarded to the Geological Survey of India, Western Region, Jaipur vide Letter F.No. DRI/AZU/CI/ENQ-53(INT-11/2020)2020 dated 04.12.2020 along with Test Memos for testing, as detailed below:

S. No.	Test Memo No. & date	Goods imported vide BoE No. & Date	Description of goods declared	RUD No.
1	01 dated 04.12.2020	8857392 dated18.09.2020	Rough Dolomite Blocks Grey Elegante	**RUD-05**
2	02 dated 04.12.2020	8857370 dated18.09.2020	Rough Dolomite Blocks White Wave	**RUD-06**

The Geological Survey of India, Western Region, Jaipur submitted testing reports in different parameters/analysis along with response of queries, raised by DRI. The details are as under:

i. Geotechnical Laboratory Report No. GTLab./GSI/WR/2020-21 dated 21.01.2021
ii. Petrology Laboratory Report dated 28.01.2021
iii. Chemical Analysis Report dated 04.02.2021
iv. Details of response of queries dated 17.02.2021

On perusal of all the above report and response of queries received, it appears that goods imported by 'M/s Monark' has the following characteristics:

- *The blocks are Hard and Compact in nature of white colour.*
- *The rock is essentially composed of Calcite/dolomite.*
- *The rock is a metamorphic rock.*
- *Specific gravity of the rock is 2.72 to 2.77.*
- *Stone is formed from dolomitic limestone.*
- *Rock is hard and capable of taking polish and can be used as marble slab.*
- *As per the physical property and based on petrography, chemical composition and specific gravity data, the sample meets the specification of marble. More precisely, the rock is identified as* ***Dolomitic Marble****.*

5.2 For the sake of clarity, Geotechnical Laboratory report one image each of the Petrology Laboratory Report, Chemical Analysis Report of the samples and response of queries conveyed by the Geological Survey of India, Western Region, Jaipur are reproduced below:-

5.2.1Geotechnical Laboratory report dated 21.01.2021:-

GOVERNMENT OF INDIA
GEOLOGICAL SURVEY OF INDIA
WESTERN REGION
JAIPUR

No /GTLab./GSI/WR/2020-21 **Date 21.01.2021**

Geotechnical Laboratory
Geological Survey of India
Western Region, 15-16, Jhalana Doongari,
Jaipur-302004

FS: 2020-21
ITEM No.: NA

Sample received from: DRI., Zonal Unit, Ahmadabad, Gujarat
Through: TCS Division, GSI WR, Jaipur

S.N.	Sample ID No.*	Specific Gravity
1	1 (Ist slot)	2.68
2.	2(Ist slot)	2.72
3.	3 (Ist slot)	2.68
4.	1 (IInd slot)	2.72
5.	2 (IInd slot)	2.77
6.	1(IIIrd slot)	2.77

8826816 - 15/9/20
8857392 - 18/9/20
9181729 - 15/10/20
8826577 - 15/9/20
8857370 - 18/9/20
8826679 - 15/9/20

*The rock samples were in irregular size and shape.

Tests conducted at GT lab, GSI WR, Jaipur.

21.01.2021
(Mohammad Ahmad)
Senior Geologist

As requested TBV.
As defined above
30/07/2021.

5.2.2 Petrology Laboratory Report dated 28.01.2021:-

GEOLOGICAL SURVEY OF INDIA
WESTERN REGION

15-16, Jhalana Institutional Area,
Jaipur – 302004.

PETROLOGY LABORATORY

REPORT

Name of the party	:	**Director of Revenue Intelligence, Zonal unit, Ahmadabad**
Type of analysis	:	**Petrographic study**
Type of samples	:	**Rock sample**
Number of samples	:	**1**
Samples No(s), if given	:	**8857392 (TS 4)**

A. Megascopic Observation

1. Nature	:	**Hard and compact**
2. Colour	:	**White**
3. Granularity	:	**Medium Grained**

B. Observation under Microscope: The rock is essentially composed of calcite/dolomite. Calcite show rhombohedral cleavage and polysynthetic twinning. The rock is medium to coarse grained.
The rock is a metamorphic rock in nature.

C. Sample identified: Dolomitic Marble

28/1/2021

Analysed By

Biswaranjan Mohanty

Name : **BISWARANJAN MOHANTY**
Designation : **Senior Geologist**
Date : **28.01.2021**
Place : **Jaipur**

Director/ Lab. In charge

28/1/21

(S.S DUTTA)
Director

30/07/2021.

5.2.3 Chemical Analysis Report dated 04.02.2021:-

भारत सरकार / GOVERNMENT OF INDIA
भारतीय भूवैज्ञानिक सर्वेक्षण / GEOLOGICAL SURVEY OF INDIA
पश्चिमी क्षेत्र / WESTERN REGION
रसायन प्रभाग / CHEMICAL DIVISION

Office: 15-16, Khanij Bhawan, GSI Complex,
Jhalana Institutional Area, Jhalana Doongri,
Jaipur-302004, Rajasthan

Phone: 0141-2710753
Email: dir.chem.wr@gsi.gov.in

CHEMICAL ANALYSIS REPORT

1. Sender's Name: Director(C) & TCS, GSI, WR, Jaipur
2. Sender's Letter No.: 2121/13/LAB/TCS/WR/12 Dated 06/01/21
3. Nature of Sample: Commercial (Rock Sample)
4. Name of the Party: Sr. Intelligence Officer
   Directorate of Revenue Intelligence, Zonal Unit, Ahmedabad (Gujarat)
5. Nature of Test desired by the party: Major, Minor Oxide and Trace element (WD-XRF)
5. Preliminary Registration No.: X-7188 (1-06)
6. Date of Registration: 08/01/2021
7. Method of Analysis: GSI/CLJ/PR/SOP/01/XRF/LA Issue No. 2
8. Instrument used: WD XRF Zetium PANalytical
9. Working group: Dr. C.D.Misra, S.K.Raymahury, Sanjay Kumar, Pankaj Koli, Sr. Chemists, V.K.Jangid, Chemists
10. Month of Analysis: January, 2021

Seq	Bill No & Date	Sample No/ Ref No.	SiO_2 (%)	Al_2O_3 (%)	Fe_2O_3 (%)	MnO (%)	CaO (%)	MgO (%)	Na_2O (%)	K_2O (%)	TiO_2 (%)	P_2O_5 (%)	Ba (ppm)	Co (ppm)	Cr (ppm)
1	9181729, 15/10/20	X-7188-1 TCS-1	0.92	0.24	0.12	<0.003	36.06	16.62	0.12	<0.1	0.02	<0.01	<50	51	<15
2	8826816, 15/09/20	X-7188-2 TCS-2	0.53	0.13	0.11	<0.003	34.96	17.69	0.12	<0.1	0.02	<0.01	<50	51	<15
3	8857392, 18/09/20	X-7188-3 TCS-3	<0.1	<0.1	<0.1	<0.003	35.60	17.30	0.10	<0.1	0.02	<0.01	<50	55	<15
4	8826577, 15/09/20	X-7188-4 TCS-4	<0.1	<0.1	<0.1	<0.003	33.42	19.77	<0.1	<0.1	0.07	<0.01	<50	38	<15
5	8857370, 18/09/20	X-7188-5 TCS-5	0.13	<0.1	<0.1	<0.003	34.99	17.98	<0.1	<0.1	0.02	<0.01	<50	37	<15
6	8826679, 15/09/20	X-7188-6 TCS-6	0.27	<0.1	<0.1	<0.003	32.92	19.75	0.13	<0.1	0.02	<0.01	<50	40	<15

Seq	Bill No & Date	Sample No/ Ref No.	Cu (ppm)	Ga (ppm)	Nb (ppm)	Ni (ppm)	Pb (ppm)	Rb (ppm)	Sc (ppm)	Sr (ppm)	Th (ppm)	V (ppm)	Y (ppm)	Zn (ppm)	Zr (ppm)
1	9181729, 15/10/20	X-7188-1 TCS-1	15	<5	<2	6	<2	<3	<3.5	158	<4	<20	<5	<10	<5
2	8826816, 15/09/20	X-7188-2 TCS-2	77	<5	<2	8	<2	<3	<3.5	135	<4	<20	<5	<10	<5
3	8857392, 18/09/20	X-7188-3 TCS-3	18	<5	<2	19	<2	<3	<3.5	118	<4	<20	<5	<10	<5
4	8826577, 15/09/20	X-7188-4 TCS-4	18	<5	<2	16	<2	<3	<3.5	17	<4	<20	<5	<10	<5
5	8857370, 18/09/20	X-7188-5 TCS-5	22	<5	<2	23	<2	<3	<3.5	116	<4	<20	<5	<10	<5
6	8826679, 15/09/20	X-7188-6 TCS-6	10	<5	<2	16	<2	<3	<3.5	24	<4	<20	<5	<10	<5

This report related to particular sample(s) before which stated / or those brush pertains to the sample(s) only

Complaint(s) if any, if any, with in fortnight of this report should be brought to notice within 15 days from the date of receipt

Name of the party with in fortnight is not available

Analysed by:

Pankaj Kumar Jaiswal
Sr.Chemist

Sanjay Kumar
Sr.Chemist

Sagnik Kumar Raymahury
Sr.Chemist

Dr. Vinod Kumar Jangid
Chemist

Sunny Sharma
Chemist

Reviewed by:

Dr. C.D.Misra
Sr. Chemist

Authorised Signatory

D.K.Varshney 07/02/2021
Superintending Chemist & Chief

As reported TRV
10/02/21

5.2.4Response of queries dated 17.02.2021:-

Queries and Response of Test Memo No-1
Name and Address of Importer: M/s Monark India Pvt. Ltd., Gurgaon

Query- i: Whether the rock is sedimentary or metamorphic in nature?

Response: Metamorphic

Query- ii: Specific gravity of the rock

Response: 2.72

Query- iii: Chemical composition of the rock

Response: Chemical analysis report attached herewith

Query- iv: Whether the stone is formed from the re-crystallization of limestone and/or dolomitic limestone?

Response: The sample is formed from dolomitic limestone

Query- v: Whether the rock is sufficiently hard and capable of taking polish and can be used as marble slabs?

Response: Yes

Query- vi: Petrographic analysis of the rock

Response: Petrology laboratory report attached herewith

Query- vii: Whether it meets the specifications of marble? If yes, which type of marble it is

Response: Yes. Physical property and based on the petrography, chemical composition and specific gravity data, the sample meets the specifications of marble. More precisely, it is dolomitic marble.

Director
TCS Division,
Geological Survey of India
Western Region, Jaipur

As reported TRV
20/02/2021

Queries and Response of Test Memo No-2
Name and Address of Importer: M/s Monark India Pvt. Ltd., Gurgaon

Query- i: Whether the rock is sedimentary or metamorphic in nature?

Response: Metamorphic

Query- ii: Specific gravity of the rock

Response: 2.77

Query- iii: Chemical composition of the rock

Response: Chemical analysis report attached herewith

Query- iv: Whether the stone is formed from the re-crystallization of limestone and/or dolomitic limestone?

Response: The sample is formed from dolomitic limestone

Query- v: Whether the rock is sufficiently hard and capable of taking polish and can be used as marble slabs?

Response: Yes

Query- vi: Petrographic analysis of the rock

Response: Petrology laboratory report attached herewith

Query- vii: Whether it meets the specifications of marble? If yes, which type of marble it is?

Response: Yes. Physical property and based on the petrography, chemical composition and specific gravity data, the sample meets the specifications of marble. More precisely, it is dolomitic marble.

As signated TRV. 30/07/2021

5.3 The above Test Report of Geotechnical Laboratory, Petrology Laboratory, Chemical Analysis of the samples and response of queries conveyed by the Geological Survey of India, Western Region, Jaipur confirmed that sample drawn under panchnama dated 28.09.2020 meets the specification of marble. Thus, it appears that actual goods imported by 'M/s Monark' were "Blocks of Rough Marble".

6.SEIZURE OF GOODS IMPORTED BY M/S MONARK INDIA PVT. LTD. AT ICD TUMB:

6.1 Whereas examination of the goods under panchnama dated 28.09.2020, revealed that the goods imported under Bills of Entry No.8857370 and 8857392 both dated 18.09.2020 by 'M/s Monark' by declaring as "Rough Dolomite Blocks Grey Elegante' and 'Rough Dolomite Blocks White Wave' and classifying under CTH25181000 were actually the 'Rough Marble Blocks' of Grey & white colour and correctly classifiable under Customs Tariff Heading No.25151210. Accordingly, the goods imported by 'M/s Monark' vide Bill of Entry No. 8857370 and 8857392 both dated 18.09.2020through ICD Tumb, which were detained on 28.09.2020 having actual value of **Rs.18,81,421/-** were seized vide Seizure Memo dated 03.12.2020 under the reasonable belief that the said goods were liable for confiscation under the provisions of the Customs Act, 1962.

6.2 The Deputy Commissioner of Customs, ICD Tumb, Dist- Valsad (Gujarat) vide letter F.No. VIII/05/ICD-Tumb/Misc-HQ/2020-21 dated 17.11.2020 informed that 'M/s Monark' has approached for provisional release of seized goods and requested to provide NOC for provisional release of the goods. Accordingly, DRI, Ahmedabad vide letter F.No. DRI/ AZU/CI/ENQ-53(INT-11/2020)/2020 dated 11.12.2020, informed the Adjudicating Authority that they have no objection if the seized goods are released provisionally after safeguarding Revenue and on furnishing of Bank Guarantee and Bond in terms of Board's Circular No.35/2017-Cus. dated 16.08.2017.

7. PROVISIONAL RELEASE OF SEIZED GOODS:

7.1 The Deputy Commissioner of Customs, ICD Tumb, Dist- Valsad (Gujarat)vide letter F.No. VIII/06/ICD-TUMB/Dolomite/2020-21/383 dated 01.09.2022 informed that vide letter F.No. VIII/06/ICD-TUMB/Dolomite/2020-21 dated 21.12.2020, the seized goods were released provisionally on payment of declared Duty as per the Bills of entry, execution of Bond for full value of Rs. 18,81,421/- and on furnishing of Bank Guarantee of Rs.12,32,425.

8. TESTING OF SAMPLES DRAWN BY CUSTOMS ICD TUMB:

8.1 During the investigation, it appears that 'M/s Monark' had imported one consignment of Marble Blocks and filed Bill of Entry No. 9879849 dated08.12.2020 at ICD Thumb, Taluka-Umbergaon, Dist-Valsad, Gujarat for clearance of said consignment. The officers of Customs ICD Tumb, Taluka-Umbergaon, Dist-Valsad, Gujarat had drawn the representative samples from the consignment declared as 'Rough Dolomite Blocks' imported by 'M/s Monark'. The said samples were sent to the CSIR-National Geophysical Research Institute, Uppal Road, Hyderabad under Test memo No.1078183 dated 11.12.2020 for testing by Customs ICD Tumb. The Test Report dated 29.01.2021received from the CSIR-National Geophysical Research Institute, Hyderabad by ICD Tumb was forwarded to the DRI Office vide letter F. No. VIII/06/ICD-Tumb/Dolomite/2020-21 dated 12.02.2021 by the Deputy Commissioner of Customs, ICD Tumb.

8.2 On perusal of the above Test Reports received from CSIR-National Geophysical Research Institute, Uppal Road, Hyderabad regarding the above consignment imported by 'M/s Monark', it appears that the CSIR-National Geophysical Research Institute, Hyderabad has given Test Report considering different parameters/analysis viz. Physical properties, Optical properties & Chemical properties along with queries & response. The details are as under:

1) The rock is a metamorphic rock.
2) Specific gravity of the rock is 2.73
3) Sample rock is formed from re-crystallization of limestone and/ or Dolomitic limestone.
4) Rock is enough hard to be polished and can be used as marble slabs.
5) Based on petrography, chemical composition and specific gravity data, the sample meets the specification of Marble.
6) Rock is identified as **Dolomite Marble**.

8.3 For the sake of clarity, test report dated 29.01.2021 issued by the CSIR-National Geophysical Research Institute, Hyderabad for the consignment imported by 'M/s Monark' is reproduced below:-

सीएसआईआर - राष्ट्रीय भूभौतिकीय अनुसंधान संस्थान
(वैज्ञानिक तथा औद्योगिक अनुसंधान परिषद)
उप्पल रोड, हैदराबाद - 500007, तेलंगाणा, भारत

CSIR – NATIONAL GEOPHYSICAL RESEARCH INSTITUTE
(Council of Scientific & Industrial Research)
Uppal Road, Hyderabad – 500 007, Telangana, INDIA

Dr. M. Ram Mohan,
Senior Principal Scientist,
Geochemistry Division,
Email: rammohan@ngri.res.in
Ph: 040-27012607

29th January 2021

To,
Ms. Dipali Shukla,
Superintendent,
ICD-Tumb

Sub: Submission of test results for 8 samples

Ref: Test memo no.s ICD-Tumb/I-1078599 dt. 19-12-2020
Test memo no.s ICD-Tumb/I-1078183 dt. 11-12-2020
Test memo no.s ICD-Tumb/I-1077118 dt. 20-11-2020
Test memo no.s ICD-Tumb/I-1077112 dt. 20-11-2020
Test memo no.s ICD-Tumb/I-1077125 dt. 20-11-2020
Test memo no.s ICD-Tumb/I-1077128 dt. 20-11-2020
Test memo no.s ICD-Tumb/I-1077131 dt. 20-11-2020
Test memo no.s ICD-Tumb/I-1077133 dt. 20-11-2020

Dear Sir/ Madam,

With reference to your letters with test memo no.s mentioned above to The Director, CSIR-NGRI, please find herewith the enclosed results, sample wise.

Please acknowledge the receipt of the same.

OFFICE OF THE DY. JASTT. COMMISSIONER OF CUSTOMS
RECEIVED
1165
04 FEB 2021
SIGNATURE
ICD-TUMB (GOA)

Smt. Mr. Dipali Shukla to put up pl.

Best Regards,

(M. Ram Mohan)

Dr. M. RAM MOHAN
Sr. Principal Scientist & Professor AcSIR
CSIR-National Geophysical Research Institute
Uppal Road, Hyderabad-500 007.
Telangana, India.

फोन / Phone:040-2701 2607(O)
फैक्स / Fax:040-23434651, 27171564

वेब साइट/ Website: www.ngri.org.in
ई मेल/ Email: director@ngri.res.in

20/06/2022

1. Sample Name : Not Provided (TR No. 1078183)

2. Sample Type : **Metamorphic rock**

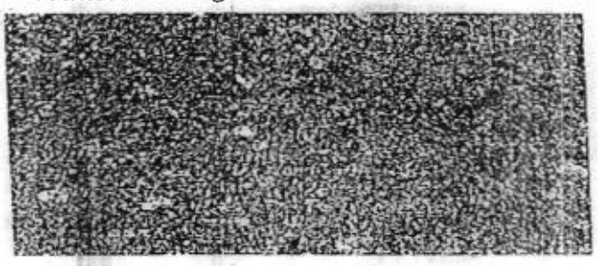
3. **Physical Properties:**

Nature	: Monomineralic and non-clastic
Colour	: White
Streak	: White
Tenacity	: Brittle
Lustre	: Vitreous
Transparency	: Non-transparent
Hardness	: 3– 4

Specific gravity: 2.73

4. **Optical Properties:**

Grain Size	: Fine to medium grained
Shape	: Euhedral to subhedral
Texture	: Inequigranular granoblastic
Cleavage	: Rhombohedral
Pleochroism	: Pleochroic
Mineralogy	: Altered carbonate material with few grains of quartz with calcite vein
Alteration	: Altered calcite grains



Photomicrograph under plane – polarized light showing re – crystallization of carbonate material.

M. Ram Mohan

Dr. M. RAM MOHAN
Sr. Principal Scientist & Professor AcSIR
CSIR-National Geophysical Research Institute
Uppal Road, Hyderabad-500 007.
Telangana, India.

Signed TBV against exposure
27/09/20 (1/2)

Scanned with CamS

Chemical Properties:

Reaction with Hydrochloric acid	: Mild effervescence
Major Element Composition	: Major element analysis is performed on X-ray Fluorescence (XRF) Spectrometer (Axios, PANanalytical) with reference to the international standards of dolomite (BCS 368) and limestone (JLs – 1). Please see Table 1.

Table 1: Major oxide composition of the sample (in wt%).

OV=Observed values, CV=Certified values

Sample	SiO_2	Al_2O_3	Fe_2O_3	MnO	MgO	CaO	Na_2O	K_2O	TiO_2	P_2O_5	LOI
TR No. 1078183 (NO. 7)	0.09	0.08	0.01	0.00	15.72	34.70	0.06	0.01	0.09	0.00	47.27
BCS-368 (OV)	0.85	0.15	0.25	0.08	20.53	30.70	0.10	0.03	0.09	0.00	46.70
BCS-368 (CV)	0.92	0.17	0.23	0.06	20.90	30.80	ND	ND	ND	ND	46.70
JLS-1 (CV)	0.11	0.02	0.02	0.00	0.62	55.02	0.00	0.00	ND	0.03	43.73
JLS-1 (OV)	0.18	0.06	0.04	0.01	0.65	55.00	0.05	0.02	0.09	0.05	43.73

Table 2: Comparison of major element data of the studied samples with carbonate standards (after, Pettijohn 1975).

	Dolostone	Pure Limestone	Impure Limestone	TR No. 1078183 (NO. 7)
SiO_2	3.98	1.88	10.61	0.09
Al_2O_3	0.78	0.83	4.3	0.08
Fe_2O_3	0.64	0.26	2.97	0.01
MnO	0.02	0.01	0.22	0.00
MgO	20.26	2.75	2.01	15.72
CaO	29.06	50.89	41.9	34.70
Na_2O	0.14	0.06	1.38	0.06
K_2O	0.04	0.01	0.56	0.01
TiO_2	0.04	0.01	0.07	0.09
P_2O_5	0.32	1	0.21	0.00

M. Ram Mohan

Dr. M. RAM MOHAN
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CSIR-National Geophysical Research Institute
Uppal Road, Hyderabad-500 007.
Telangana, India.

6. Queries & Response

Query 1: Whether the rock is sedimentary or metamorphic in nature?

Response : Metamorphic

Q. 2: Specific gravity of the rock

R. : 2.73

Q. 3: Chemical composition of the rock

R. : Refer Table 1

Q. 4: Whether the rock is formed from the re-crystallization of limestone and / or dolomitic limestone ?

R.: The given sample is formed from dolomitic limestone

Q. 5: Whether the rock is sufficiently hard and capable of taking polish and can be used as marble slabs ?

R. : Yes, the rock is hard enough to be polished and can be used as marble slabs

Q. 6: Petrographic analyses of the rock

R. : Refer section 4 (optical properties)

Q. 7: Whether it meets the specifications of marble? if yes, which type of marble it is ?

R. : Yes. Based on petrography, chemical composition and specific gravity data, the sample meets the specifications of marble.

More precisely, it is dolomite marble.

M. Ram Mohan

Dr. M. RAM MOHAN
Sr. Principal Scientist & Professor AcSIR
CSIR-National Geophysical Research Institute
Uppal Road, Hyderabad-500 007.
Telangana, India.

Signed to be verified (TRV) against original

22/09/21 2/2

Scanned with CamSc

8.4 The above Test Report of the samples and response of queries conveyed by the CSIR-National Geophysical Research Institute, Hyderabad confirmed that sample drawn by the officers of Customs ICD Tumb, Taluka- Umbergaon, Dist-Valsad, Gujarat from the consignment declared as 'Rough Dolomite Blocks' imported by 'M/s Monark' meets the specification of Marble. Thus, it appears that actual goods imported by 'M/s Monark' were "Blocks of Rough Marble".

COLLECTION AND SCRUTINY OF RECORDS/DOCUMENTS

9.1 During the course of searches carried out in the office premises of M/s Monark India Pvt. Ltd., EWS, New Park Height Gate, Park Drive, Sector–54, DLF Phase-V, Gurugram–122011, the complete documents pertaining to imports were not found. The documents viz. Commercial Invoice, Performa Invoices issued by original suppliers of goods, Purchase order placed to overseas supplier and Purchase order issued by M/s. DLF Home Developers Limited, buyer of marbles/slabs in India were submitted by 'M/s Monark' vide letter dated 03.03.2021. On scrutiny of documents viz. Commercial Invoice, Packing list and declaration filed by the original supplier of goods based in Greece & Turkey, who supplied the goods to M/s. Edifice Ventures Limited andM/s. Edifice Ventures Limited exported the same to 'M/s Monark', it appears that subject goods were Blocks of Marble. Further, on scrutiny of the Purchase order placed to overseas supplier, it appears that 'M/s Monark' had placed the purchase order for purchase of Rough Marble Blocks of various trade names viz. Santa Marina, White Wave, Dark Emperador, Pietra Grey, Black Mariquina and Polished Slabs

(Thassos), which are as per websiteFHL Group|Santa Marina Marble|Marbles and Granites Greece|Marble Slab Suppliers Worldwide,one of their suppliers from which they had purchased Dolomite Blocks. Santa Marina is a White Marble and described as White background with grey brownish veining creating a symphony of playful patterns on a canvas that only nature could have printed so wonderfully. Further, on scrutiny of purchase order placed by M/s. DLF Home Developers Ltd., buyer of Marble slabs, it appears that M/s. DLF Home Developers Ltd. has placed order for supply of Marble Stones, Polished Marble Slabs, Polished Thassos White Stone etc. As per website of one of their supplier, M/s EagleSA, Greece i.e. eagle-sa.gr/thassosfrom which they had purchased Dolomite Blocks, Thassos are one of the most impressive and luxurious categories of marble in the world. Also known as "Thassos Snow White", it is known over the centuries for its unrivaled, unique and shining white color. Recognized as the whitest marble in the world, Thassos White is an exceptional and aesthetically unique material to add beauty and luxury to any environment. It is fine-grained with a bright, crystalline colour of high reflectance to sunlight. Available in different selections, small or large, round-shaped or long calcite crystals, light shading, may appear. Its composition is mainly of crystalline Dolomite and this is why it provides greater reflection than any other white marble in the world, while maintaining a low temperature for a long time. This uniqueness makes it ideal for use in hotter areas. Facesof these marbles can be finished into honed, polished or brushed surfaces and is suitable for any interior and exterior application.

9.2 On scrutiny of the import documents resumed during search in the office premises of 'M/s Monark'on 21.09.2020, documents submitted by 'M/s Monark' on 03.03.2021 and Test/Analysis Reports of representative samples drawn from the consignment imported by 'M/s Monark', it appears that the goods imported by 'M/s Monark'were Rough Marble block in the guise of Dolomite Block and same should be classifiable under Customs Tariff Heading No.25151210. Further, Marble Slabs imported in guise of Dolomite Slabs should be classifiable under Customs Tariff Heading No.68022190. It was felt that the statements of Customs brokers who filed the Bills of Entry on behalf of 'M/s Monark' were to be obtained/recorded with respect to these evidences. Accordingly, investigation was extended to the Custom House Agents/Customs Brokers, who had handled the clearance of imported goods.

9.3 Statement of **Shri Rupesh Jivanbhai Katariya, Authorized Signatory of M/s. International Cargo Corporation**, (Customs broker) was recorded under Section 108 of the Customs Act, 1962 on 05.07.2021& 05.04.2022, wherein he inter-alia stated that:

9.3.1 He was authorized Signatory who coordinated with the Customers for the documentation and classification of the imported goods before filing Bills of Entry and other Technical aspects for the clearance of the imported goods. He was not aware whether the imported goods were Dolomite Blocks and they filed Bill of entry under Customs Tariff Heading No.25181000 after getting check list confirmation from the Importer.

9.3.2 He perused DRI Letter F. No. DRI/AZU/CI/INT-11/2020 dated 04.12.2020issued to the Geological Survey of India, Jaipur for forwarding of representative samples drawn from the consignments i.e. 'Rough Dolomite Blocks of white colour', imported by M/s. Monark India Pvt. Ltdvide Bills of Entry No 8857370 and 8857392 both dated 18.09.2020.

9.3.3 He perused the Test Reports of Geotechnical Laboratory, Petrology Laboratory, Chemical Analysis of the samples and response of queries conveyed

by the Geological Survey of India, Western Region, Jaipur and put his dated signature on the same in token of having perused it. He agreed with the contents of the Analysis Report and stated that as per the above Test/Analysis Report the material declared as 'Rough Dolomite Blocks of white colour' were actually 'Rough Marble Block of Dolomitic nature' with specific gravity of 2.68 to 2.77 composed of Calcite/dolomite.

9.3.4 He perused the Test Report dated 29.01.2021 issued by the CSIR-National Geophysical Research Institute, Hyderabad for samples taken from the import consignments of M/s. Monark India Pvt. Ltd.by Customs ICD Tumb and put his dated signature on the same in token of having perused. He agreed with the contents of the Test Report and stated that as per the above Test Report the material declared as 'Rough Dolomite Blocks' were actually 'Rough Marble Block of Dolomitic nature'.

9.3.5 He perused the Bill of Entry No.8857370 dated 18.09.2020 alongwith commercial invoice, packing list, Country of Origin Certificate, Insurance and Bill of lading of the goods imported by 'M/s Monark'and stated that in Certificate of insurance No. H689971486 dated 13.08.2020 for the goods supplied by overseas supplier, description of the goods was mentioned as 'Rough Dolomite Blocks-White wave Marbles'. He stated that the goods were looking like marbles and the Importer had made themunderstand that these were the Rough Dolomite Blocks as mentioned in commercial invoice and to be classified under Customs Tariff Heading No.25181000, therefore on their instructions they filed the Bill of EntryNo.8857370 dated 18.09.2020 under Customs Tariff Heading No.25181000 by declaring the goods as Rough Dolomite Blocks.

9.3.6 He was shown the IS 1130-1969 (Indian Standard: Specification for Marble), which was as *"Marbles are metamorphic rocks capable of taking polish, formed from the re-crystallization of Limestones or dolomitic limestones and are distinguished from limestone by even visibly crystallined nature and non-flaggy stratification."*

9.3.7 Further, he perused the HSN Explanatory General Notes of Chapter 2515 which states that heading 25.15 covers Marble, travertine, ecaussine and other calcareous monumental or building stone of an apparent specific gravity of 2.5 or more, and alabaster, whether or not roughly trimmed or merely cut, by sawing or otherwise, into blocks or slabs of a rectangular (including square) shape(+). Further as per the HSN Explanatory General Notes *Marble is a hard calcareous stone, homogeneous and fine-grained, often crystalline and either opaque or translucent. Marble is usually variously tinted by the presence of mineral oxides (coloured veined marble, onyx marble, etc.), but there are pure white varieties.* Travertines are varieties of calcareous stone containing layers of open cells. Ecaussine is extracted from various quarries in Belgium and particularly at Ecaussines. It is a bluish-grey stone with an irregular crystalline structure and contains many fossilised shells. On fracture Ecaussine shows a granular surface similar to granite and is therefore sometimes known as "Belgian granite", "Flanders granite" or "petit granit". *The heading covers other similar hard calcareous monumental or building stones, provided their apparent specific gravity is 2.5 or more (i.e. effective weight in kg/I,000 cm').*

9.3.8 As per the literature and Test Analysis Report of the Geological Survey of India, Jaipur, he understood and accepted that the Marble is a metamorphic rock that forms when limestone is subjected to the heat and pressure of metamorphism. Marble is composed primarily of the mineral calcite ($CaCO3$) and usually contains other minerals, such as clay minerals, micas, quartz, pyrite, iron oxides, and graphite. Under the conditions of metamorphism, the

calcite in the limestone re-crystallizes to form a rock that is a mass of interlocking calcite crystals. He also accepted that name of Marble Blocks/slabs were classified as per their genesis and chemical composition, colour, texture, origin of country, etc. Dolomite Marble and Dolomitic Marbles was also a form of marbles, which was a crystalline variety of dolomite containing magnesium carbonate as dolomite molecules in certain proportion.

9.3.9 He accepted that as per the test reports, IS 1130-1969 (Indian Standard: Specification for Marble), HSN Explanatory General Notes the goods imported by declaring as 'Dolomite Block' meets the specifications of 'Marble' and should be classified under the Customs Tariff Heading 2515 instead of 2518. He accepted that they have wrongly classified the goods under Customs Tariff Heading 2518 instead of 2515.

9.3.10 He stated that being a Company in the business of import and export in the capacity of a CHA, he was fully aware of the provisions of Customs Broker Licensing Regulations, 2018 and Customs Act, 1962; that being a Custom House Agent/Broker, as per the provisions of CBLR, 2018, they were required to abide by Regulation 10 of CBLR, 2018 and it was their prime duty to inform the Department regarding any malpractice in the import consignments which they were handling.

9.4 On scrutiny of documents resumed during search and submitted by 'M/s. Monark', it appears that after the import of the goods by 'M/s. Monark', the same were send for Job work to M/s. Royale Impex, Silvassa. On scrutiny of documents, it appears the said goods were those imported by declaring as Rough Dolomite Blocks but 'M/s .Monark' had issued Delivery Challans for job work, wherein Rough marble Blocks were written. It was felt that statement of the responsible person of M/s. Royale Impex, Silvassa, the Company who received the goods from M/s. Monark' for job work, was to be obtained/recorded with respect to receipt of goods. Accordingly, the**Statement of Shri Krishan Kumar Agarwal, Partner of M/s. Royale Impex, Silvassa (Job Worker)** was recorded under Section 108 of the Customs Act, 1962 on 15.09.2022 **[RUD–19]**, wherein he inter-alia stated that:

- M/s Royale Impex has a marble processing plant at Silvassa, wherein five Gangsaw Machines for cutting of Marble Blocks into Marble slabs were installed; that they cut marble Blocks into slabs and marble slabs were further polished; that M/s Royale Impex processed the Marble blocks imported by them and also did Job work of cutting of Marble Blocks into Marble Slabs of various customers viz. M/s. A-One Marble, Silvassa, M/s. Herital Marble and M/s. Monark India Pvt Ltd etc.

- He perused the panchnama dated 21.09.2020 drawn at the office premises of M/s. Monark India Pvt Ltd, Gurugram, alongwith the documents placed at page no 03 to 24 of file no 04 resumed under panchnama dated 21.09.2020 drawn at the office premises of M/s. Monark India Pvt Ltd. On being asked to explain the documents he stated that the documents placed at page no 03 to 24 of file no 04 resumed under the above panchnama dated 21.09.2020 were Delivery Challans issued by M/s. Monark India Pvt Ltd in the name of M/s Royale Impex for sending Blocks (which were imported by M/s. Monark India Pvt Ltd, Gurugram) for processing of Blocks into Slabs under job work,.

- He perused the Delivery challan No.MIPL/DC/2021/012 to MIPL/DC/2021/019 all dated 02.06.2022 issued by M/s. Monark India Pvt Ltd, wherein the description of goods received for job work was written as Santa Marina Rough Marble Blocks and same was imported vide Bill of Entry No 7716262 dated 21.05.2020. On being asked he stated that they received

Rough Marble blocks from M/s. Monark India Pvt. Ltd. under the Delivery challan No. MIPL/DC/2021/012 to MIPL/DC/2021/019 all dated 02.06.2022 and the same were processed as Polished Marble Slab in their processing unit.

10. STATEMENTS AND INQUIRY WITH IMPORTING COMPANY

10.1 Statement of **Shri Salim Khan, Director of M/s. Monark India Pvt. Ltd**. was recorded under Section 108 of the Customs Act, 1962 on 30.07.2021 &22.09.2022wherein he inter-alia stated that:

10.2M/s. Monark India Pvt. Ltd. was engaged in Contract manufacturing and supplying of Modular Kitchen, Fittings and Marble for Flooring etc. for which they import Marble Blocks, Polished Marble Slabs, Modular Kitchen and Fittingsfrom Greece, Turkey, Spain, China and various other countries. He stated that they had an agreement with M/s. DLF Building India and other real estate builders for the supply of Marble/stones for their various projects and they were supplying them Marble/stones for used in flooring and cladding, bathrooms, kitchen and living areas.

10.3 He was one of the Directors of the Company and looked after all the work related to import of stones for their Company; that they have a dedicated procurement team of various persons including him who after verifying various parameters finalizes the purchase of various stones and other goods; that the import documentation was looked after by their Accounts Head under his guidance. He stated that all import, procurement, documentation, accounting and finance were looked after by various persons through their registered office situated at Plot No-884, Phase-V, Udhyog Vihar, Gurgaon-122016; that he personally visited Turkey, Greece and Spain to purchase the required various stone blocks/slabs and after identifying the Marble Blocks, Stones and Slabs, placed order to export the same to India.

10.4 He was also one of the Directors in M/s. Edifice Ventures Limited, a Hong Kong based Company; that through that Company, the goods were routed to India; that for the purpose of ease of business, large exclusive contracts, making payments overseas through opening letter of credits and other financial instruments, they purchased the goods from Greece and Turkish market in the name of M/s. Edifice Ventures Limited, Hong Kong but goods were brought from Greece/Turkey to India directly.

10.5 He perused Panchnama dated 28.09.2020 drawn at M/s. Navkar Corporation Limited, Survey No.-44/1, Village-Tumb, Valsad, Gujarat, wherein representative samples were drawn from the consignments i.e. 'Rough Dolomite Blocks' imported by M/s. Monark India Pvt. Ltd vide Bills of Entry No. 8857392 and 885730 both dated 18.09.2020.

10.6 He perused DRI Letter F. No. DRI/AZU/CI/ENQ-53(INT-11/2020)/2020 dated 04/12/2020 issued to the Additional Director General & HOD, Geological Survey of India, Jaipur for forwarding of representative samples drawn on 28.09.2020 by the officers of Directorate of Revenue Intelligence from the consignments i.e. 'Rough Dolomite Blocks- Grey Elegante and Rough Dolomite Blocks White wave' imported by M/s. Monark India Private Limited, Gurgoan vide Bill of Entry No. 8857392 and 885730 both dated 18.09.2020 at ICD Tumb for testing and put his dated signature on the same.

10.7 He perused the Test Reports dated 21.01.2021, 28.01.2021 and 04.02.2021 of Geotechnical Laboratory, Petrology Laboratory, Chemical Analysis

of the samples and response of queries conveyed by the Geological Survey of India, Western Region, Jaipur and after reading and understanding the said document, he put his dated signature on the same. On being asked he explained that, after testing of the samples, the Geological Survey of India, Western Region, Jaipur had opined that:

- *The blocks are Hard and Compact in nature of white colour.*
- *The rock is essentially composed of Calcite/dolomite.*
- *The rock is a metamorphic rock.*
- *Specific gravity of the rock is 2.72and 2.77*
- *Stone is formed from dolmitic limestone.*
- *Rock is hard and capable of taking polish and can be used as marble slab.*
- *As per the physical property and based on petrography, chemical composition and specific gravity data, the sample meets the specification of marble. More precisely, the rock is identified as* ***Dolomitic Marble****.*

10.8 On being asked he stated that per the above Test/Analysis Report the material declared as 'Rough Dolomite Blocks-Grey Elegante and Rough Dolomite Blocks White wave' were actually 'Rough Marble Block of Dolomitic nature' with specific gravity of more than 2.5 composed of Calcite/dolomite. He perused DRI Letter F. No. VIII/06/ICD-Tumb/Dolomite/2020-21 dated 12.02.2021 addressed to the DRI, Ahmedabad, issued by the Deputy Commissioner of Customs, ICD Tumb, wherein Test Reports dated 29.01.2021 received from CSIR-National Geophysical Research Institute, Hyderabad against Test memo No.1078183 dated 11.12.2020 for testing of samples taken from the import consignment of M/s. Monark India Private Limited was forwarded; that after reading and understanding the said document, he put his dated signature on the same and stated that they filed Bill of Entry No. 9959253 dated 15.12.2020for clearance of goods declared as Rough Dolomite Block.

10.9 He perused the Test Report dated 29.01.2021 of CSIR-National Geophysical Research Institute, Hyderabad for the samples and after reading and understanding the said document he put his dated signature on the same. On being asked he explained that, after testing of the samples, the CSIR-National Geophysical Research Institute, Hyderabad had opined that:

- The rock is a metamorphic rock.
- Specific gravity of the rock is 2.73
- Sample rock is formed from re-crystallization of limestone and/ or Dolomitic limestone.
- Rock is enough hard to be polished and can be used as marble slabs.
- Based on petrography, chemical composition and specific gravity data, the sample meets the specification of Marble.
- Rock is identified as Dolomite Marble.

10.10 On being asked he stated that per the above Test Report the material declared as 'Rough Dolomite Blocks' meets the specification of Marble, more precisely, Dolomite Marble with specific gravity of 2.73.

10.11 He perused Panchnama dated 21.09.2020 drawn at the office premises of 'M/s Monark' and was confronted with some documents resumed under Panchnama dated 21.09.2020 from the office premises of 'M/s Monark', which he explained as under:

- Document available in File No. 1 (page No. 01 to 43) were the import documents viz. Bill of entry No. 6901605 dated 12.02.2020, Commercial

Invoice No. EVLMIPLCM19065-1 dated 01.02.2020 along with packing list issued by overseas supplier, M/s Edifice Ventures Limited, Hong Kong for supply of goods to 'M/s Monark' and Bill of lading etc. He further explained that documents viz. Commercial Invoice No. 87 dated 23.12.2019 along with packing list issued by original supplier, M/s Eagle S.A., Greece, for supply of goods to M/s Edifice Ventures Limited, Hong Kong, Bill of lading no. 590016215 dated 30.12.2019 issued by shipping line for transportation of goods from Thessaloniki (Greece) to Nhava Sheva port and Country of origin issued by originating country was also available. On being asked, he stated the goods weighing 283.94 MT imported by 'M/s Monark' under Bill of entry No. 6901605 dated 12.02.2020 were originally supplied by M/s Eagle S.A., Greece to M/s Edifice Ventures Limited, Hong Kong vide Commercial Invoice No. 87 dated 23.12.2019, available at Page no. 09 and packing list available at page no. 06. Thereafter, M/s Edifice Ventures Limited, Hong Kong supplied the said goods weighing 283.94 MT to M/s Monark India Pvt. Ltd. vide Commercial Invoice No. EVLMIPLCM19065-1 dtd 01.02.2020 along with packing list available at page no. 43 and 42 respectively. He also perused Bill of Lading No.590016215 dated 30.12.2019 issued by shipping line for transportation of goods available at Page no. 37 to 40 and Country of origin no. 237/2020 dated 12.02.2020 issued by originating country available at Page no. 36 and stated that goods weighing 283.94 MT were of Greece origin, loaded from Thessaloniki (Greece) and delivered at Nhava Sheva port directly. He perused the Commercial Invoice No. 87 dated 23.12.2019 issued by M/s. Eagle S.A., Greece, available at Page no. 09 wherein description of goods was mentioned as Marble Blocks under the column COLL: and in packing list available at page no. 06 and state that these goods were the same goods supplied to 'M/s. Monark' by declaring as Rough Dolomite Blocks under Customs Tariff Heading No.25181000.

- Document available in File No. 4 (page No. 01 to 103) were the import documents viz. Bill of entry No. 7716262 dated 21.05.2020, Commercial Invoice No.EVLMIPLCMS190831 dated 12.04.2020 along with packing list issued by overseas supplier, M/s. Edifice Ventures Limited, Hong Kong for supply of goods to 'M/s. Monark', Delivery Challan issued M/s. Monark' for Jobwork etc. He further explained that documents viz. Commercial Invoice No. 22 dated 31.03.2020 along with packing list issued by original supplier, M/s. Eagle S.A., Greece, for supply of goods to M/s. Edifice Ventures Limited, Hong Kong, Bill of lading No. 20.14.751 dated 13.04.2020 issued by shipping line for loading of goods from Thessaloniki (Greece) to delivery at ICD Tumb India through Hazira port and Country of origin issued by originating country was also available. On being asked, he stated the goods weighing 279.92 MT imported by 'M/s. Monark' under Bill of Entry No. 7716262 dated 21.05.2020 were originally supplied by M/s. Eagle S.A., Greece to M/s Edifice Ventures Limited, Hong Kong vide Commercial Invoice No. 22 dated 31.03.2020. Thereafter, M/s. Edifice Ventures Limited, Hong Kong supplied the said goods weighing 279.92 MT to M/s Monark India Pvt. Ltd. vide Commercial Invoice No. EVLMIPLCMS190831 dated 12.04.2020 along with packing list. He stated that after importing of said goods 'M/s Monark' send these goods to M/s Royale Impex, Silvassa for Job work i.e. for cutting into slabs under various Delivery challans. He perused the Delivery challan No. MIPL/DC/2021/012 to MIPL/DC/2021/019 all dated 02.06.2022 issued by 'M/s Monark', available at Page no. 03 to 24, wherein description of goods send for job work was written as Rough Marble Blocks. On being asked, he stated that the actual goods supplied by M/s .Edifice Ventures Limited, Hong Kong to 'M/s Monark', were Rough Marble Blocks but same were cleared by 'M/s Monark' under Bill of entry No. 7716262 dated 21.05.2020 by declaring as Rough Dolomite Blocks under Customs Tariff Heading No.25181000.

- Document available in File No. 9 (page No. 01 to 37) were the import documents viz. Commercial Invoice No. EVLMIPLCMGE20221 dated 30.07.2020 along with packing list issued by overseas supplier, M/s Edifice Ventures Limited, Hong Kong for supply of goods to 'M/s. Monark'. He further explained that documents viz. Commercial Invoice No. GIB2020000000011 dated 04.08.2020 along with packing list issued by original supplier, M/s. Mermaid Madencilik Ihracat Ithalat San VE Tic. Ltd. Sti, Antalya, Turkey for supply of goods to M/s. Edifice Ventures Limited, Hong Kong, Export Declaration filed by M/s. Mermaid Madencilik Ihracat Ithalat San VE Tic. Ltd. at port of loading, Bill of lading No. KTLIZM2015132 dated 01.08.2020 issued by shipping line for loading of goods from Aliaga Izmir port of Turkey to delivery at ICD Tumb India through Nhava Sheva port and Country of origin issued by originating country was also available. On being asked, he stated the goods weighing 46.94 MT imported by 'M/s Monark' under Bill of Entry No. 8857392 dated 18.09.2020 were originally supplied by M/s. Mermaid Madencilik Ihracat Ithalat San VE Tic. Ltd. Sti, Antalya, Turkey to M/s. Edifice Ventures Limited, Hong Kong vide Commercial Invoice No. GIB2020000000011 dated 04.08.2020 available at Page no. 19 and packing listavailable at page no. 13. Thereafter, M/s Edifice Ventures Limited, Hong Kong supplied the said goods weighing 46.94 MT to M/s. Monark India Pvt. Ltd. vide Commercial Invoice No. EVLMIPLCMGE20221 dated 30.07.2020 along with packing list available at page no. 36 and 35 respectively. He also perused Bill of Lading No.KTLIZM2015132 dated 01.08.2020issued by shipping line for transportation of goods available at Page no. 8, Country of Origin No.0081433 dated 21.08.2020 issued by originating Country available at Page no. 4 and stated that goods weighing 46.94 MT were of Turkish origin, loaded from Aliaga Izmir port of Turkey and delivered at ICD Tumb through Nhava Sheva port directly. He perused the Export declaration filed by M/s. Mermaid Madencilik Ihracat Ithalat San VE Tic. Ltd. at port of loading, available at Page no. 03 for supply of goods vide Commercial Invoice No.GIB2020000000011 dated 04.08.2020, which was in Turkish language but when photo of the said document was taken by I Phone and translated from Google lens in English language, it shows that the description for goods supplied under Commercial Invoice No. GIB2020000000011 dated 04.08.2020 was mentioned as Dolomite Block Marble. On being asked, he stated that the same goods were supplied by M/s Edifice Ventures Limited, Hong Kong to 'M/s. Monark', which were cleared by 'M/s. Monark' under Bill of Entry No. 8857392 dtd 18.09.2020 by declaring as Rough Dolomite Blocks Grey Elegante under Customs Tariff Heading No. 25181000.

- Document available in File No. 10 (page No. 01 to 32) were the import documents viz. Commercial Invoice No. MIPLCMMB-20021 dated 03.08.2020 along with packing list issued by overseas supplier, M/s. Edifice Ventures Limited, Hong Kong for supply of goods to 'M/s. Monark'. He further explained that the documents viz. Commercial Invoice No. DRB2020000000020 dated 29.07.2020 along with packing list issued by original supplier, M/s. Derbent Madan Anonim Sirketi, Istanbul, Turkey for supply of goods to M/s. Edifice Ventures Limited, Hong Kong, Declaration filed by M/s. Derbent Madan Anonim Sirketi at Port of loading, Bill of Lading No.KTLIZM2015159A dated 05.08.2020 issued by shipping line for transportation of goods loaded in Container No.CAXU3119229 & MSCU1695418 from Tekirdag port of Turkey to delivery at ICD Tumb India through Nhava Sheva port and Country of origin issued by originating country was also available. On being asked, he stated the goods weighing 43.66 MT imported by 'M/s .Monark' under Bill of Entry No. 8857370 dated 18.09.2020 were originally supplied by M/s. Derbent Madan Anonim Sirketi, Istanbul, Turkey to M/s. Edifice Ventures Limited,

Hong Kong vide Commercial Invoice No. DRB2020000000020 dtd 29.07.2020. Thereafter, M/s. Edifice Ventures Limited, Hong Kong supplied the said goods weighing 43.66 MT to M/s. Monark India Pvt. Ltd. vide Commercial Invoice No. MIPLCMMB-20021 dated 03.08.2020 along with packing list. He perused the declaration filed by M/s. Derbent Madan Anonim Sirketi at port of loading, available at Page no. 13 which was in Greek language but when photo of the said document was taken by I Phone and translated from Google lens in English language, it shows that the goods loaded in container no. CAXU3119229 & MSCU1695418 were Block of Marble. On being asked, he stated that the same goods were supplied by M/s. Edifice Ventures Limited, Hong Kong to 'M/s Monark', which were cleared by 'M/s. Monark' under Bill of Entry No. 8857370 dtd 18.09.2020 by declaring as Rough Dolomite Blocks White Wave under Customs Tariff Heading No.25181000.

10.12 He was confronted with some documents viz. Commercial Invoice & Performa Invoices issued by original suppliers of goods, Purchase order placed to overseas supplier and Purchase order placed by M/s DLF Home Developers Limited, buyer of marbles/slabs in India were submitted by 'M/s Monark' vide letter dated 03.03.2021, which he explained as under:

- Document available at page No 30 was the Purchase Order No. MIPL/EVL/ST/1/1920-Amend-1 dated 04.03.2020 placed by 'M/s Monark', to overseas supplier, M/s. Edifice Ventures Limited, Hong Kong, wherein description of goods was mentioned as Rough Marble Blocks of various trade names viz. Dark Emperador, Pietra Grey & Black Mariquinab. On being asked, he stated that the Dark Emperador, Pietra Grey & Black Mariquinab were trade names of Marble and they had purchased Marbles/stones from M/s. Edifice Ventures Limited, Hong Kong. Similarly, he perused all the other purchase orders placed by 'M/s Monark' and available in the documents submitted vide letter dated 03.03.2021 and found that 'M/s Monark' had placed the Purchase Order for purchase of Rough Marble/stone Blocks of various trade names viz. Santa Marina, White Wave, Dark Emperador, Pietra Grey, Black Mariquinab and Polished Slabs (Thassos).

- Document available at page No 42 to 47 was the Purchase order No. CFT/POD/00019/1920 dated 30.03.2020 placed by M/s. DLF Home Developers Ltd., a buyer in India, wherein supply of goods were written as Marble/Stones Slabs.On being asked, he stated that theM/s. DLF Home Developers Ltd. had placed order for Marble/Stone Slabs and accordingly, they supplied Marble/Stone slabs to M/s. DLF Home Developers Ltd. Similarly, he perused all the other purchase orders placed by M/s. DLF Home Developers Ltd. and available in the documents submitted vide letter dated 03.03.2021 and found that M/s. DLF Home Developers Ltd. had placed order for supply of Marble Stones, Polished Marble Slabs, Polished Thassos White Stone etc.

10.13 He perused the statement dated 15.09.2022 of Shri Krishan Kumar Agarwal, Partner of M/s. Royale Impex, Silvassa jobworker of goods sent by 'M/s. Monark' and statements dated 05.07.2021 and 05.04.2022 of Shri Rupesh Katariya, Authorized person of M/s. International Cargo Corporation, Customs Broker and agreed with the same.

10.14 He stated that name of Marble Blocks/slabs were classified as per colour, texture, origin of country, etc. Some of different form/name of natural marbles were 'BOTTOCHINO ROYAL, BOTTOCHINO CLASSICO, BOTTOCHINO VENATO, ONYX (White), ONYX (Red), CREMANI BEIGE, CREMA ROYAL, SILVER PORTO, NEW GREY WILLIAM, VOLAKAS, BAINCO MARFIL, GREY SONATA, YELLOW

TRAVENTINE, IVORY PESSARO, GREY EMPERADOR, FIOR DI PESCO, GRIGIO CARNICO, PERLATO SICILIA, FELIZ GREY, GRIGIO BRONZE ARMANI, CELINA GREY, CASA DI NOVA, etc; that the names for imported Marbles were decided by the suppliers and sometimes by them on the basis of the quarry location, quarry name, Colour combination, Veins/lines/design found in Marbles and various other parameters and the said names were either Italian names or Greece names or Turkey names or country of origin names from China and Vietnam.

10.15 He was shown the IS 1130-1969 (Indian Standard: Specification for Marble), which was as *"Marbles are metamorphic rocks capable of taking polish, formed from the re-crystallization of Limestones or dolomitic limestones and are distinguished from limestone by even visibly crystallined nature and non-flaggy stratification."* Further, he perused the HSN Explanatory General Notes of Chapter 2515 and stated that heading 25.15 covers Marble, travertine, ecaussine and other calcareous monumental or building stone of an apparent specific gravity of 2.5 or more, and alabaster, whether or not roughly trimmed or merely cut, by sawing or otherwise, into blocks or slabs of a rectangular {including square) shape(+). Further as per the HSN Explanatory General Notes *Marble is a hard calcareous stone, homogeneous and fine-grained, often crystalline and either opaque or translucent. Marble is usually variously tinted by the presence of mineral oxides (coloured veined marble, onyx marble, etc.), but there are pure white varieties.* Travertines are varieties of calcareous stone containing layers of open cells. Ecaussine is extracted from various quarries in Belgium and particularly at Ecaussines. It is a bluish-grey stone with an irregular crystalline structure and contains many fossilised shells. On fracture Ecaussine shows a granular surface similar to granite and is therefore sometimes known as "Belgian granite", "Flanders granite" or "petit granit". *The heading covers other similar hard calcareous monumental or building stones, provided their apparent specific gravity is 2.5 or more (i.e. effective weight in kg/I,000 cm').*

10.16 He perused the printouts of the webpage of website of Eagle-SA/thassos (eagle-sa.gr/thassos), one of their suppliers from whom they had purchased Dolomite Blocks and stated that as per website, Thassos, among all its other beauties, generates one of the most impressive and luxurious categories of marble in the world. Also known as "Thassos Snow White", it is known over the centuries for its unrivaled, unique and shining white color. Recognized as the whitest marble in the world, Thassos White is an exceptional and aesthetically unique material to add beauty and luxury to any environment. It is fine-grained with a bright, crystalline color of high reflectance to sunlight and is available in different selections, small or large, round-shaped or long calcite crystals and light shading may appear. Its composition is mainly of crystalline dolomite and this is why it provides greater reflection than any other white marble in the world, while maintaining a low temperature for a long time. This uniqueness makes it ideal for use in hotter areas. Face can be finished into honed, polished or brushed surface, suitable for any interior and exterior application. Further he perused printout of the webpage of website FHL Group|Santa Marina Marble|Marbles and Granites Greece|Marble Slab Suppliers Worldwide,one of their suppliers from whom they had purchased Dolomite Blocks and stated that as per the website, Santa Marina is mentioned under the category White Marble and described as White background with grey brownish veining, creating a symphony of playful patterns on a canvas that only nature could have printed so wonderfully. This new quarry added in 2019 to their group, has all the features to deliver huge blocks in quantities that could match all challenging projects.

10.17 He stated that after going through the content of websites and available in open source, the Dolomite Blocks/Dolomite Slabs imported by 'M/s Monark' were Dolomitic Marble Blocks and Dolomitic Marble Slabs only and Dolomitic

Marble Blocks were treated/ processed the same as Marble Blocks on job work basis and the resultant Marble/Slabs were traded/sold as Santa Marina, White Wave, Dark Emperador, Pietra Grey, Black Mariquinab & Thassos White.

10.18 He stated that as per the literature, Test Analysis Report of the Geological Survey of India, Jaipur and Test Report of the CSIR-National Geophysical Research Institute, Hyderabad, he understood and accepted that the Marble is a metamorphic rock that forms when limestone is subjected to the heat and pressure of metamorphism. Marble is composed primarily of the mineral calcite (CaCO3) and usually contains other minerals, such as clay minerals, micas, quartz, pyrite, iron oxides, and graphite. Under the conditions of metamorphism, the calcite in the limestone re-crystallizes to form a rock that is a mass of interlocking calcite crystals. He also accepted that name of Marble Blocks/slabs were classified as per their genesis and chemical composition, colour, texture, origin of country, etc.

10.19 On being specifically asked that when their Company was aware about the product details, nature of Marbles and its classification then why they indulged in classification under HSN code/Customs Tariff Heading 2518 and 68029900, he stated that they came to know from their supplier /market /custom broker that Stone Blocks of Dolomite nature imported by various importers in India at Nhava Sheva Sea Port and ICD Tumb were imported with its genesis name 'Dolomite Blocks' with classification under HS Code/Customs Tariff Heading No.25181000 /25182000/2518300 and 'Marble Slabs/stone slabs' of Dolomite nature were imported with its genesis name Dolomite Slabs with classification under HS Code/Customs Tariff Heading No.68029900. He stated that they had regularly imported the "Rough Marble Block" earlier under HSN code/Customs Tariff Heading 2515 from the suppliers based in Turkey; that as per Indian custom Tariff all stone meant for building purposes should be classified under Customs Tariff Heading 2515/Marble. He stated that the Customs Duty so evaded was passed on to the buyers as they had sold the products at lower prices after considering the Customs Duty payable before the time of import.

11. MODUS OPERANDI ADOPTED FOR EVASION OF CUSTOMS DUTY:

11.1 In view of the evidence and facts discussed in the foregoing paras, it appears that 'M/s Monark' was importing the goods namely "Rough Marble Block" by mis-declaring as "Rough Dolomite Block" under Customs Tariff Heading No.25181000 to evade payment of Duty by availing the exemption from payment of BCD under Sr.No.120 of Notification No. 050/2017-Cus dated 30.06.2017 and also availing the exemption from payment of GST under Notification No. 1/2017-Integrated Tax (Rate) dated 28.06.2017. The goods "Rough Dolomite Block" were actually a "Rough Marble Block" and same should be classified under Customs Tariff Heading No.25151210 with applicable duties thereon, however, the Importer was claiming and availing classification of the product under Customs Tariff Heading No.25181000 for "Rough Marble Block" which attracted a lower rate of Duty, with the intention to evade payment of applicable Customs Duties including IGST (hereinafter mentioned as Customs Duty) under Customs Tariff Heading No.25151210 which was higher in comparison to Customs Tariff Heading No.25181000. 'M/s Monark' was also importing the goods namely "Polished Marble Slabs" by mis-declaring as "Dolomite Slabs" under Customs Tariff Heading No.68029900 to evade payment of Duty. The goods "Dolomite Slabs" were actually "Polished Marble Slabs" and same should be classified under Customs Tariff Heading No.68022190 with applicable duties thereon, however, the Importer was claiming and availing classification of the product under Customs Tariff Heading No.68029900 for "Polished Marble Slabs" which attracted a lower rate of Duty, with the intention

to evade payment of applicable Customs Duties including IGST (hereinafter mentioned as Customs duty) under Customs Tariff Heading No.68022190 which was higher in comparison to Customs Tariff Heading No.68029900.

11.2 In the manner discussed herein above, Shri Salim D Khan, Director of 'M/s Monark'in connivance with overseas suppliers, had evaded the Customs Duty due to the Government Exchequer by way of mis-declaring the goods imported as 'Dolomite Block' and thereby mis-classifying the same under Customs Tariff Heading No.25181000and 'Dolomite Slabs' by mis-classifying the same under Customs Tariff Heading No.68029900to evade the applicable Customs duty.

DISCUSSION OF THE EVIDENCES:

12. Whereas the mis-declaration and mis-classification of goods is evident from the following evidences on record:-

12.1 The Representative samples drawn from the consignments declared as 'Rough Dolomite Blocks Grey Elegante' and 'Rough Dolomite Blocks White Wave' imported by 'M/s Monark' under panchnama dated 28.09.2020 were subjected to Testing/analysis of product. The Geological Survey of India, Western Region, Jaipur submitted Testing reportsin different parameters /analysis along with response of queries, raised by DRI,it appears that goods imported by 'M/s Monark'has the following characteristics:

- *The blocks are Hard and Compact in nature of white colour.*
- *The rock is essentially composed of Calcite/dolomite.*
- *The rock is a metamorphic rock.*
- *Specific gravity of the rock is 2.72and 2.77.*
- *Stone is formed from dolomitic limestone.*
- *Rock is hard and capable of taking polish and can be used as marble slab.*
- *As per the physical property and based on petrography, chemical composition and specific gravity data, the sample meets the specification of Marble. More precisely, the rock is identified as* ***Dolomitic Marble****.*

The Test Report of Geotechnical Laboratory, Petrology Laboratory, Chemical Analysis of the samples and response of queries conveyed by the Geological Survey of India, Western Region, Jaipur confirmed that the sample drawn under panchnama dated 28.09.2020 meets the specifications of "Marble" having specific gravity of 2.72and 2.77. The samples drawn from the consignments of 'M/s Monark' were imported from overseas suppliers, M/s. Edifice Ventures Limited, Hong Kong which is the same suppliers from whom 'M/s Monark' was regularly importing the goods by declaring "Rough Dolomite Blocks" and "Dolomite Slabs", thus it is evident that goods imported by 'M/s. Monark' were Blocks/Slabs of Marble but mis-declared as "Rough Dolomite Blocks" and "Dolomite Slabs" to evade the duty.

12.2 Samples drawn by officers of Customs, ICD Tumb from the cargo declared as 'Rough Dolomite Blocks' imported by 'M/s Monark' vide Bill of Entry No.9879849 dated08.12.2020 was subjected to Testing/analysis of goods. The CSIR-National Geophysical Research Institute, Hyderabad submitted Test reports dated 29.01.2021against Test Memo No. 1078183 dated 11.12.2020 in different parameters /analysis along with response of queries, raised by Customs. As per the Test Reports dated 29.01.2021 of CSIR-National Geophysical Research Institute, Hyderabad, it appears that the goods imported by 'M/s Monark' has the following characteristics:

- *The rock is a metamorphic rock.*
- *Specific gravity of the rock is 2.73*
- *Sample rock is formed from re-crystallization of limestone and/ or Dolomitic limestone.*
- *Rock is enough hard to be polished and can be used as marble slabs.*
- *Based on petrography, chemical composition and specific gravity data, the sample meets the specification of Marble.*
- *Rock is identified as Dolomite Marble.*

The Test Report of CSIR-National Geophysical Research Institute, Hyderabad and response of queries conveyed by the CSIR-National Geophysical Research Institute, Hyderabad confirmed that sample sent under Test Memo No. 1078183 dated 11.12.2020 meets the specifications of "Marble". The samples drawn from the consignment of 'M/s Monark' were imported from overseas supplier, M/s Edifice Ventures Limited, Hong Kong, which is the same supplier from whom 'M/s Monark' was regularly importing the goods by declaring as 'Rough Dolomite Blocks'. Thus it is evident that goods imported by 'M/s Monark' were Block of Marble but mis declared as "Rough Dolomite Blocks" to evade the Duty.

12.3 Documents available at Page no. 9 & Page no. 6of File No.1 resumed under Panchnama dated 21.09.2020 from the office premises of 'M/s Monark' are the Commercial Invoice No. 87 dated 23.12.2019 along with packing list issued by the original supplier, M/s. Eagle S.A., Greece, for supply of goods weighing 283.94 MT to M/s. Edifice Ventures Limited, Hong Kong. The said goods were exported by M/s. Edifice Ventures Limited, Hong Kong to 'M/s Monark' vide Commercial Invoice No. EVLMIPLCM19065-1 dated 01.02.2020 along with packing list available at page no. 43 and 42 of File No. 1 resumed under above said Panchnama dated 21.09.2020. Further, Documents available at Page no. 9 of the above file was Bill of Lading No. 590016215 dated 30.12.2019and HBL No.19.14.3797.1 dated 30.12.2019 issued by shipping lines for transportation of goods available at Page No. 37 to 40 and Country of origin No. 237/2020 dated 12.02.2020 issued by originating country, available at Page no. 36, wherein it appears that goods weighing 283.94 MT were of Greece origin, loaded from Thessaloniki (Greece) and delivered at Nhava Sheva port directly. On scrutiny of Commercial Invoice No. 87 dated 23.12.2019 issued by M/s. Eagle S.A., Greece, it appears that description of goods was mentioned as "Marble Blocks" and in packing list it was mentioned that "20 Marble Blocks having 283.94 MT" of weight were supplied to M/s. Edifice Ventures Limited, Hong Kong. In order to provide a view the relevant scanned image of all documents are reproduced below:-

(i) <u>Commercial Invoice No. 87 dated 23.12.2019 along with Packing list issued by the original supplier, M/s. Eagle S.A., Greece :</u>

SELLER: EAGLE S.A.
INDUSTRIAL ZONE OF DRAMA
66100 DRAMA, GREECE
TEL: +3025210-55960/+3025210-81360 FAX:+302521055961
REGISTER VAT NUMBER: 800395204

BUYER: EDIFICE VENTURES LIMITED
Address : 3/F, SHUNFENG INTERNATIONAL CENTER, 182, QUEEN'S RD EAST, HONG KONG
TEL:+8675588250959 FAX:+8675583483582.
Attn: David Wu
Email: david.wu@edificev.com

DATE 23/12/2019

COMMERCIAL INVOICE No087

DESCRIPTION OF GOODS	HS CODE	QUALITY	DIMENSIONS (cm)	PIECES	QUANTITY	PRICE €/ton	AMOUNT
ROUGH DOLOMITE BLOCKS	25181000	A	VARIOUS DIMENSIONS	20	283,94 tons	460	130 612,40 €

COLLI:	20 MARBLE BLOCKS
CONTAINERS:	13
GROSS WEIGHT:	284,54 TONS
NET WEIGHT:	283,94 TONS
TOTAL AMOUNT:	130.612,40 €
PORT OF LOADING:	THESSALONIKI PORT, GREECE
PORT OF DISCHARGE:	NHAVA SHEVA, INDIA
CONSIGNEE:	MONARK INDIA PVT LTD PLOT No884 UDYOG VIHAR PHASE 5 GURGAON, HARYANA, INDIA
SHIPPING LINE:	MAERSK
VESSEL:	PERSEUS I
FLAG:	CYPRUS
TRADE TERMS:	CFR INDIA
PAYMENT TERMS:	DOWN PAYMENT BEFORE LOADING
OUR BANK:	NATIONAL BANK OF GREECE M.ALEXANDROU STR.32 66100, DRAMA GREECE
SWIFT CODE:	ETHN GR AA
IBAN:	GR72 0110 3370 0000 337 470 358 80
RECEIVER:	EAGLE SA

ORIGINAL

EAGLE S.A.
INDUSTRIAL ZONE OF DRAMA
66100 DRAMA GREECE
TEL: +30 25210 55960 & 81360
FAX: +30 25210 55961
VAT REGISTER: EL 800395204

SELLER: EAGLE S.A.
INDUSTRIAL ZONE OF DRAMA
66100 DRAMA, GREECE
TEL.:+3025210-55960/+3025210-81360 FAX:+3025210559 61
REGISTER VAT NUMBER: 800395204

BUYER: EDIFICE VENTURES LIMITED
Address : 3/F, SHUNFENG INTERNATIONAL CENTER, 182,
QUEEN'S RD EAST, HONG KONG
TEL.:+8675588250950 FAX:+8675583483582
Email: salomdb@gmail.com / david.wu@edificev.com

DATE 23/12/2019

BLOCK LIST

CONTAINER	SEAL	DESCRIPTION OF GOODS	No	QUALITY	LOADINGS	DIMENSIONS (cm)			M3	NW TONS	GW TONS	TARE	VGM TONS
PONU0277691	GR0580169	ROUGH DOLOMITE BLOCK	1	A	*	2,70	1,80	1,45	7,05	18,80	18,83	2,30	21,13
SUDU7684202	GR0580170	ROUGH DOLOMITE BLOCK	2	A	*	3,00	1,60	1,60	7,68	21,56	21,59	2,20	23,79
MSKU3730564	GR0580182	ROUGH DOLOMITE BLOCK	3	A	*	3,00	1,60	1,60	7,68	21,85	21,88	2,28	24,16
MRKU6821884	GR0580161	ROUGH DOLOMITE BLOCK	5	A	5+15	3,20	1,70	0,80	4,35	12,68	12,71		
		ROUGH DOLOMITE BLOCK	15	A	15+5	2,60	1,05	0,90	2,03	7,02	7,05	2,17	21,93
TGHU0452941	GR0580149	ROUGH DOLOMITE BLOCK	6	A	6+4	2,60	0,90	1,00	2,34	6,90	6,93		
		ROUGH DOLOMITE BLOCK	4	A	4+6	3,10	1,60	1,10	5,46	13,46	13,49	2,20	22,62
PONU0053958	GR0580181	ROUGH DOLOMITE BLOCK	7	A	*	2,90	1,80	1,70	8,87	23,43	23,46	2,30	25,76
MSKU4468778	GR0580148	ROUGH DOLOMITE BLOCK	8	A	8+12	2,10	1,60	1,00	3,36	9,46	9,49		
		ROUGH DOLOMITE BLOCK	12	A	12+8	3,20	1,00	1,50	4,80	15,50	15,53	2,17	27,19
MSKU7996357	GR0580162	ROUGH DOLOMITE BLOCK	9	A	9+18	2,10	1,50	1,90	5,99	16,23	16,26		
		ROUGH DOLOMITE BLOCK	18	A	18+9	1,90	1,00	0,85	1,62	4,97	5,00	2,17	23,43
MSKU1205320	GR0580187	ROUGH DOLOMITE BLOCK	10	A	10+11	2,50	1,50	0,60	2,25	6,04	6,07		
		ROUGH DOLOMITE BLOCK	11	A	10+11	2,30	1,40	1,80	5,82	16,13	16,16	2,23	24,46
MRKU8557851	GR0580191	ROUGH DOLOMITE BLOCK	13	A	*	2,20	1,80	1,70	6,73	18,27	18,30	2,18	20,48
MRKU8885530	GR0580147	ROUGH DOLOMITE BLOCK	14	A	14+16	2,10	1,50	1,80	5,67	15,17	15,20		
		ROUGH DOLOMITE BLOCK	16	A	16+14	2,90	1,40	1,00	3,92	10,46	10,49	2,17	27,66
SUDU7678010	GR0580183	ROUGH DOLOMITE BLOCK	17	A	*	3,20	1,70	1,60	8,70	24,22	24,25	2,22	26,47
UXKU2360616	GR0580184	ROUGH DOLOMITE BLOCK	19	A	19+20	2,95	1,90	1,10	6,17	17,29	17,32		
		ROUGH DOLOMITE BLOCK	20	A	20+19	1,90	1,00	0,90	1,71	4,50	4,53	2,20	24,05
TOTAL									103,06	283,94	284,54	28,79	313,33

COLLI: 20 MARBLE BLOCKS [redacted]
CONTAINERS: 13
GROSS WEIGHT 284,54 TONS
NET WEIGHT: 283,94 TONS
PORT OF LOADING: THESSALONIKI PORT, GREECE
PORT OF DISCHARGE: NHAVA SHEVA
ACCORDING TO COMMERCIAL INVOICE No87 DATED 23-12-2019

ORIGINAL

EAGLE S.A.
INDUSTRIAL ZONE OF DRAMA
66100 DRAMA, GREECE
TEL: +30 252[illegible] & 81360
FAX: +30 [illegible]55961
VAT REG. NO [illegible]0039520

(ii) Commercial Invoice No. EVLMIPLCM19065-1 dtd 01.02.2020 along with packing list issued by M/s Edifice Ventures Limited, Hong Kong:

Tomorrows building solutions ---- Today

Edifice Ventures Limited

Shipper:
EDIFICE VENTURES LIMITED
Address
3/F, SHUNFENG INTERNATIONAL CENTER, 182, QUEEN'S RD EAST, HONG KONG
TEL:+8675580250959 FAX:+8675583483582.

Date: Feb 01, 2020

Invoice No.:
EVL-MIPL-CM-MB-19065-1

CONSIGNEE:
MONARK INDIA PRIVATE LIMITED
Plot No – 884 Udyog Vihar Phase-5, Gurgaon|Haryana, India
Landline No-0124-4341910 | Mobile No: 91 9810190136
Email ID: anurag@monark-india.com
GSTIN No. # 06AAHCM2483M1Z3
I/E Code # 0511031874

COMMERCIAL INVOICE
(ORIGINAL)

DELIVERY ADDRESS:
Monark India Pvt. Ltd.
Plot No – 884 Udyog Vihar Phase-5, Gurgaon|Haryana, India
Landline No-0124-4341910 | Mobile No: 91 9810190136
Email ID: anurag@monark-india.com
GSTIN No. # 06AAHCM2483M1Z3
I/E Code # 0511031874

IEC No.: 0511031874

Item	Description	Quantity	UOM	Unit price/ USD (CIF)	Total Amount/USD (CIF)
DOLOMITE ROUGH BLOCK	DOLOMITE ROUGH BLOCK 2.7*1.8*1.45 CM 3*1.6*1.6 CM 3*1.6*1.6 CM 3.1*1.6*1.6 CM 3.2*1.7*0.8 CM 2.6*0.9*1 CM 2.9*1.8*1.7 CM 2.1*1.6*1 CM 2.1*1.5*1.9 CM 2.5*1.5*0.6 CM 2.3*1.4*1.8 CM 3.2*1*1.5 CM 2.2*1.8*1.7 CM 2.1*1.5*1.8 CM 2.6*1.25*0.9 CM 2.8*1.4*1 CM 3.2*1.7*1.6 CM 1.9*1*0.85 CM 2.95*1.9*1.1 CM 1.9*1*0.9 CM	283.94	Tonnes	$816.96	$231,967.62
TOTAL CIF AMOUNT					**$231,967.62**

TOTAL AMOUNT IN US DOLLAR TWO HUNDRED THIRTY ONE THOUSAND NINE HUNDRED AND SIXTY SEVEN AND CENTS SIXTY TWO ONLY

Remark:
1. All prices are in CIF terms.
2. Payment Terms: 100% through T/T within 150 days.
3. Bank Detail:
Beneficiary:
EDIFICE VENTURES LIMITED
3/F, SHUN FENG INTERNATIONAL CTR, 182 QUEEN'S RD EAST, HONGKONG
Tel.: +86 755 8825 0959 Fax: +86 755 8340 3582
Bank: THE HONGKONG AND SHANGHAI BANKING CORPORATION LIMITED
Bank Add.: HSBC Main Building, 1 Queen Road Central, Central HK
Account No.: 800 597787 838
Swift Code: HSBCHKHHHKH
4. All bank charges /cost incurred outside HK in connection with telegraphic transfer in India and intermediate bank shall be borne by the drawee

P. — IRFAN
29-9-20
Q2 — Monish K
21/9/2020

Monark India Private Limited Gurgaon

For and on Behalf of Edifice Ventures Limited
Authorized Signature:

EDIFICE VENTURES LIMITED

Abhishek
21/09/2020

TBV.

Edifice Ventures Limited

Shipper:
EDIFICE VENTURES LIMITED

Address: 3/F, SHUNFENG INTERNATIONAL CENTER, 182, QUEEN'S RD EAST, HONG KONG
TEL:+8675588250959 FAX:+8675583483582.

Date: Feb.14.2020

Invoice No.:
EVL-MIPL-CM-MB-19065-1

Consignee:
Monark India Private Limited
Address: Plot No 884, Udyog Vihar, Phase - V, Gurugram - 122 016, Haryana, India
Contact: Anurag Talukdar
Mobile No: +91 9810190136
Email ID: anurag@monark-india.com
Landline No-0124-4341910

PACKING LIST
(ORIGINAL)

Delivery Address:
Monark India Private Limited
Address: Plot No 884, Udyog Vihar, Phase - V, Gurugram - 122 016, Haryana, India

IEC No.: 0511031874

Item	Description	Reference	Quantity	Unit	Container No./Seal No.	Package	Net Weight (kg)	Gross Weight (kg)	CBM
DOLOMITE ROUGH BLOCK	Dolomite Rough Block 2.7*1.8*1.45 CM	PI: EVL-MIPL-MB-19065	1	PCS	PONU0277691 / GR0530169	20	283.94	284.54	103.06
	Dolomite Rough Block 3*1.6*1.8 CM		1	PCS	SUDU7684202 / GR0530170				
	Dolomite Rough Block 3*1.6*1.6 CM		1	PCS	MSKU3730564 / GR0530382				
	Dolomite Rough Block 2.6*1.25*0.9CM		1	PCS	MRKU6621884 / GR0530161				
	Dolomite Rough Block 3.2*1.7*0.8 CM		1	PCS					
	Dolomite Rough Block 2.6*0.9*1 CM		1	PCS	TGHU0450941 / GR0530349				
	Dolomite Rough Block 3.1*1.6*1.1 CM		1	PCS					
	Dolomite Rough Block 2.9*1.8*1.7 CM		1	PCS	PONU0053958 / GR0530381				
	Dolomite Rough Block 2.1*1.6*1 CM		1	PCS	MSKU4468778 / GR0530346				
	Dolomite Rough Block 3.2*1*1.5 CM		1	PCS					
	Dolomite Rough Block 2.1*1.5*1.9 CM		1	PCS	MSKU7996357 / GR0530162				
	Dolomite Rough Block 1.9*1*0.85 CM		1	PCS					
	Dolomite Rough Block 2.5*1.5*0.6 CM		1	PCS	HASU1205320 / GR0530187				
	Dolomite Rough Block 2.3*1.4*1.8 CM		1	PCS					
	Dolomite Rough Block 2.2*1.8*1.7 CM		1	PCS	MRKU6557851 /GR0530391				
	Dolomite Rough Block 2.1*1.5*1.8 CM		1	PCS	MRKU8885530 / GR0530347				
	Dolomite Rough Block 2.8*1.4*1.0 CM		1	PCS					
	Dolomite Rough Block 3.2*1.7*1.6 CM		1	PCS	SUDU7678010 / GR0530383				
	Dolomite Rough Block 2.95*1.9*1.1 CM		1	PCS	UTOU2340816 / GR0530348				
	Dolomite Rough Block 1.9*1*0.9 CM		1	PCS					
TOTAL						20	283.94	284.54	103.06

For and on Behalf of Edifice Ventures Limited
Authorised Signature:

(Operation Manager)

Monark India Private Limited Gurgaon

EDIFICE VENTURES LIMITED

(iii) Bill of Lading No.590016215 dated 30.12.2019 and HBL No. 19.14.3797.1 dated 30.12.2019 issued by shipping lines:

MAERSK

NON-NEGOTIABLE WAYBILL

S.C. MAEU

B/L No. 590016215

Shipper
TEU S. A. SHIPPING & FORWARDING COMPANY
POLYTECHNIOU 31 , 546 26 THESSALONIKI-GREECE
TEL.2310 566788 , FAX.2310 566789
European Vat number : 099775920

Booking No.
590016215

Export references

Inv. Contract
2264398

Consignee
NAVIGATORS VISA GLOBAL LOGISTICS LTD. D-604,605 THE
FIRST B/H KESHAV BAUGH PARTY PLOT NEAR SHIVALIK
HIGH-STREET, AHMEDABAD Gujarat 380015 PH:079-40070850
HUNTING LINE, FAX:079-40070853

This contract is subject to the terms, conditions and exceptions, including the law & jurisdiction clause and limitation of liability & declared value clauses, of the current Maersk Bill of Lading (available from the Carrier, its agents and at terms.maersk.com/cargo), which are applicable with legal amendments (mutatis mutandis). To the extent necessary to enable the Consignee to sue and to be sued under this contract, the Shipper on entering into this contract does so on his own behalf and as agent for and on behalf of the Consignee and warrants that he has the authority to do so. The shipper shall be entitled to change the Consignee at any time before delivery of the goods provided he gives the Carrier reasonable notice in writing.
Delivery will be made to the Consignee or his authorised agent on production of reasonable proof of identity (and, in the case of an agent, reasonable proof of authority) without production of this waybill. The Carrier shall be under no liability whatsoever for misdelivery unless caused by the Carrier's negligence.

Notify Party (see clause 22)
SAME AS CONSIGNEE
Email id : MUNDRA@NAVI-VISAGLOBAL.COM
GST NO: 24AACCN0168R1Z5
PAN NO: AACCN0168R

Combined Inland routing (See sign of Carriage as defined in clause 1. For account and risk of Merchant)

Vessel
PERSEUS 1

Voyage No.
9525

Place of Receipt, applicable only when document used as Multimodal Waybill

Port of Loading
Thessaloniki

Port of Discharge
NHAVA SHEVA PORT

Place of Delivery, applicable only when document used as Multimodal Transport B/L (see clause 1)

PARTICULARS FURNISHED BY SHIPPER

Kind of Packages; Description of goods; Marks and Numbers; Container No./Seal No.

Weight: 284540.000 KGS

Measurement: 103.0700 CBM

13 containers said to contain 20 BLOCK

ROUGH DOLOMITE BLOCKS
HS CODE: 25181000

APPLICABLE FREE TIME 14 DAYS DETENTION AT
(PORT OF DISCHARGE / PLACE OF DELIVERY)

MSKU7996357	ML-GR0530162	20 DRY 8'6	2 BLOCK	21260.000 KGS	7.6000 CBM
UXXU2360616	ML-GR0530348	20 DRY 8'6	2 BLOCK	21850.000 KGS	7.6800 CBM
MRKU6557851	ML-GR0530191	20 DRY 8'6	1 BLOCK	18300.000 KGS	6.7300 CBM
PONU0053958	ML-GR0530381	20 DRY 8'6	1 BLOCK	23460.000 KGS	8.8700 CBM
MSKU3730564	ML-GR0530382	20 DRY 8'6	1 BLOCK	21880.000 KGS	7.6800 CBM
HASU1205320	ML-GR0530187	20 DRY 8'6	2 BLOCK	22230.000 KGS	8.0500 CBM
SUDU7678010	ML-GR0530383	20 DRY 8'6	1 BLOCK	24250.000 KGS	8.7000 CBM
MSKU4468778	ML-GR0530346	20 DRY 8'6	2 BLOCK	25020.000 KGS	8.1600 CBM
PONU0277691	ML-GR0530169	20 DRY 8'6	1 BLOCK	18830.000 KGS	7.0500 CBM

Above particulars as declared by Shipper, but without responsibility of or representation by Carrier

CERTIFIED COPY

Freight & Charges | Rate | Unit | Currency | Prepaid | Collect

Carrier's Receipt, Total number of containers or packages received by Carrier
13 containers

Place of Issue of Waybill
Piraeus

Shipped on Board Date (Local Time)
2019-12-30

Date Issue of Waybill
2020-01-15

Declared Value Charges (see clause 7.3 of the Maersk Bill of Lading) Ad Declared Value of USD

Shipped, as far as ascertained by reasonable means of checking, in apparent good order and condition unless otherwise stated herein the total number or quantity of Containers or other packages or units indicated in the box opposite entitled "Carrier's Receipt"

Signed for the Carrier Maersk A/S

Maersk Hellas S.A.
As Agent(s)

This transport document has one or more numbered pages

Monark India Private Limited Gurgaon

COMBINED TRANSPORT OR - TO - PORT BILL OF LADING
NOT NEGOTIABLE UNLESS CONSIGNED "TO ORDER"

SHIPPER (EXPORT (COMPLETE AND ADDRESS)
EDIFICE VENTURES LIMITED
ADDRESS 3/F, SHUNFENG INTERNATIONAL CENTER,182, QUEEN'S RD
EAST HONG KONG
TEL +8675588250959 FAX +8675583483582
EMAIL:DAVID.WU@EDIFICEV.COM

BILL OF LADING No
19.14.3797.1

TEU SA
Shipping & Forwarding Company
31 Politechniou str.
546 26 Thessaloniki, Greece
tel:+30 2310 566788, fax:+30 2310 566789
www.teu.gr
e-mail: info@teu.gr

CONSIGNEE (COMPLETE NAME AND ADDRESS) (to order as indicated)
Monark India Pvt. Ltd.
Plot No - 884 Udyog Vihar Phase-5 Gurgaon, Haryana, India
Mobile No 91 9810190136 anurag@monark-india.com
Landline No-0124-4341910
GSTIN No # 06AAHCM2483M1Z3
I/E Code # 0511031874 PAN no. AAHCM2483M

NOTIFY PARTY (COMPLETE NAME AND ADDRESS) (No claim shall attach for failure to notify)
SAME AS CONSIGNEE

PLACE OF RECEIPT (Applicable only when this document is used as a Combined Transport Bill of Lading)

PORT OF DISCHARGE (Applicable only when this document is used as a Combined Transport Bill of Lading)
NHAVA SHEVA PORT, INDIA

VESSEL PERSEUS I VOY 9525 PORT OF LOADING THESSALONIKI PORT, GREECE

PLACE OF DELIVERY (Applicable only when this document is used as a Combined Transport Bill of Lading)

PARTICULARS FURNISHED BY SHIPPER

MARKS & NOS / CONT. NOS	No. OF PKGS	HM. or W	DESCRIPTION OF PACKAGES AND GOODS	GROSS WEIGHT	MEASUREMENT
			13 x 20 Dry Van FCL SAID TO CONTAIN : ROUGH DOLOMITE BLOCKS TTL NW: 283940 KG / TTL GW: 284540 KG TTL BLOCKS: 20 / TTL CBM: 103.07 M3 HS CODE: 25181000 FREIGHT PREPAID SHIPPER'S LOAD STOW AND COUNT DEMURRAGES AS PER SHIPPING LINE'S TARIFF APPLICABLE FREE TIME 14 DAYS DETENTION AT POD		

FOR DELIVERY OF GOODS PLS APPLY :
NAVIGATORS VISA GLOBAL LOGISTICS LTD. D - 604 , 605 The First B/H Keshav Baugh Party Plot, Near Shivalik High-Street, Ahmedabad, Gujarat 380015 PH:079-40070850 HUNTING LINE, FAX:079-40070853, Email Id : MUNDRA@NAVI-VISAGLOBAL.COM GST NO: 24AACCN0168R1Z5 PAN NO. AACCN0168R

SHIPPED ON BOARD 30/12/2019

AS PER ATTACHED LIST

FREIGHT PREPAID AND NOT TO BE RETURNED SHIP OR CARGO LOST OR NOT LOST

SHIPPER'S LOAD STOW & COUNT

ORIGINAL

IN WITNESS WHEREOF ... INDICATE WETHER ANY OF THE CARGO IS HAZARDOUS MATERIAL UNDER DOT IMCO OR OTHER REGULATIONS AND INDICATE CORRECT COMMODITY NUMBER

Note. The Merchant's attention is called to the fact that according to Clauses 10, 11 and 12 of this Bill of Lading, the liability of Carrier in most cases limited in respect of loss or damage to the goods and delay.

LAW AND JURISDICTION CLAUSE
The Contract evidenced by or contained in this Bill of Lading shall be governed by the law of England and any claim or dispute arising hereunder in connection therewith shall (without prejudice to the Carrier's right to commence proceedings in any other jurisdiction) be subject to the jurisdiction of the Courts of England.

FREIGHT AMOUNT | FREIGHT PAYABLE AT

Excess Value Declaration: Refer to Clauses 11 (4) & (8) on reverse side.

RECEIVED by the Carrier the Goods as specified herein in apparent good order and condition unless otherwise stated to be transported to such place as agreed, authorised or permitted herein and subject to all terms and conditions ... on the front and reverse of this Bill of Lading to which Merchant agrees by accepting this Bill of Lading, any local privileges and customs notwithstanding. The particulars given above as stated by the Shipper and the weight, measure, quantity, quality, condition, contents and value are unknown to the Carrier.

BILL OF LADING No.
No Of Original B/L: THREE (3)

DATE 30/12/2019

AT THESSALONIKI.
BY TEU S.A.
AS AGENTS ONLY

(iv) Country of origin no. 237/2020 dated 12.02.2020 issued by originating country :

1. Αποστολέας (Consignor - Expéditeur) EAGLE S.A. INDUSTRIAL ZONE OF DRAMA 66100,GREECE for account of EDIFICE VENTURES LIMITED 3/F, SHUNFENG INTERNATIONAL CENTER, 182, QUEEN'S RD EAST, HONG KONG	237/2020	ΠΡΩΤΟΤΥΠΟ ORIGINAL
2. Παραλήπτης (Consignee - Destinataire) MONARK INDIA PVT LTD PLOT No884 UDYOG VIHAR PHASE 5 GURGAON, HARYANA, INDIA	ΕΥΡΩΠΑΪΚΗ ΚΟΙΝΟΤΗΤΑ - EUROPEAN COMMUNITY COMMUNAUTÉ EUROPÉENNE ΠΙΣΤΟΠΟΙΗΤΙΚΟ ΚΑΤΑΓΩΓΗΣ CERTIFICATE OF ORIGIN CERTIFICAT D' ORIGINE	
	3. Χώρα καταγωγής (Country of Origin - Pays d' origine) EUROPEAN UNION - GREECE	
4. Ενδείξεις σχετικές με τη μεταφορά (μνεία προαιρετική) Transport details (Optional) Informations relatives au transport (mention facultative) ACCORDING TO COMMERCIAL INVOICE No087/23-12-2019	5. Παρατηρήσεις (Remarks - Remarques)	

6. Αύξων αριθμός, σημεία, αριθμοί, αριθμός και φύση των δεμάτων, περιγραφή των εμπορευμάτων Item number, marks, numbers, number and kind of packages, description of goods No d' ordre, marques, numéros nombre et nature des colis, designation des marchandises	7. Ποσότητα Quantity Quantité
COLLI: 20 ROUGH DOLOMITE BLOCKS	GROSS WEIGHT 284.54 TONS NET WEIGHT 283.94 TONS

8. Η ΥΠΟΓΡΑΦΟΥΣΑ ΑΡΧΗ ΒΕΒΑΙΩΝΕΙ ΟΤΙ ΤΑ ΑΝΩΤΕΡΩ ΠΕΡΙΓΡΑΦΟΜΕΝΑ ΕΜΠΟΡΕΥΜΑΤΑ ΚΑΤΑΓΟΝΤΑΙ ΑΠΟ ΤΗΝ ΧΩΡΑ ΠΟΥ ΑΝΑΦΕΡΕΤΑΙ ΣΤΗ ΘΕΣΗ 3
THE UNDERSIGNED AUTHORITY CERTIFIES THAT THE GOODS DESCRIBED ABOVE ORIGINATE IN THE COUNTRY SHOWN IN BOX 3
L' AUTORITÉ SOUSSIGNÉE CERTIFIE QUE LES MARCHANDISES DESIGNÉES CI-DESSUS SONT ORIGINAIRES DU PAYS FIGURANT DANS LA CASE No 3

CERTIFIED BY THE CHAMBER
OF COMMERCE OF DRAMA, GR

Τόπος και ημερομηνία εκδόσεως, ονομα, υπογραφη και σφραγίδα της αρμόδιας Αρχης
Place and date of issue: name, signature and stamp of competent authority
Lieu et date de delivrance: designation, signature et cachet de l' autorité compétente

Papadopoulou

On perusal of the above documents, it appears that the goods weighing 283.94 MT supplied by M/s. Eagle S.A., Greece under Commercial Invoice 87 dated 23.12.2019 were loaded from Thessaloniki (Greece) to be delivered at Nhava Sheva port directly. The goods supplied by the original supplier, M/s. Eagle S.A., Greece has correct description of goods i.e. Marble Blocks but 'M/s. Monark' arranged Commercial Invoice No.EVLMIPLCM19065-1 dated 01.02.2020 from the overseas supplier, M/s Edifice Ventures Limited, Hong Kong having description as Rough Dolomite Blocks. On being confronted, Shri Salim Khan, Director of 'M/s Monark', in his statement dated 22.09.2022 accepted that thegoods supplied by M/s. Edifice Ventures Limited under Commercial Invoice No. EVLMIPLCM19065-1 dated 01.02.2020 were Rough Marble Blocks. The said goods were cleared by 'M/s. Monark' vide Bill of Entry No.6901605 dated 12.02.2020 by declaring as Rough Dolomite Blocks under Customs Tariff Heading No.25181000.In view of the above, it appears that the Importer has intentionally mentioned the wrong description of the goods and Customs Tariff Heading in the Bill of Entry with intention to evade Customs Duty.

12.4 Documents available at Page no. 3 to 24 of File No. 4 resumed under Panchnama dated 21.09.2020 from the office premises of 'M/s. Monark' are the Delivery challans No. MIPL/DC/2021/012 to MIPL/DC/2021/019 all dated 02.06.2022 issued by 'M/s Monark' for Job Work. On scrutiny of the above Delivery challans, it appears that the goods imported by 'M/s. Monark' vide Bill of Entry No.7716262 dated 21.05.2020 were send for job work to M/s. Royale Impex, Silvassa, wherein description of goods was written as Rough Marble Blocks on the Delivery challans. In order to provide a view, a delivery challan No. MIPL/DC/2021/012 dated 02.06.2022 issued by 'M/s Monark' is reproduced below:

(ORIGINAL FOR CONSIGNEE)

MONARK

DELIVERY CHALLAN (for Job Work)

(Issued under Section 143 of CGST Act, 2017 read with Rule 55(b) of Invoice Rules)

MONARK INDIA PRIVATE LIMITED

Regd. Office: Plot No. 884, Udyog Vihar, Phase - V, Gurgaon - 122016, Haryana

GSTIN: 06AAHCM2483M1Z3

Details of Consignee (Receiver)
Name: ROYALE IMPEX
Address : Survey No.327/4,Village -Athal
Silvassa -396230
State Name : Dadra & Nagar Havell, Code : 26
GSTIN/Unique ID: 26AAEFR9752Q1ZB

Ship to : Silvaasa

Challan No : MIPL/DC/2021/012
Challan Date : 02-06-2020
Place of Dispatch : ICD Tumb, Gujarat-396150
Eway Bill No. / Date : 3812 0643 9664, Dt. 02-06-2020
Transportation Mode : By Road
Vehicle No :
Transport Name : Navkar Corporation Limited
Consignment Note No :

S.No	Description of Services	HSN/ SAC Code	UOM	Qty	Rate	Total Rate	Taxable value	CGST Rate	CGST Amount	SGST Rate	SGST Amount	IGST Rate	IGST Amount
1 (a)	**Santa Marina Rough Marble Blocks** Block Size 255*160*155 CM - 1PC Container No.. MRKU9389129 BOE 7716262 Dt. 21-05-2020	25181000	MTS	18.61	42,327.21	787,709.38	787,709.38		0.00		0.00	5%	39,385.47
				18.61			787,709.38		0.00		0.00		39,385.47

Basic Amount	787,709.38
Total GST	39,385.47
Round off	0.15
Delivery Challan Total Value	827,095.00

Amount Total (In Words) Eight Lacs Twenty Seven Thousand & Ninety Five Only.

E & OE

Certified that the Particulars given above are true and correct to the amount indicated.

TERMS & CONDITIONS:-
1) All dispute subject to Gurgaon, Haryana Jurisdiction.
2) Received in Good Condition.

Monark India Private Limited Gurgaon
Authorised Signatory

Seen
15/9/22

On being confronted, Shri Krishan Kumar Agarwal, Partner of M/s. Royale Impex, Silvassa in his statement dated 15.09.2022 admitted that goods supplied by 'M/s. Monark' for job work under MIPL/DC/2021/012 to MIPL/DC/2021/019 all dated 02.06.2022 were Blocks of Rough Marble. Further, Shri Salim Khan, Director of 'M/s. Monark' in his statement dated 22.09.2022 accepted that the goods imported were Rough Marble Blocks but the same were cleared by 'M/s. Monark' vide Bill of Entry No.7716262 dated 21.05.2020 by declaring as Rough Dolomite Blocks under Customs Tariff HeadingNo.25181000.In view of the above, it appears that the Importer has intentionally mentioned the wrong description of

goods and Customs Tariff Heading in the Bill of Entry with intention to evade Customs Duty.

12.5 The description of goods was mentioned as Marble in theExport declaration filed by the overseas supplier, M/s. Mermaid Madencilik Ihracat Ithalat San VE Tic. Ltd. at the port of exportfor goods supplied under Commercial Invoice No. GIB2020000000011 dated 04.08.2020along with packing list(Documents available at Page no. 19 &Page no. 13 of File No. 9 resumed under Panchnama dated 21.09.2020 from the office premises of 'M/s. Monark'). The said goods weighing 46.94 MT were supplied by M/s. Mermaid Madencilik Ihracat Ithalat San VE Tic. Ltd. to M/s. Edifice Ventures Limited, Hong Kong. Further, M/s. Edifice Ventures Limited, Hong Kong supplied the same goods to 'M/s. Monark'vide Commercial Invoice No. EVLMIPLCMGE20221 dated 30.07.2020 along with packing list available at page no. 35 & 36 of File No. 9 resumed under above said Panchnama dated 21.09.2020. Further, Documents available at PageNo. 8 of the above file was Bill of lading No. KTLIZM2015132 dated 01.08.2020issued by shipping line for transportation of goods and Country of origin No.0081433 dated 21.08.2020 issued by originating country available at Page no. 04 and Export declaration filed by M/s. Mermaid Madencilik Ihracat Ithalat San VE Tic. Ltd. at port of loading, available at Page No. 03 for supply of goods vide Commercial Invoice No. GIB2020000000011 dated 04.08.2020. The said Export declaration filed by the overseas supplier was in Greek language but when photo of the same was taken by I Phone and translated from Google lens in English language, it shows that the description for goods supplied under Commercial Invoice No. GIB2020000000011 dated 04.08.2020 was mentioned as Marble by the overseas supplier at the port of export. In order to provide a view, the relevant scanned image of all documents along withtranslated copy of Export declaration in English language filed by overseas supplier at load port are reproduced below:-

(i) <u>Commercial Invoice No. GIB2020000000011 dated 04.08.2020 along with Packing list issued by the original supplier, M/s. Mermaid Madencilik Ihracat Ithalat San VE Tic. Ltd.:</u>

MERMAID

COMMERCIAL INVOICE

ORIGINAL

DATE 04.08.2020

INVOICE NO: GIE2020080808011

EDIFICE VENTURES LIMITED
ADD: 3/F, SHUNGFENG INTERNATIONAL CENTER,
182, QUEEN'S RD. EAST, HONG KONG
TEL/FAX : +86-755-88250959 / +86-755-83483582

SHIPMENT: FOB ALIAGA IZMIR PORT OF TURKEY
DATE: 04.08.2020
SHIPMENT DATE: 01.08.2020
ORIGIN: TURKEY

QUANTITY	DESCRIPTION OF GOODS	UNIT PRICE	TOTAL PRICE
[illegible]	ROUGH DOLOMITE BLOCKS-GREY ELEGANT	[illegible]	[illegible]
	FOB ALIAGA PORT OF TURKEY		
	[illegible]		

[illegible] THOUSANDNINEHUNDREDSEVENTYNINEUSDEIGHTCENT

Subtotal:	[illegible]
VAT:	[illegible]
TOTAL	[illegible]

MERMAID MADENCİLİK İHR. İTH. SAN. VE TİC. LTD. ŞTİ.

MERMAID

EXPORTER :
MERMAİD MADENCİLİK İHRACAT İTHALAT SAN.VE TİC.LTD.ŞTİ
SEDİR MAH. GAZİ BULVARI A1-A2 GİRİŞ APT. NO:88 / 1 - 102
MURATPAŞA / ANTALYA
TEL: +90507 793 6995 EMAİL:arge@detaymarble.com

BUYER :
EDIFICE VENTURES LIMITED
ADD: 3/F, SHUNGFENG INTERNATIONAL CENTER,
182, QUEEN'S RD. EAST, HONG KONG
TEL/FAX : +86-755-88250959 / +86-755-83483582

ORIGINAL

DATE :
24.07.2020

PACKING LIST

NO	BLOCK NAME	MEASUREMENTS X	Y	Z	CBM	QUANTITY GROSS KG	NET WEIGHT KG	CONTAINER NAME
1	CMTA-SAM.1	210	140	97	2,85	8.280	21.980	MSCU 608 697-0
2	CMTA-SAM.3	100	165	285	4,70	13.700		
3	CMTA-SAM.2	135	170	250	5,74	15.760	24.960	MEDU 630 247-0
4	CMTA-SAM.4	305	70	160	3,42	9.200		
4 BLOCKS					16,71	46.940	46.940,00	2x20 DC

MERMAID MADENCİLİK İHR. İTH. SAN. VE TİC. LTD. ŞTİ.

(ii) Commercial Invoice No. EVLMIPLCMGE20221 dated 30.07.2020 along with packing issued by M/s. Edifice Ventures Limited, Hong Kong :

Tomorrows building solutions — Today.

Edifice Ventures Limited

Shipper: EDIFICE VENTURES LIMITED Address : 3/F, SHUNFENG INTERNATIONAL CENTER, 182, QUEEN'S RD EAST, HONG KONG. TEL:+8675588250959 FAX:+8675583483582.	Date: Jul 30, 2020 Invoice No.: EVL-MIPL-CM-GE-20022-1
Consignee: Monark India Private Limited Plot No 884, Udyog Vihar, Phase - V, Gurgaon - 122 016, Haryana, India	COMMERCIAL INVOICE (ORIGINAL)
DELIVERY ADDRESS Monark India Private Limited Plot No 884, Udyog Vihar, Phase - V, Gurgaon - 122 016, Haryana, India	Shipment No: 57th IEC No.:0511031874

Item	Description	Unit	Quantity	Unit price/ USD (FOB)	Total Amount/ USD (FOB)
Rough Dolomite Block	Grey Elegante Dolomite 210*140*97CM 100*165*285CM 135*170*250CM 305*70*160CM	Tons	46.94	$200.00	$9,388.00
Total Amount (FOB):					$9,388.00

TOTAL AMOUNT IN US DOLLAR NINE THOUSANDS THREE HUNDRED AND EIGHTY EIGHT.

Remark:

1. All prices are in FOB terms.
2. Bank Detail:

Benificiary

EDIFICE VENTURES LIMITED
3/F, SHUN FENG INTERNATIONAL CTR, 182 QUEEN'S RD EAST, HONGKONG
Tel.: +86 755 8825 0959 Fax: +86 755 8348 3582

Bank: THE HONGKONG AND SHANGHAI BANKING CORPORATION LIMITED
Bank Add.: HSBC Main Building, 1 Queen Road Central, Central HK
Account No.: 808 593784 838
Swift Code: HSBCHKHHHKH

3. All bank charges /cost incurred outside HK in connection with telegraphic transfer in India and intermediate bank shall be borne by the drawee.

Place of loading: ANTALYA,TURKEY

Place of discharge: NHAVA SHEVA,INDIA

Place of delivery : ICD TUMB,INDIA

For on Behalf of Edifice Ventures Limited
Authorized signature

(Operation manager)

(Accounting manager)

(Buyer)

Edifice Ventures Limited

Tomorrow's building solutions Today

Shipper:
EDIFICE VENTURES LIMITED
Address: 3/F, SHUNFENG INTERNATIONAL CENTER, 182, QUEEN'S RD EAST, HONG KONG,
TEL:+8675588250959 FAX:+8675583483582

Date: Jul 30,2020

Invoice No.: EVL-MIPL-CM-GE-20022-1

Consignee:
Monark India Private Limited
Plot No 884, Udyog Vihar, Phase - V, Gurgaon - 122 016, Haryana, India

PACKING LIST (ORIGINAL)

DELIVERY ADDRESS
Monark India Private Limited
Plot No 884, Udyog Vihar, Phase - V, Gurgaon - 122 016, Haryana, India

Shipment No: 57th

IEC No.:0511031874

Item	Description	Container No./ Seal No.	Unit	Quantity	Net Weight (kg)	Gross Weight (kg)	CBM
Rough Dolomite Block	Grey Elegante Dolomite 210CM*140CM*97CM	MSCU 608697-0 EU19322159	PCS	1	8,280.00	8,280.00	2.85
Rough Dolomite Block	Grey Elegante Dolomite 100CM*165CM*285CM		PCS	1	13,700.00	13,700.00	4.70
Rough Dolomite Block	Grey Elegante Dolomite 135CM*170CM*250CM	MEDU 630247-0 EU19322158	PCS	1	15,760.00	15,760.00	5.74
Rough Dolomite Block	Grey Elegante Dolomite 305CM*70CM*160CM		PCS	1	9,200.00	9,200.00	3.42
Total :				4	46940	46940	16.71

For on Behalf of Edifice Ventures Limited

(Operation manager)

(Accounting manager)

(Buyer)

(iii) Bill of Lading No.KTLIZM2015132 dated 01.08.2020 issued by shipping line:

KINAY TRANSPORT & LOGISTICS INC. (KTL)
ACTING AS A FREIGHT FORWARDER

ORIGINAL
KTL (ORDER) BILL OF LADING
FOR MARITIME OR COMBINED TRANSPORT

KTL Bill of Lading No: KTLIZM2015132 Booking No: EXPIZM20-0001768 Shipper's Ref.:

Shipper's Name and Address:
MERMAID MADENCILIK IHRACAT ITHALAT SAN. VE TIC. LTD. STI.
SEDIR MAH. GAZI BULVARI A1-A2 GIRIS APT. NO:88 / 1 - 102
MURATPASA / ANTALYA
TEL: +90507 793 6995 EMAIL: arge@detaymarble.com

Forwarding Agent's Name and Address:

Consignee's Name and Address (unless provided otherwise, a consignment "To Order" shall mean "To Order of Shipper")
EDIFICE VENTURES LIMITED
ADD: 3/F, SHUNGFENG INTERNATIONAL CENTER,
182, QUEEN'S RD. EAST, HONG KONG
TEL/FAX : +86-755-88250959 / +86-755-83483562

Actual Carrier's Name and Address:

Notify Party's Name and Address:
Monark India Pvt. Ltd.
Plot No - 884 Udyog Vihar Phase-5 Gurgaon, Haryana, India
Mobile No: 91 8860387805 Emaid ID: imports@monark-india.com
Landline No:0124-4341910 GSTIN No. # 06AAHCM2483M1Z3
I/E Code # 0511031874 PAN NO #AAHCM2483M

For delivery of goods please apply to:
OWN LOGISTICS & SERVICES PVT. LTD.
A-1867, 2ND FLOOR SECTOR-42,
GREENFIELD COLONY FARIDABAD-121010 INDIA
GST Nr. 06AABCO8563A1ZN Pan NO: AABCO8563A
Email Id: import@owniogistic.com

Vessel: MD030R Voyage: MSC NURIA

Date of Receipt: Date of Loading:
Place of Receipt: Port of Loading: ALIAGA IZMIR PORT OF TURKEY
Port of Transhipment: Port of Discharge: NHAVA SHEVA
Place of Delivery: ICD TUMB

Shipper's Declarations and Instructions and, if any, KTL's Reservations with Regard to Shipper's Declarations

Leading Marks and Numbers / Container Numbers	Number and Kind of Packages or Pieces	General Nature of Goods	Measurement (m3) / Gross Weight (kg)
		SAID TO CONTAIN	
20DC - MSCU 506687-0 SEAL NO. EU19322169	2 BLOCKS	ROUGH DOLOMITE BLOCKS - GREY ELEGANT HTS CODE:25181000	21 980.00 KGS
20DC - MEDU 630247-0 SEAL NO. EU19322158	2 BLOCKS	ROUGH DOLOMITE BLOCKS - GREY ELEGANT HTS CODE:25181000	24 960.00 KGS

FOB ALIAGA PORT OF TURKEY

FREIGHT TO COLLECT
14 DAYS FREE TIME

TOTAL GROSS WEIGHT
46 940.00 KGS

SHIPPED ON BOARD
01.08.2020
MSC NURIA
MD030R

SHIPPER'S STOW, LOAD, COUNT AND SEAL

TWO (2) CONTAINER(S) ONLY

Onward Inland Routing / Export Instructions:

Value of Goods:

Interest in Timely Delivery:

KTL
KINAY TRANSPORT & LOGISTICS S.A.

Point and Country of Origin:

Apparent Order and Condition of Goods as Noted by Carrier:

Freight and Charges: Revenue Tons: Rate: Per: Prepaid: Collect:

Prepaid at: Collect at: ICD TUMB

Exchange Rate: Exchange Rate:

Cargo insurance through the undersigned
☐ not covered ☐ covered under attached Policy

Number of Original KTL Bill of Lading: THREE(3) Place of Issue: IZMIR Date of Issue: 01.08.2020 Page: 1 1

One of the original KTL Bills of Lading shall be surrendered duly endorsed in exchange for Goods.

Stamp and Signature:

Goods and instructions are accepted and dealt with subject to the terms of the KTL Bill of Lading printed, stamped or otherwise incorporated at the front or backside.

In witness whereof the original KTL Bill of Lading all of this tenor and date have been signed in the number stated above, one of which being accomplished the others to be void.

KTL
By KINAY TRANSPORT & LOGISTICS S.A.
AS AGENTS OF KTL

(iv) <u>Country of origin no. 0081433 dated 21.08.2020 :</u>

NO S 0081433 — KOPYA COPY COPIE

MENŞE ŞAHADETNAMESI
CERTIFICATE OF ORIGIN
CERTIFICAT D'ORIGINE

1 BLOCKS
ROUGH DOLOMITE BLOCKS - GREY ELEGANT
FOR ALIAGA IZMIR PORT OF TURKEY
HTS CODE:25181000
SHIPMENT TERMS : FOB ALIAGA PORT, TURKEY
TOTAL QUANTITY: 46.94 TONS

46.94

Düzenleme Yeri ve Tarihi, İmza ve Yetkili Merciinin Mühürü
Place and date of issue, name, signature and stamp of competent authority
Lieu et date de délivrance, dénomination, signature et cachet de l'autorité compétente

ANTALYA CHAMBER OF COMMERCE AND INDUSTRY
21 Aug 2020

Export Declaration filed by the overseas supplier in Greek language at the load port :

351900

6170664804
MERMAID MADENCİLİK İHRACAT İTHALAT SAN.VE TİC.LTD.ŞTİ
SEDİR MAH. GAZİ BLV. NO: 88 /1 İÇ KAPI NO: 102MURATPAŞA/ ANTALYA
ANTALYA MURATPAŞA 052 TÜRKİYE

EX 1
1 1 1
1 4 -2020/177

ALIAĞA GÜM. MÜD.
20351900EX095860 / 24.07.2020
2 - 209 - 8585 8142 2390 3623

EDIFICE VENTURES LIMITED
3/F, SHUNFENG INTERNATIONAL CENTER, 182, QUEEN'S RD EAST, HONG KONG
740 HONG KONG

6170664804
MERMAID MADENCİLİK İHRACAT İTHALAT SAN.VE TİC.LTD.ŞTİ
SEDİR MAH. GAZİ BLV. NO: 88 /1 İÇ KAPI NO: 102MURATPAŞA/ ANTALYA
ANTALYA-MURATPAŞA 052 TÜRKİYE

864 740

6271065794
MYTA GÜMRÜK MÜŞAVİRLİĞİ VE LOJİSTİK HİZMETLERİ LTD.ŞTİ
ANTALYA/KONYAAL TI 052 TÜRKİYE

TÜRKİYE
052 684
HINDISTAN

3 MSC NURIA MOD 30R - PANAMA 442 1
3 MSC NURIA MOD 30R - PANAMA 442

TRALI-010
NEMPORT İSKELESİ
USD 7,979,80 6,8348 11

10 10 351900 ALIAĞA GÜM. MÜD.
006201028007
TÜRKİYE GARANTİ BANKASI A.Ş. ANTALYA ORGANİZE SANAYİ

ALIAĞA GÜM. MÜD. NEM PORT
2 PEŞİN 7,979,80

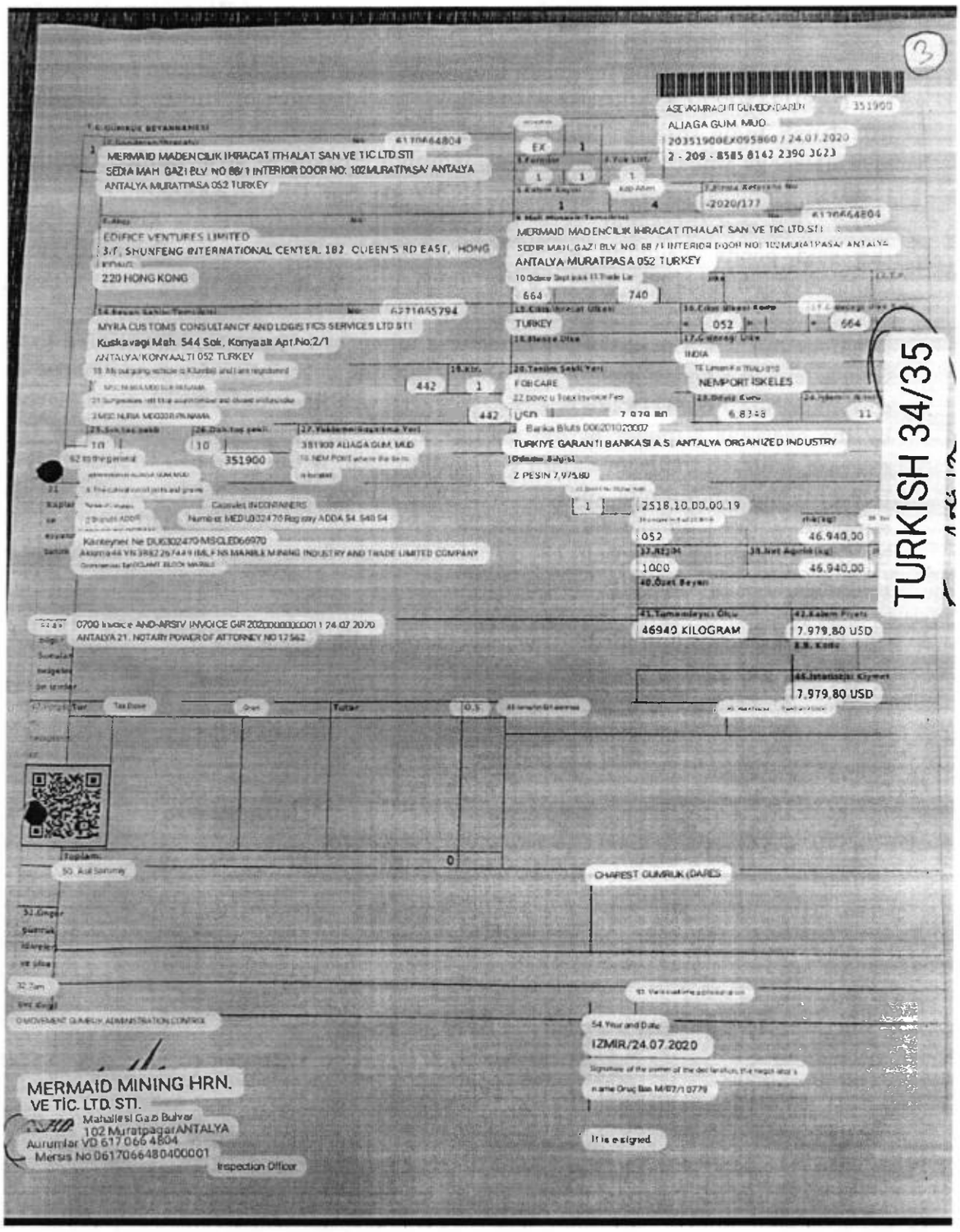
1 2518.10.00.00.19
052 46,940,00
1000 46,940,00

46940 KİLOGRAM 7,979,80 USD
7,979,80 USD

İZMİR / 24.07.2020
Oruç Baş M/07/10779

E-imzalıdır.

(v) Translated copy of export declaration filed by overseas supplier in English language :


MERMAID MADENCILIK IHRACAT ITHALAT SAN VE TIC LTD STI
SEDIA MAH. GAZI BLV. NO 88/1 INTERIOR DOOR NO: 102MURATPASA/ ANTALYA
ANTALYA MURATPASA 052 TURKEY
EDIFICE VENTURES LIMITED
3/F, SHUNFENG INTERNATIONAL CENTER, 182 QUEEN'S RD EAST, HONG
220 HONG KONG
MYRA CUSTOMS CONSULTANCY AND LOGISTICS SERVICES LTD STI
Kuskavagi Meh. 544 Sok, Konyaalti Apt.No:2/1
ANTALYA/KONYAALTI 052 TURKEY
TURKIYE GARANTI BANKASI A.S. ANTALYA ORGANIZED INDUSTRY
46940 KILOGRAM
7,979.80 USD
IZMIR/24.07.2020
MERMAID MINING HRN.
VE TIC. LTD. STI.
Inspection Officer
TURKISH 34/35

On perusal of the above documents, it appears that the goods weighing 46.94 MT supplied by M/s. Mermaid Madencilik Ihracat Ithalat San VE Tic. Ltd. under Commercial Invoice GIB2020000000011 dated 04.08.2020 were loaded from Aliaga Izmir port of Turkey to be delivered at ICD Tumb India through Nhava Sheva port. The original supplier, M/s. Mermaid Madencilik Ihracat Ithalat San VE Tic. Ltd.filed Export declaration at the load port, wherein correct description i.e. Marble was mentioned for description of goods but 'M/s. Monark' arranged Commercial Invoice No. EVLMIPLCMGE20221 dated 30.07.2020 from the overseas supplier, M/s. Edifice Ventures Limited, Hong Kong having description as Rough Dolomite Blocks and cleared the same vide Bill of Entry No.8857392 dated 18.09.2020 by declaring as Rough Dolomite Blocks under Customs Tariff HeadingNo.25181000.In view of the above, it appears that the Importer has intentionally mentioned the wrong description of goods and Customs Tariff Heading in the Bill of Entry with the intention to evade Customs Duty.

12.6 Documents available at Page No.13of File No.10 resumed under Panchnama dated 21.09.2020 from the office premises of 'M/s Monark' is the Export declaration filed by M/s. Derbent Madan Anonim Sirketi, Istanbul, Turkey at port of loading for goods totally weighing 43.66 MT loaded in container No. CAXU3119229 & MSCU1695418 from Tekirdag port of Turkey to deliver at ICD Tumb India through Nhava Sheva port. The said goods were supplied by M/s. Derbent Madan Anonim Sirketi, Istanbul, Turkey to M/s. Edifice Ventures Limited, Hong Kong vide Commercial Invoice No. DRB2020000000020 dated 29.07.2020 and thereafter, M/s. Edifice Ventures Limited, Hong Kong supplied the said goods weighing 43.66 MT to M/s Monark India Pvt. Ltd. vide Commercial Invoice No. MIPLCMMB-20021 dtd 03.08.2020 along with packing list.The said Export declaration filed by the overseas supplier was in Greek language but when photo of the same was taken by I Phone and translated from Google lens in English language, it shows that the description for goods loaded in container No.CAXU3119229 & MSCU1695418 was mentioned as Block of Marble by the overseas supplier at the port of export. In order to provide a view the relevant scanned image of Export declaration filed by the overseas supplier, M/s. Derbent Madan Anonim Sirketi, Istanbul, Turkey at the load port for goods supplied under Commercial Invoice No. DRB2020000000020 dated 29.07.2020 in Greek language as well as translated copy from Google lens in English language arereproduced below:-

(i) <u>Export Declaration filed by overseas supplier in Greek language at the load port :</u>

Seri :

T.C. GÜMRÜK BEYANNAMESİ

1 BEYAN

EX 1

A SEVK/İHRACAT GÜMRÜK İDARESİ
TEKİRDAĞ GÜMRÜK MÜDÜRLÜĞÜ
20590100EX012581
29/07/2020
12-0815 2265 9234 8189

1 — 2 Gönderici / İhracatçı — No 2920634499
DERBENT MADEN ANONIM SIRKETI
NISPETIYE MAH. GAZI GUCNAR SK. UYGUR IS MERKEZI
NO:4 D:7 BESIKTAS/ISTANBUL 052

3 Formular: 1 | 1
4 Vak. Türü: 0
5 Kalem say.: 1
6 Kap adedi: 4
7 Referans numarası: IHR2000363-admin

8 Alıcı — No *
EDIFICE VENTURES LIMITED
3/F, SHUNFENG INT.CENTER 182,QUEENS RD EAST
HONG KONG 740

9 Mali Müşavir/Serbest Muhasebeci — No 2920634499
DERBENT MADEN ANONIM SIRKETI
NISPETIYE MAH. GAZI GUCNAR SK. UYGUR IS MERKEZI
NO:4 D:7 BESIKTAS/ISTANBUL

10 Gideceği ülke: 664
11 Tic. yapılan ülke: 740
13 T.P.

14 Beyan Sahibi / Temsilcisi — No 12004730524
ALTAN ERTEKİN
HAYDAR ÇAVUŞ MH. HAYDAR ÇAVUŞ SK.NO:23/1
BALIKESİR/BANDIRMA

15 Çıkış/İhracat ülkesi: TURKIYE
15 Çıkış ülk. kodu: 052
17 Gideceği ülke kodu: 664
16 Menşe ülke:
17 Gideceği ülke: HINDISTAN

18 Çıkıştaki taşıt aracının kimliği ve kayıtlı olduğu ülke: GEMİ-M/V MSC SHIRLEY UI029R | 268
19 Kip: 1
20 Teslim şekli: EXW | MARMARA ADASI / BALIKESİR

21 Sınırı geçecek hareketli taşıt aracının kimliği ve kayıtlı olduğu ülke: GEMİ-M/V MSC SHIRLEY UI029R | 268
22 Döviz ve toplam fatura bedeli: USD | 10,915.00
23 Döviz kuru: 6.8846
24 İşlemin niteliği: 1 | 1

25 Sınırdaki taşıma şekli: 10
26 Dahili taşıma şekli:
27 Yükleme yeri: ASYAPORT LİMANI/TEKİRDAĞ
28 Finansal ve bankacılık verileri: T. GARANTİ BANKASI ÇANAKKALE

29 Çıkış gümrük idaresi: TEKİRDAĞ GÜMRÜK MÜDÜRLÜ
30 Eşyanın bulunduğu yer: ASYAPORT LİMANI/TEKİRDAĞ
PEŞİN

31 Kapların ve eşyanın tanımı: Kapların marka ve numaraları - konteyner adetleri - adet ve cinsleri
2 KONTEYNER 43,660.00 KİLOGRAM
Markası:ADR Numarası:-,CAXU311922-9,MSCU169541-8
Ticari tnm:BLOK MERMER (2 KONTEYNER İÇERİSİNDE 4 ADET BLOK MERMER)

*Marka Bilgi: Tescilsiz**DERBENT*****0**75,145.41TRY

32 Kalem: 1
33 Eşya kodu: 25181000 00 19
34 Menşe ülke kodu: 052
35 Brüt ağırlık (kg): 43,660.00
36 Tercih
37 REJİM: 10 | 00
38 Net ağırlık (kg): 43,660.00
39 Kota
40 Özet Beyan
41 Tamamlayıcı birim
42 Kalem fiyatı: 10,915.00
T.R. Kodu
44 İlave bilgiler/sunulan belgeler ve izinler: Fatura V ;Çeki listesi V PACKING LIST #29-07-20;TPS-E-Fatura V 2024316011088601226 2 578/1 #29-07-20;Kantar Fişi V VGM (TARTIM SONUCU) #29-07-20; **VEKALETNAME BEŞ İKTAŞ 12.NOTERİ NO:11447-19/08/2019**;İML:DERBENT MADEN ANONIM SIRKETI-VD - VN:2920634499;
43,660.00 -
46 İstatistiki kıymet: 10,915.00
47 Vergi hesaplamaları: Tür | Vergi Matrahı | Oran | Tutar | Ödş
Toplam
48 Ödemenin ertelenmesi
49 Antrepo tipi ve kodu

50 Asıl sorumlu — No — İmza
C HAREKET GÜMRÜK İDARESİ

51 Öngör. gümrük idareleri (ve ülke)

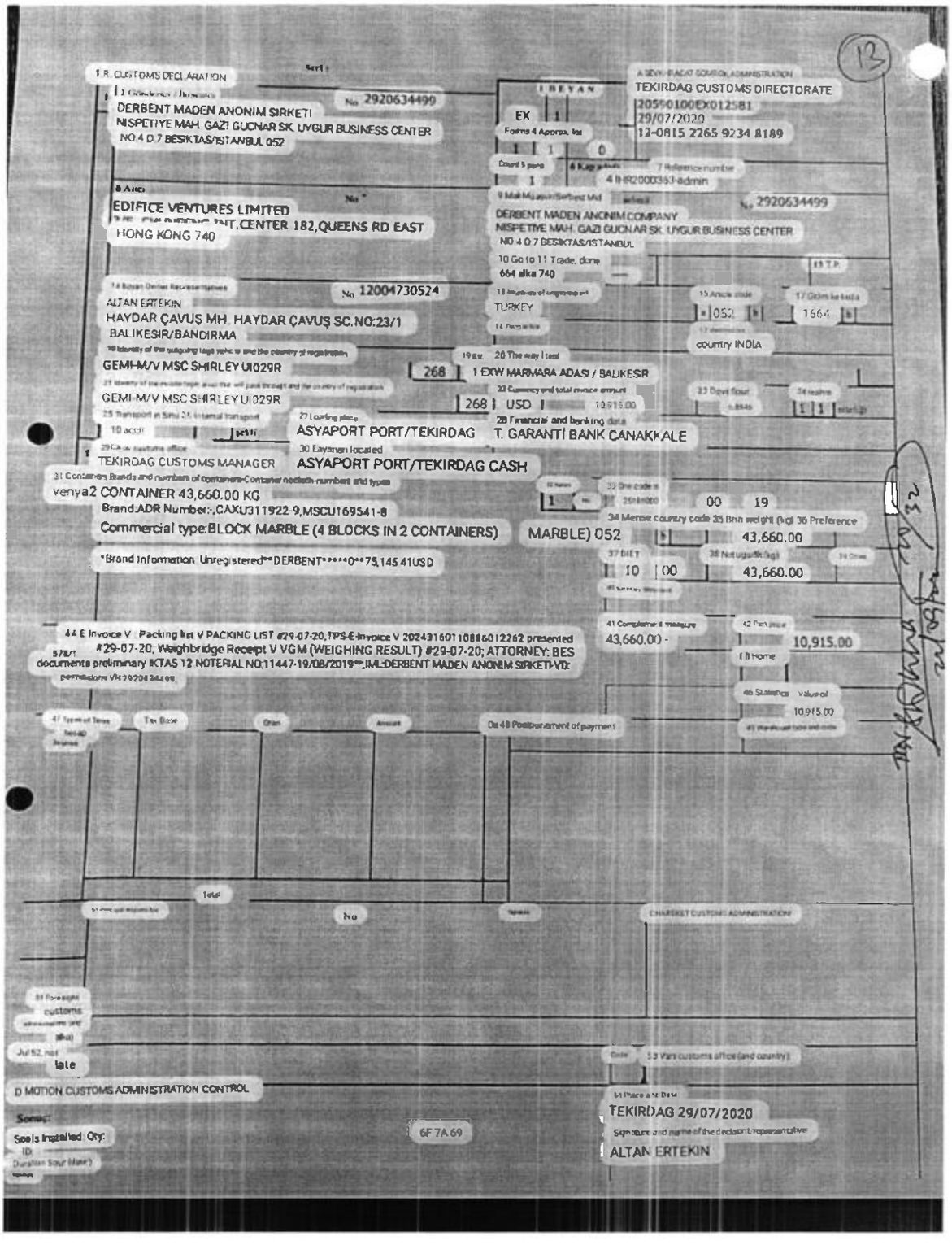
52 Tem. güv. değ.
Kod
53 Varış gümrük idaresi (ve ülke)

B HAREKET GÜMRÜK İDARESİ KONTROLÜ
Sonuç
Takılan bildirilerin: Adedi
Kısaltılı
Sıfır Sayılı (tarih)
İmza

6F 7A 69

54 Yer ve Tarih
TEKİRDAĞ 29/07/2020
Beyanname sahibi / temsilcisinin imzası ve adı
ALTAN ERTEKIN

(ii) Translated copy of export declaration filed by overseas supplier in English language :



T.R. CUSTOMS DECLARATION

DERBENT MADEN ANONIM SIRKETI
NISPETIYE MAH. GAZI GUCNAR SK. UYGUR BUSINESS CENTER
NO:4 D:7 BESIKTAS/ISTANBUL 052

No 2920634499

EDIFICE VENTURES LIMITED
HONG KONG 740

No 12004730524

ALTAN ERTEKIN
HAYDAR ÇAVUŞ MH. HAYDAR ÇAVUŞ SC.NO:23/1
BALIKESIR/BANDIRMA

GEMI-M/V MSC SHIRLEY UI029R

GEMI-M/V MSC SHIRLEY UI029R

TEKIRDAG CUSTOMS MANAGER

venya2 CONTAINER 43,660.00 KG
Brand:ADR Number:-,CAXU311922-9,MSCU169541-8
Commercial type:BLOCK MARBLE (4 BLOCKS IN 2 CONTAINERS)

*Brand Information: Unregistered**DERBENT*****0**75,145.41USD

44 E Invoice V Packing list V PACKING LIST #29-07-20,TPS-E-Invoice V 20243160110886012262 presented #29-07-20; Weighbridge Receipt V VGM (WEIGHING RESULT) #29-07-20; ATTORNEY; BES documents preliminary IKTAS 12 NOTERIAL NO:11447-19/08/2019**;IMI:DERBENT MADEN ANONIM SIRKETI-VD:

TEKIRDAG CUSTOMS DIRECTORATE
20590100EX012581
29/07/2020
12-0815 2265 9234 8189

DERBENT MADEN ANONIM COMPANY
NISPETIYE MAH. GAZI GUCNAR SK. UYGUR BUSINESS CENTER
NO:4 D:7 BESIKTAS/ISTANBUL

TURKEY

country INDIA

1 EXW MARMARA ADASI / BALIKESIR

USD 10,915.00

ASYAPORT PORT/TEKIRDAG

T. GARANTI BANK CANAKKALE

ASYAPORT PORT/TEKIRDAG CASH

MARBLE) 052

43,660.00

43,660.00

43,660.00 -

10,915.00

D MOTION CUSTOMS ADMINISTRATION CONTROL

TEKIRDAG 29/07/2020

ALTAN ERTEKIN

On perusal of the above documents, it appears that the goods weighing 43.66 MT supplied by M/s. Derbent Madan Anonim Sirketi, Istanbul, Turkey under Commercial Invoice DRB2020000000020 dated 29.07.2020 were loaded from Tekirdag port of Turkey to be delivered at ICD Tumb India through Nhava Sheva port. The original supplier, M/s. Derbent Madan Anonim Sirketi, Istanbul, Turkeyfiled Export declaration at the load port, wherein correct description i.e. Block of Marble was mentioned for description of goods but 'M/s Monark' arranged Commercial Invoice No.MIPLCMMB-20021 dated 03.08.2020 from the overseas supplier, M/s. Edifice Ventures Limited, Hong Kong having description as Rough Dolomite Blocks and cleared the same vide Bill of entry No.8857370 dated 18.09.2020 by declaring as Rough Dolomite Blocks White Wave under Customs Tariff Heading 25181000. In view of the above, it appears that the Importer has intentionally mentioned the wrong description of goods and Customs Tariff Headingin the Bill of Entry with intention to evade Customs Duty.

12.7 Page No. 30 of the documents submitted by 'M/s. Monark' vide letter dated 03.03.2021 was the Purchase Order No.MIPL/EVL/ST/1/1920-Amend-1 dated 04.03.2020 placed by 'M/s. Monark', to overseas supplier, M/s Edifice Ventures Limited, Hong Kong for purchase of goods. On scrutiny of the said purchase order, it appears that 'M/s. Monark' has placed order to overseas supplier for purchase of Rough Marble Blocks of various trade names viz. Dark Emperador, Pietra Grey & Black Mariquinab. Thus, it is clearly seen that 'M/s. Monark' had imported marbles only. In order to provide a view, relevant page of Purchase order no. No. MIPL/EVL/ST/1/1920-Amend-1 dated 04.03.2020 is reproduced below:

[redacted]

Date: 04-Mar-2020

PO No.: MIPL/EVL/ST/1/1920-Amend-1

Edifice Ventures Limited
3/F, Shun Feng International Center,
182 Queen's Road East, Hong Kong
Tel: +86 75588250959 Fax: +86 75583483582
Reference: Mr. David

PURCHASE ORDER

Subject	Supply of Rough Stone Blocks

Dear Sir,

This has reference to the above supply, subsequent discussions you had with us. We are pleased to place order on you for the supply of Rough Stone Blocks for our Camellias project as per the terms & conditions given below:

Terms & Conditions:

1. **Scope of Supply:**
   Supply of Rough Stone Blocks as per the selections approved by Monark India Pvt. Ltd.

S.No.	Item Description	Term	UOM	Qty.	Rate	Amount
1.	Rough Dolomite Block (Butterfly)	CIF	Tons	283.94	$816.96	$231,967.62
2.	Rough Marble Block (Dark Emperador)	FOB	Tons	240.96	$170.00	$40,963.20
3.	Rough Marble Block (Pietra Grey)	CNF	Tons	103.40	$201.00	$20,783.40
4.	Rough Marble Block (Dark Emperador)	FOB	Tons	78.40	$160.00	$12,544.00
5.	Rough Marble Block (Black Marquina)	CNF	Tons	80.41	$201.00	$16,162.41
	TOTAL			787.11		$322,420.63

Total Amount: US Dollars Three Hundred Twenty Two Thousand Four Hundred Twenty and Sixty Three Cents Only.

2. **Price Basis:**
   a) On CIF, FOB & CNF Terms.
   b) Based on mutual consent by either party, rate mentioned above may change subject to the following:

[redacted] **MONARK INDIA PVT. LTD** [redacted]

On perusal of the above purchase order placed by 'M/s. Monark', it appears that 'M/s. Monark' had placed the purchase order for purchase of Marbles of various trade names. Similarly, on documents submitted by 'M/s. Monark' vide letter dated 03.03.2021 it was found that'M/s. Monark' had placed the purchase order for purchase of Rough Marble Blocks of various trade names viz. Santa Marina, White Wave, Dark Emperador, Pietra Grey, Black Mariquinab and Polished Slabs (Thassos). As per website FHL Group|Santa Marina Marble|Marbles and

Granites Greece|Marble Slab Suppliers Worldwide,one of their suppliers from whom they had purchased Dolomite Blocks and stated that as per the website, Santa Marina is mentioned under category White Marble and described as White background with grey brownish veining, creating a symphony of playful patterns on a canvas that only nature could have printed so wonderfully. Therelevant printout of webpage of website FHL Group|Santa Marina Marble|Marbles and Granites Greece|Marble Slab Suppliers Worldwide is reproduced below:

12.8 Page No. 42 to 47 of the documents submitted by 'M/s. Monark' vide letter dated 03.03.2021 was the Purchase order No. CFT/POD/00019/1920 dated 30.03.2020 placed by M/s. DLF Home Developers Ltd., a buyer in India, wherein supply of goods were written as Marble/Stones Slabs. Shri Salim Khan, Director of 'M/s. Monark' in his statement dated 22.09.2022 accepted that M/s. DLF Home Developers Ltd. had placed order for Marble Slabs and accordingly, they supplied Marble slabs to M/s. DLF Home Developers Ltd. In order to provide a view, relevant page of Purchase order No.CFT/POD/00019/1920 dated 30.03.2020 placed by M/s. DLF Home Developers Ltd.is reproduced below:

DLF HOME DEVELOPERS LIMITED
1st Floor, DLF Gateway Tower, R Block,
DLF City, Phase - III, Gurgaon - 122 002, Haryana (India)
Tel: +91-124-4769000, Fax: +91-124-4769250
CIN U74899DL1995PLC075028

DLF BUILDING INDIA

CFT/POD/00019/1920

30.03.2020

M/s. MONARK INDIA PVT. LTD.,
Plot No. 884, Udyog Vihar, Phase – V,
Gurgaon – 122016.

PURCHASE ORDER

Sub :	**Supply of 'various Stone' for the Camellias project located at the DLF V, Gurgaon.**
Ref.:	**Your PI Ref No. NIL dated 27.01.2019 & 21.02.2020.**

Dear Sir,

This has reference to the above and subsequent discussions you had with us. We are pleased to place our order on you for the supply of various Stone as per the terms & conditions given below:

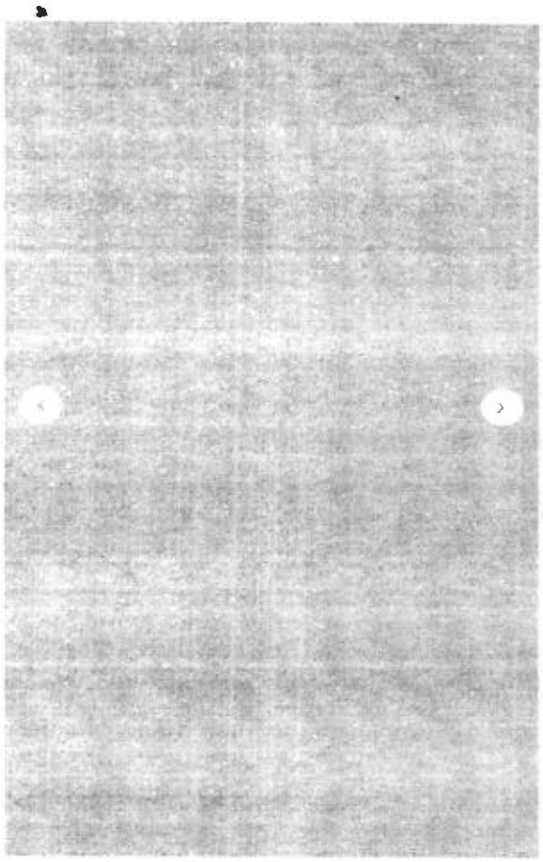
Terms & Conditions

1.	**Scope of Work**	:	Supply of Marble/ Stones slabs as per sample approved.
2.	**Description, Qty and Rates**	:	Annexure- I attached.
3.	**Technical Specification**	:	As per Annexure – I.
4.	**GST**	:	Inclusive in the price given below (Pls refer Annexure – I)
5.	**Freight & Insurance**	:	Included
6.	**Total Order Value inclusive of GST, Freight & Insurance.**	:	**Rs.31,77,47,219.00** (Rupees Thirty One Crore Seventy Seven Lac Forty Seven Thousand Two Hundred Nineteen Only).
7.	**Completion Period**	:	Completion By 31/10/2020. (66% by 30th August 20; balance by 31st October 20).
8.	**Delivery at**	:	Material shall be delivered at our site "The Camellias", Gurgaon.
	Billing Address		**DLF Limited,** **Shopping Mall, Arjun Marg, Phase – I, Gurugram.** **GST No. 06AAACD3494N1ZC**

43/58

Cont..2/-

On perusal of the above purchase order placed by M/s. DLF Home Developers Ltd., it appears that M/s. DLF Home Developers Ltd. had placed order for Marble Slabs only. Similarly, on perusal of all the other purchase orders placed by M/s. DLF Home Developers Ltd. and available in the documents submitted vide letter dated 03.03.2021, it appears that M/s. DLF Home Developers Ltd. had placed order for supply of Marble Stones, Polished Marble Slabs, Polished Thassos White Stone etc. As per website of one of their suppliers, M/s. EagleSA, Greece i.e. eagle-sa.gr/thassos(from whom they had purchased Dolomite Blocks, Thassos) among all its other beauties, generates one of the most impressive and luxurious categories of marble in the world. The relevant printout of webpage of website eagle-sa.gr/thassosis reproduced below:



Thassos Snow White Marble

Thassos, among all its other beauties, generates one of the most impressive and luxurious categories of marble in the world.

Also known as "Thassos Snow White", it is known over the centuries for its unrivaled, unique and shining white color. Recognized as the whitest marble in the world, Thassos White is an exceptional and aesthetically unique material to add beauty and luxury to any environment.

Fine-grained with a bright, crystalline color of high reflectance to sunlight. Available in different selections.

Small or large round-shaped or long calcite crystals, light shading, may appear. Its composition is mainly of crystalline dolomite and this is why it provides greater reflection than any other white marble in the world, while maintaining a low temperature for a long time. This uniqueness makes it ideal for use in hotter areas.

Face can be finished into honed, polished or brushed. Suitable for any interior and exterior application. Face can be finished into a honed, polished or brushed. Face can be finished into honed, polished or brushed.

TECHNICAL SPECIFICATIONS

Apparent density (EN 1936) kg/m³	2770 Kg/m3
Open porosity (EN 1936) % vol	0.7
Water absorption at atmospheric pressure (EN 13755) % wt	0.2
Uniaxial compressive strength (EN 1926) MPa	164
Flexural strength under concentrated load (EN 12372) Mpa	18.5
Breaking load at dowel hole (EN 13364) N	2250
Abrasion resistance (EN 14157 – B) mm³	24313
Rupture energy (EN 14158) Joule	4
Flexural strength under concentrated load (EN 12372 after 48 frost resistance cycles MPa	15.7

Heraclea White Marble

22/09/2022

12.9 In Indian Standard Specification for **Marble, IS:1130-1969**, Entry No. 0.2 marbles have been described as *metamorphic rocks capable of taking polish, formed from the re-crystallization of limestones or* ***dolomitic limestones*** *and are distinguished from limestone by even visibly crystallined nature and non-flaggy stratification.* (**Note**-Sometimes rocks, such as serpentine are also polished and used in trade as marble.)

Further, the Government of India, Ministry of Mines, Indian Bureau of Mines has also defined the marble in geological term as *"it is a metamorphosed limestone produced by recrystallisation under condition of thermal and also regional metamorphism. In commercial parlance, all calcareous rocks capable of polish are classed as marbles. Furthermore, serpentine rocks, containing little calcium or magnesium carbonates, if attractive and capable of taking good polish are also classed as marbles. The calcareous stones like onyx, travertine and some limestone have also been classed as marbles."*

As per the classification provided by the Government of India, Ministry of Mines, Indian Bureau of Mines vide the Indian Minerals Yearbook 2013 (Part- III : Mineral Reviews) the marbles are first classified on the basis of colour, shade and pattern and second on the basis of their genesis and chemical composition.

The Indian Bureau of Mines classified marbles by their genesis and chemical composition as under:

i) **Calcite Marble:** It is a crystalline variety of limestone containing not more than 5% magnesium carbonate. Colour and designwise, it may vary from grey to white to any colour, and even figurative light- brown to pink.

ii) **Dolomitic Marble**: It is a crystalline variety of limestone containing not less than 5% or more than 20% magnesium carbonate as dolomite molecules.

iii) **Dolomite Marble:** It is a crystalline variety of dolomite containing in excess of 20% magnesium carbonate as dolomite molecules. It has variegated colours and textures. As the whiteness increases, the lustre and translucency increases to an extent that it starts resembling with onyx. The main advantage of this marble is availability of exotic colours and patterns and its low maintenance cost. Marbles of Banswara in Rajasthan and Chhota Udaipur in Gujarat belong to this category.

iv) **Siliceous Limestone:** It is a limestone containing high silica with smooth appearance due to fine-grained texture. It is difficult to cut and polish this type of marble but once polished, it gives a pleasant look. It is available in several colours and designs. The pink marble of Babarmal and Indo-Italian variety from Alwar belongs to this category.

v) **Limestone:** Several varieties of limestone are being exploited and used as marble. The Oolitic limestone of UK, Black Marble of Bhainslana, Katra & Sirohi and Golden-yellow Marble of Jaisalmer belong to this category. This type requires frequent maintenance in the form of polishing as they are non-metamorphosed and hence are softer in nature.

vi) **Serpentine or Green Marble:** This marble is characterised mainly by the presence of a large amount of serpentine mineral. It has various shades of green varying from parrot-green to dark-green and is known for having varying degrees of veinlet intensities of other minerals, chiefly carbonate of calcium and magnesium. Most of the green marbles from Gogunda, Rikhabdeo, Kesariyaji and Dungarpur belong to this category. This marble is mostly used for anelling. The darker variety of this marble, which is so dark-green that it looks like black, has been termed as Verde Antique.

vii) **Onyx:** It is a dense crystalline form of lime carbonate deposited usually from cold water solutions. It is generally transparent to translucent and shows a characteristic variegated colour layering due to mode of deposition. Such type of marble is found in Kupwara district in Jammu and Kashmir. It is used for making decorative articles.

viii) **Travertine Marbles:** It is a variety of limestone regarded as a product of chemical precipitation from hot springs. The depositional history has left exotic patterns, when this is cut into thin slabs and polished, it become translucent.

Marble is a metamorphic rock that forms when limestone is subjected to the heat and pressure of metamorphism. Marble is composed primarily of the mineral calcite ($CaCO3$) and usually contains other minerals, such as clay minerals, micas, quartz, pyrite, iron oxides, and graphite. Under the conditions of metamorphism, the calcite in the limestone recrystallizes to form a rock that is a mass of interlocking calcite crystals. **Dolomite Marble** is also a form of marble, which is a crystalline variety of dolomite containing in excess of 20% magnesium carbonate as dolomite molecules.

12.10 The HSN Explanatory General Notes of Chapter 2515 is as under:-

25.15 MARBLE, TRAVERTINE, ECAUSSINE AND OTHER CALCAREOUS MONUMENTAL OR BUILDING STONE OF AN APPARENT SPECIFIC GRAVITY OF 2.5 OR MORE, AND ALABASTER, WHETHER OR NOT ROUGHLY TRIMMED OR MERELY CUT, BY SAWING OR OTHERWISE, INTO BLOCKS OR SLABS OF A RECTANGULAR {INCLUDING SQUARE) SHAPE(+).

- Marble and travertine:

2515 .11 -- Crude or roughly trimmed

2515.12 --Merely cut, by sawing or otherwise, into blocks or slabs of a rectangular (including square) shape

2515.20--Ecaussine and other calcareous monumental or building stone; alabaster

Marble is a hard calcareous stone, homogeneous and fine-grained, often crystalline and either opaque or translucent. Marble is usually variously tinted by the presence of mineral oxides (coloured veined marble, onyx marble, etc.), but there are pure white varieties.

Travertines are varieties of calcareous stone containing layers of open cells. Ecaussine is extracted from various quarries in Belgium and particularly at Ecaussines. It is a bluish-grey stone with an irregular crystalline structure and contains many fossilised shells. On fracture Ecaussine shows a granular surface similar to granite and is therefore sometimes known as "Belgian granite", "Flanders granite" or "petit granit".

The heading covers other similar hard calcareous monumental or building stones, provided their apparent specific gravity is 2.5 or more (i.e. effective weight in kg/I,000 cm').

The HSN Explanatory General Notes of Chapter 2515 **[RUD–39]**covers Marble, travertine, ecaussine and other calcareous monumental or building stone of an apparent specific gravity of 2.5 or more, and alabaster, whether or not roughly trimmed or merely cut, by sawing or otherwise, into blocks or slabs of a rectangular {including square) shape(+). Further as per the HSN Explanatory General Notes *Marble is a hard calcareous stone, homogeneous and fine-grained, often crystalline and either opaque or translucent. Marble is usually variously tinted by the presence of mineral oxides (coloured veined marble, onyx marble, etc.), but there are pure white varieties.* Travertines are varieties of calcareous stone containing layers of open cells. Ecaussine is extracted from various quarries in Belgium and particularly at Ecaussines. It is a bluish-grey stone with an irregular crystalline structure and contains many fossilised shells. On fracture Ecaussine shows a granular surface similar to granite and is therefore sometimes known as "Belgian granite", "Flanders granite" or "petit granit". *The heading covers other similar hard calcareous monumental or building stones, provided their apparent specific gravity is 2.5 or more (i.e. effective weight in kg/I,000 cm').*

12.11 As per theTest/Analysis Report along with response of queries received from the Geological Survey of India, Western Region, Jaipur, Test Reports dated 29.01.2021 received from CSIR-National Geophysical Research Institute, Hyderabad against Test Memo No.1078183 dated 11.12.2020, Commercial Invoice, packing list issued by the original supplier from originating country, declaration filed by the original supplier of goods at load port, Purchase order placed by M/s. Monark India Pvt. Ltd. to the overseas supplier for purchase of goods, as per literature of the Marble, IS 1130-1969 (Indian Standard:

Specification for Marble) editions released by Government of India, Ministry of Mines, Indian Bureau of Mines,Purchase order placed by M/s. DLF Home Developers Limited, local buyer of Marble slabs in India, Delivery challans issued by M/s. Monark India Pvt. Ltd. for job work and HSN Explanatory General Notes of Chapter 2515 and Tariff, it appears that the product is rightly classifiable under Customs Tariff HeadingNo.25151210 of Indian Customs Tariff, which is as under: ---

2515 MARBLE, TRAVERTINE, ECAUSSINE AND OTHER CALCAREOUS MONUMENTAL OR BUILDING STONE OF AN APPARENT SPECIFIC GRAVITY OF 2.5 OR MORE, AND ALABASTER, WHETHER OR NOT ROUGHLY TRIMMED OR MERELY CUT, BY SAWING OR OTHERWISE, INTO BLOCKS OR SLABS OF A RECTANGULAR (INCLUDING SQUARE) SHAPE.

- Marble and travertine:

2515 11 00 -- Crude or roughly trimmed

2515 12 -- Merely cut, by sawing or otherwise, into blocks or slabs of a rectangular (including square) shape

2515 12 10 -- Blocks

2515 12 10 -- Slabs

12.12 Shri Krishan Kumar Agarwal, Partner of M/s. Royale Impex, Silvassato whom 'M/s. Monark' send the goods for job work has admitted in his statement dated 15.09.2022 that their Company received Rough marble Blocks from 'M/s. Monark' for cutting into slabs vide delivery Challans, which were imported by 'M/s. Monark' under Bill of Entry No.7716262 dated 21.05.2020.

12.13 Shri Salim Khan, Directorof 'M/s. Monark' and Shri Rupesh Jivanbhai Katariya, Authorized Signatory of M/s. International Cargo Corporation (Customs House broker) has admitted in their respective statements that goods i.e. "Rough Marble Block" imported by 'M/s. Monark' falls under Customs Tariff HeadingNo.25151210 but 'M/s Monark' had imported the same by mis-classifying the product as 'Dolomite Block'. Further, the goods imported by 'M/s. Monark' by mis-classifying and claiming as "Dolomite Slabs" were actually "Marble Slabs", which falls under Customs Tariff Heading 68022190.

13. In view of the above, it appears that 'Dolomite Block' imported by 'M/s. Monark' was 'Rough Marble Block' and 'Dolomite Slabs'imported by 'M/s. Monark' was 'Marble Slabs'. As per the Test/Analysis Report along with response of queries received from the Geological Survey of India, Western Region, Jaipur and Test reports received from CSIR-National Geophysical Research Institute, Hyderabad, the consignments imported by 'M/s. Monark' meets the specification of marble. The same was also evident from the evidences available in the form of Commercial Invoice, packing list issued by the original supplier from the originating country, declaration filed by the original supplier of goods at load port, Purchase order placed by M/s. DLF Home Developers Limited, local buyer of Marble slabs in India, Purchase order placed by M/s. Monark India Pvt. Ltd. to overseas supplier for purchase of goods, Delivery challans issued by M/s. Monark India Pvt. Ltd. for job work and statements of Customs Broker and Job worker. Further, as per the literature of Marble, IS 1130-1969 (Indian Standard: Specification for Marble) editions released by Government of India, Ministry of Mines, Indian Bureau of Mines, it appears that Dolomite Marble and Dolomitic Marbles was also a form of marbles, which was a crystalline variety of dolomite containing magnesium carbonate as dolomite molecules in certain proportion. From the above, it appears that goods imported by 'M/s Monark' were 'Rough Marble Block' and 'Marble Slabs'. In view of the aforesaid position, the subject goods i.e. 'Rough Marble Block' appear to be rightly classifiable under Customs Tariff Heading 25151210 and Marble Slabs' appear to be rightly classifiable

under Customs Tariff Heading 68022190, as the HSN Explanatory General Notes of Chapter 2515 covers Marble, travertine, ecaussine and other calcareous monumental or building stone of an apparent specific gravity of 2.5 or more, and alabaster, whether or not roughly trimmed or merely cut, by sawing or otherwise, into blocks or slabs of a rectangular (including square) shape. Further as per the HSN Explanatory General Notes Marble is a hard calcareous stone, homogeneous and fine-grained, often crystalline and either opaque or translucent. Marble is usually variously tinted by the presence of mineral oxides (coloured veined marble, onyx marble, etc.), but there are pure white varieties.

14. REJECTION OF CLASSIFICATION OF PRODUCT DECLARED AS 'DOLOMITE BLOCKS' UNDER CUSTOMS TARIFF HEADING 25181000 AND RE-CLASSIFICATION UNDER CTH 25151210 AS 'ROUGH MARBLE BLOCKS'. SIMILARLY, REJECTION OF CLASSIFICATION OF PRODUCT DECLAIRED AS 'DOLOMITE SLABS' UNDER CUSTOMS TARIFF HEADING 68022900 AND RE-CLASSIFICATION UNDER CTH 68022190 AS 'MARBLE SLABS'

14.1 Further, as per the General Rules for the Interpretation of the Harmonized System, the classification of goods in the Nomenclature shall be governed by certain principles. As per Rule 1 of the General Rules for the Interpretation *'the titles of Sections, Chapters and sub-Chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes and, provided such headings or Notes do not otherwise require, according to the following provisions.'*

14.2 'M/s. Monark' had imported 'Rough Marble Block' by wrongly claiming classification under Customs Tariff Heading 25181000 and 'Polished Marble Slabs' by wrongly claiming classification under Customs Tariff Heading 68022900during the period from February, 2020 to September, 2020. The Geological Survey of India, Western Region, Jaipur after testing/chemical analysis of the sample along with response of queries confirmed that "*the blocks are hard and capable of taking polish and can be used as marble slab, blocks are Compact in nature of white colour; that the rock is a metamorphic rock, essentially composed of Calcite/dolomite having specific gravity 2.72 to 2.77 formed from dolomitic limestone"*.Further, the CSIR-National Geophysical Research Institute, Hyderabad gave Test Reports considering different parameters/analysis viz. Physical properties, Optical properties & Chemical properties along with queries & response, which confirmed that *"the rock is a metamorphic rock having specific gravity of 2.73, formed from re-crystallization of limestone and/ or Dolomitic limestone. The Rock is hard enough to be polished and can be used as marble slabs"*.The Geological Survey of India, Western Region, Jaipur and CSIR-National Geophysical Research Institute, Hyderabad both confirmed that *"as per the physical property and based on petrography, chemical composition and specific gravity data, the sample meets the specification of marble".* Therefore, it appears that the goods imported by 'M/s Monark'merits classification under Heading 25151210 of the Customs Tariff Heading in terms of the above HSN Explanatory General Notes of Chapter 25 of Customs Tariff and Test Report/Chemical Analysis Reports as against the classification under Customs Tariff HeadingNo.25181000 claimed by them. Further, it appears that the goods imported by 'M/s. Monark' merits classification under Heading 68022190of the Customs Tariff Heading in terms of the Test Report/Chemical Analysis Reports as against the classification under Customs Tariff HeadingNo.68022900 claimed by them.

14.3 Further, from the evidences available in the form of Commercial Invoice, packing list issued by the original supplier from originating country, declaration

filed by the original supplier of goods at load port, Purchase order placed by M/s. DLF Home Developers Limited, local buyer of Marble slabs in India, Purchase order placed by M/s. Monark India Pvt. Ltd. to overseas supplier for purchase of goods, Delivery challans issued by M/s. Monark India Pvt. Ltd. for job work and as per literature of the Marble, editions released by Government of India, Ministry of Mines, Indian Bureau of Mines, Dolomite Marble and Dolomitic Marbles was also a form of marbles. Thus, it appears that goods imported by 'M/s Monark' were 'Rough Marble Block' were rightly classifiable under Customs Tariff Heading 25151210 and 'Polished Marble slabs' were rightly classifiable under Customs Tariff Heading No.68022190.

15. Whereas from the investigations carried out in the case, it appears that 'M/s. Monark' was well aware of the Duty structure under Customs Tariff HeadingNo.25151210in comparison to Customs Tariff Heading 25181000 as well as duty structure under Customs Tariff Heading 68022900in comparison to Customs Tariff Heading No.68022190. However, they wrongly claimed classification under Customs Tariff Heading No.25181000 and Customs Tariff Heading No.68022900with a mala-fide intention of evading Customs Duty. The Importer with the intent to evade payment of Custom Duty had consciously and intentionally mis-declared the goods under Customs Tariff Heading No. 25181000in the import documents by suppressing the fact that, 'Rough Dolomite Blocks' are the 'Rough Marble Blocks' as well as mis-declared the goods under Customs Tariff Heading No.68022900in the import documents by suppressing the fact that 'Dolomite Slabs' are the 'Polished Marble Slabs'. The above wilful suppression and wilful mis-statement was done by the Importer with the intention to evade payment of Customs Duty leviable and payable on the import of 'Rough Marble Blocks' and 'Polished Marble Slabs' as specified in the First schedule under Section 2 of the Customs Tariff Act, 1975. Hence, it appears that the Importer had knowingly involved themselves in the suppression of the material facts and also indulged in mis-statement of facts.

16. Whereas from the facts and evidences discussed in the foregoing paras, it is established that the goods 'Rough Marble Blocks' imported by 'M/s. Monark' should have been appropriately classified under Customs Tariff Heading No. 25151210and accordingly should have been assessed to higher rate of Customs Duty as applicable for Customs Tariff Heading No.25151210 during the relevant period. Further, the goods 'Polished Marble Slabs' imported by 'M/s. Monark' should have been appropriately classified under Customs Tariff Heading No.68022190and accordingly should have been assessed to higher rate of Customs Duty as applicable for Customs Tariff Heading No.68022190during the relevant period.

17. VIOLATION OF LEGAL PROVISIONS OF CUSTOMS ACT, 1962

17.1 Vide Finance Act, 2011 w.e.f. 08.04.2011 "SelfAssessment" has been introduced under the Customs Act, 1962. Section 17 of the said Act provides for self-assessment of Duty on import and export goods by the Importer or Exporter himself by filing a Bill of Entry or Shipping Bill as the case may be, in the electronic form, as per Section 46 or 50 respectively. Thus, under self-assessment, it is the Importer or Exporter who will ensure that he declares the correct classification, applicable rate of Duty, value, benefit or exemption Notification claimed, if any in respect of the imported/exported goods while presenting Bill of Entry or Shipping Bill. In the present case, it is evident that the actual facts was only known to the Importer about the product and the aforesaid fact came to light only subsequent to the in-depth investigation and after chemical analysis of the product. Therefore, it appears that 'M/s. Monark' have deliberately contravened the above said provisions with an intention to evade

payment of Customs Duty leviable and payable on the import of 'Rough Marble Blocks' and 'Polished Marble Slabs' as specified in the First Schedule under Section 2 of the Customs Tariff Act, 1975. It appears that 'M/s. Monark' had contravened the provisions of Section 46(4A) of the Customs Act, 1962 in as much as 'M/s. Monark' while filing Bills of Entry had to ensure the accuracy and completeness of the information given therein for assessment of Customs Duty, whereas in the instant case, 'M/s Monark' had failed to fulfill this legal obligation in respect of imports of 'Rough Marble Blocks' & 'Polished Marble Slabs' for its correct and accurate classification.

18. CULPABILITY AND LIABILITY OF NOTICEES

18.1 From the aforesaid paras, it appears that the Importer had knowingly and deliberately indulged in suppression of facts and had wilfully misrepresented/mis-stated the material facts regarding the goods imported by them, in the declarations made in the import documents including Check lists presented for filing of Bills of Entry presented before the Customs at the time of import for assessment and clearance, with an intent to evade payment of applicable Customs Duty. Therefore, the Duty not paid/short paidis liable to be recovered from 'M/s. Monark' by invoking the extended period of five years as per Section 28 (4) of the Customs Act, 1962, in as much as the Duty is short paid on account of wilful mis-statement as narrated above. Accordingly, the total differential Customs Duty amounting to **Rs. 1,98,67,743/-**in respect of the imports at various Ports/ICD's viz. ICD Tumb (INSAJ6), Taluka- Umbergaon, Dist-Valsad, Gujarat and Nhava Sheva port (INNSA1) as indicated in **Annexure-A, B & C** to the Show Cause Notice i.e.**(Rs. 1,14,14,992/-** in respect of the imports at ICD Tumb (INSAJ6), Taluka-Umbergaon, Dist-Valsad, Gujarat asdetailed in **Annexure-A & B** and **Rs. 84,52,751/-** in respect of the imports at Nhava Sheva port (INNSA1) as detailed in **Annexure-C)**, is liable to be recovered from 'M/s Monark', under Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28 AA ibid.

19. 'M/s Monark' have imported 'Rough Marble Blocks' & 'Polished Marble Slabs' valued at **Rs. 4,21,49,071/-** ('Rough Marble Blocks' valued at Rs. 2,98,73,715/- as detailed in Annexure-A, B (at Sr. No. 1)& C and 'Polished Marble Slabs' valued at Rs. 1,22,75,356/- as detailed in Annexure-B (at Sr. No. 2) to the Show Cause Notice) by deliberately resorting to mis-statement & suppression of the material fact that the goods i.e. 'Rough Marble Blocks' are classifiable under Customs Tariff Heading No.25151210 and 'Polished Marble Slabs' are classifiable under Customs Tariff Heading No.68022190in contravention of the provisions of Section 46 (4) of the Customs Act, 1962. In terms of Section 46(4) of Customs Act, 1962, the Importer was required to make a declaration as to the truth of the contents of the Bills of Entry submitted for assessment of Customs Duty, which in the instant case, 'M/s Monark' had failed to fulfil in respect of the imports of 'Rough Marble Blocks' through various Ports/ICD's viz. ICD Tumb(INSAJ6), Taluka-Umbergaon, Dist-Valsad, Gujarat and Nhava Sheva port (INNSA1).For these contraventions and violations, the goods fall under the ambit of 'smuggled goods' within the meaning of Section 2(39) of the Customs Act, 1962 and are liable for confiscation under the provisions of Section 111(m) of the Customs Act, 1962 in as much as the goods imported viz. 'Rough marble Blocks' valued at Rs. 2,98,73,715/- and Polished Marble Slabs' valued at Rs.1,22,75,356/- did not correspond with respect to the entry, under Section 46 of Customs Act, 1962 as narrated supra.

20. The aforesaid acts of suppression of facts and wilful mis-statement by 'M/s Monark' had led to evasion of Customs Duty of **Rs.1,98,67,743/-,** thereby rendering them liable for penalty under Section 114A of the Customs Act, 1962,

in as much as the Customs Duty amounting to **Rs. 1,98,67,743/-**was evaded by reason of wilful mis-statement and suppression of facts with a malafide intention to evade payment of applicable Customs Duty. All the aforesaid acts of commission and omission on the part of 'M/s. Monark' have rendered the subject imported goods totally valued at **Rs.4,21,49,071/-**(as detailed in Annexure-A, B & C to the Show Cause Notice) liable for confiscation under Section 111(m) of the Customs Act, 1962. 'M/s. Monark' are therefore liable to penalty under Section 112(a) and 112(b) of the Customs Act, 1962. In the present case, it is also evident that the actual facts were only known to the Importer about the product and its actual classification. However, it appears that 'M/s. Monark' had knowingly and intentionally made, signed or used the declaration, statements and/or documents and presented the same to the Customs authorities, which were incorrect in as much as they were not representing the true, correct and actual classification of the imported goods, and have therefore rendered themselves liable for penalty under section 114AA of the Customs Act, 1962 also. Since 'M/s. Monark' have violated the provisions of Section 17 and 46 of the Customs Act, 1962 which was their duty to comply, but for which no express penalty is elsewhere provided for such contravention or failure, they shall also be liable to penalty under Section 117 of the Customs Act, 1962.

21. It further revealed that mis-declaration of description and mis-classification of goods in the import documents viz. Bills of Entry presented by 'M/s Monark' before the Customs authorities, was done on the directions and under the guidance of Shri Salim Khan, Director of'M/s Monark' to willfully suppress the correct description and classification of goods with an intent to evade payment of applicable Customs Duty. Shri Salim Khan had full knowledge about the mis-classification of the said imported goods in as much as Shri Salim Khan was overall responsible for all imports and finalization of classification of imported goods. He managed documents for mis-classification of goods from the overseas supplier and instructed the Customs Broker to produce the same before Customs for clearance to file the Bills of entry to evade Duty.Test/Analysis Report along with response of queries received from the Geological Survey of India, Western Region, Jaipur and CSIR-National Geophysical Research Institute, Hyderabad confirmed that the sample drawn from the import consignments of 'M/s Monark' meets the specifications of "Marble". Further, 'M/s Monark' received the Commercial Invoice, packing list issued by the original supplier from the originating country, declaration filed at load port by the original supplier of goods, wherein description of goods was mentioned as Rough marble Block but Shri Salim Khan instructed Customs Brokers to file the Bills of entry under Customs Tariff Heading No. 25181000 to evade duty. Shri Salim Khan was aware that the consignments imported by "M/s Monark' was actually Rough Marble Block falling under Customs Tariff Heading No.25151210, as it was evident from the documents available in the form of Commercial Invoice, packing list issued by the original supplier from the originating country, declaration filed by the original supplier of goods at load port, Purchase order placed by M/s. DLF Home Developers Limited, local buyer of Marble slabs in India, Purchase order placed by M/s. Monark India Pvt. Ltd. to overseas supplier for purchase of goods, Delivery challans issued by M/s. Monark India Pvt. Ltd. for job work and statement of Custom Broker. Further, as per literature of the Marble, editions released by Government of India, Ministry of Mines, Indian Bureau of Mines and admitted by Shri Salim Khan, Director of 'M/s Monark', Rough Marble Block falls under Customs Tariff Heading No.25151210 and Polished Marble Slabs falls under Customs Tariff Heading No.68022190.All the aforesaid acts of commissions and omissions on the part of Shri Salim Khan have rendered the imported goods liable for confiscation under Section 111 (m) of the Customs Act, 1962, and consequently rendered him liable for penalty under Section 112(a) and (b) of the Customs Act, 1962. Further, it also appears that

Shri Salim Khan had knowingly and intentionally made, signed or used the declaration, statements and/or documents and presented the same to the Customs authorities, which were incorrect in as much as they were not representing the true, correct and actual classification of the imported goods, and has therefore rendered himself liable for penalty under Section 114AA of the Customs Act, 1962. Since, Shri Salim Khan, Director of 'M/s Monark' has also violated the provisions of Section 17 and 46 of the Customs Act, 1962 which was his duty to comply, but for which no express penalty is elsewhere provided for such contravention or failure, he shall also be liable to penalty under Section 117 of the Customs Act, 1962.

22. It also appears that M/s. International Cargo Corporation, a Customs Broker Firm acted on behalf of 'M/s Monark' for clearance of consignments of 'Rough Marble Blocks' and 'Polished Marble Slabs' from customs. 'M/s Monark' handed over the documents to the Customs Broker for filing of Bill of Entry and to arrange clearance of the goods. M/s. International Cargo Corporation, the Customs Broker Firm who handled clearance activities in the capacity as the Custom Broker is responsible for having indulged in mis-declaration of description and mis-classification of goods. The Custom Broker firm, M/s. International Cargo Corporation along with Shri Salim Khan, Director of 'M/s Monark' cleared the 'Rough Marble Blocks' and 'Polished Marble Slabs' without payment of applicable Customs Duty by willfully mis-declaring its description and correct Customs Tariff Heading Number.The Custom Broker Firm was very much aware that the consignments imported by 'M/s Monark' by declaring as 'Dolomite Blocks' were actually 'Rough Marble Blocks' falling under Customs Tariff Heading No.25151210 and Dolomite Slabs' were actually 'Polished Marble Slabs' falling under Customs Tariff Heading No.68022190, as it was evident from the documents available in the form of Chemical analysis/Test Reports of samples taken from import consignments of 'M/s Monark' and other evidences available in the form of Commercial Invoice, packing list issued by the original supplier from originating country, declaration filed by the original supplier of goods at load port, Purchase order placed by M/s. DLF Home Developers Limited, local buyer of Marble slabs in India, Purchase order placed by M/s. Monark India Pvt. Ltd. to overseas supplier for purchase of goods, Delivery challans issued by M/s. Monark India Pvt. Ltd. for job work and statement of Custom Broker. Further, as per literature of the Marble, editions released by Government of India, Ministry of Mines, Indian Bureau of Mines and admitted by Shri Salim Khan, Director of 'M/s Monark', the commissions and omissions on the part of M/s. International Cargo Corporation who is a Licensed Customs Broker Firm, was in violation of the obligations cast on them in terms of Regulation 10 of the Customs Broker License Regulations, 2018. By these deliberate acts and omissions, they abetted 'M/s Monark' in mis-declaring the description of goods and mis-classifying the Customs Tariff Heading Number of imported goods in the Bills of Entry filed by them. M/s. International Cargo Corporation connived with 'M/s Monark' and facilitated them in the import of goods without payment of applicable Customs Duty in contravention of the provisions of Customs Act, 1962, the Customs Brokers Licensing Regulations, 2018 and other statutes. All the aforesaid acts of commissions and omissions on part of the aforesaid Customs Broker, have rendered the imported goods liable for confiscation under Section 111(m) of the Customs Act, 1962. Further, they had consciously dealt with the said goods which they knew or had reasons to believe, were liable to confiscation under the Customs Act, 1962. By these acts, M/s. International Cargo Corporation has rendered themselves liable to penalty under provisions of Section 112 (a) and 112(b) of the Customs Act, 1962. They prepared/got prepared, signed/got signed documents which they had reasons to believe were false and thereby rendered themselves liable for penalty under Section 114AA of the Customs Act, 1962.

23. It further appears that mis-declaration of description and mis-classification of the goods in the import documents viz. Bills of Entry filed by M/s. International Cargo Corporation on behalf of 'M/s Monark' before the Customs authorities, was done on the direction of Shri Rupesh Jivanbhai Katariya, Authorized Signatory of M/s. International Cargo Corporation. Shri Salim Khan, Director of 'M/s Monark' handed over the documents to Shri Rupesh Jivanbhai Katariya for filing of Bills of Entry and to arrange clearance of the goods. Shri Rupesh Jivanbhai Katariya was aware of the correct classification of the goods but as per the directions of Shri Salim Khan, Director of 'M/s Monark', they willfully & knowingly suppressed the true, correct & actual description and classification of the goods with an intent to facilitate 'M/s Monark' to evade applicable Customs Duty. Shri Rupesh Jivanbhai Katariya, Authorized Signatory of M/s. International Cargo Corporation, who handled clearance activities in the capacity as the Custom Broker is responsible for having indulged in mis-declaration of description and mis-classification of goods. Shri Rupesh Jivanbhai Katariya along with Shri Salim Khan, Director of 'M/s. Monark' cleared the 'Rough Marble Blocks'& 'Polished Marble Slabs' without payment of applicable Customs Duty by willfully mis-declaring its description and correct Customs Tariff Heading Number.Shri Rupesh Jivanbhai Katariya was very much aware that the consignments imported by 'M/s. Monark' by declaring as 'Rough Dolomite Blocks' were actually 'Rough Marble Blocks' falling under Customs Tariff Heading No.25151210 and Dolomite Slabs'were actually 'Polished Marble Slabs' falling under Customs Tariff Heading No.68022190, as it was evident from the documents available in the form of Chemical Analysis/Test Reports of samples taken from import consignments of 'M/s. Monark' and other evidences available in the form of Commercial Invoice, packing list issued by the original supplier from the originating country, declaration filed by the original supplier of goods at load port, Purchase order placed by M/s. DLF Home Developers Limited, local buyer of Marble slabs in India, Purchase order placed by M/s. Monark India Pvt. Ltd. to overseas supplier for purchase of goods, Delivery challans issued by M/s. Monark India Pvt. Ltd. for job work and as per literature of the Marble, editions released by Government of India, Ministry of Mines, Indian Bureau of Mines and also as admitted by Shri Salim Khan, Director of 'M/s Monark'. The commissions and omissions on the part of Shri Rupesh Jivanbhai Katariya, Authorized Signatory of the Licensed Customs Broker Firm was in violation of the obligations cast on such Licensed Customs Brokers in terms of Regulation 10 of the Customs Broker License Regulations, 2018. By these deliberate acts and omissions, they abetted 'M/s Monark' in mis-declaring the description of goods and mis-classifying the Customs Tariff Heading Number of imported goods in the Bills of Entry filed by them. Shri Rupesh Jivanbhai Katariya facilitated, 'M/s. Monark' who intended to clear the imported goods without payment of applicable Customs Duty which was in contravention of the provisions of the Customs Act, 1962, the Customs Brokers Licensing Regulations, 2018 and other statutes. All the aforesaid acts of commission and omission on the part of Shri Rupesh Jivanbhai Katariya have rendered the imported goods liable for confiscation under Section 111(m) of the Customs Act, 1962. Further, he had consciously dealt with the said goods which he knew or had reasons to believe, were liable to confiscation under the Customs Act, 1962. By these acts, Shri Rupesh Jivanbhai Katariya, Authorized Signatory of M/s. International Cargo Corporation has rendered himself liable to penalty under the provisions of Section 112 (a) and 112(b) of the Customs Act, 1962.He prepared/got prepared, signed /got signed documents which he had reasons to believe were false and thereby rendered himself liable for penalty under Section 114AA of Customs Act, 1962.

24. The details of goods seized, which were attempted to be imported by M/s. Monark India Pvt. Ltd. (IEC-0511031874), Plot No-884, Phase-V, Udhyog Vihar,

Gurgaon-122016 through ICD Tumb (INSAJ6), Taluka-Umbergaon, Dist-Valsad, Gujarat suppressing the description and Classification of goods, along with the assessable value and Differential Duty demanded/to be recovered is as below:

Sr. No.	Bills of Entry No. & Date	Description of Goods	Value of goods imported (Rs.)	Duty Short paid/ to be recovered (Rs.)
1	2	3	4	5
1	Shown in Annexure-A to the notice	Rough marble Blocks	18,81,421	9,50,212
Total			**18,81,421**	**9,50,212**

24.1 The Port/ICD wise details of goods imported by M/s. Monark India Pvt. Ltd. (IEC-0511031874), Plot No-884, Phase-V, Udhyog Vihar, Gurgaon-122016 in the past period (from February' 2020 to July' 2020) bysuppressing the description and Classification of goods, along with assessable value and Differential Duty demanded/to be recovered is as below:

Sr. No.	Bills of Entry No. & Date	Description of Goods	Value of goods imported (Rs.)	Duty Short paid/to be recovered (Rs.)	Ports / ICDs of imports
1	2	3	4	5	6
1	As shown at Sr. No 1 in Annexure-B to the notice	Rough marble Blocks	1,12,55,830	56,84,757	ICD Tumb (INSAJ6), Taluka-Umbergaon, Dist-Valsad, Gujarat
2	As shown at Sr. No 2 in Annexure-B to the notice	Marble Slabs	1,22,75,356	47,80,024	
Sub Total			**2,35,31,186**	**1,04,64,780**	
3	As shown in Annexure-C to the notice	Rough marble Blocks	1,67,36,464	84,52,751	Nhava Sheva Sea (INNSA1)
Grand Total			**4,02,67,650**	**1,89,17,531**	

Show Cause Notice pertains to demand of Duty involved in the goods imported through multiple ports viz. ICD Tumb (INSAJ6), Taluka- Umbergaon, Dist-Valsad, Gujarat and Nhava Sheva Sea Port(INNSA1). This Show Cause Notice is being issued by the competent authority at Customs Ahmedabad as per Notification No. 28/2022-Customs (N.T.) dated 31.03.2022 issued by Central Board of Indirect Taxes and Customs (CBIC), New Delhi being the port where the highest Duty is involved.

25. In view of the above, Show Cause Notice No.VIII/10-35/Commr./O&A/2022-23 dated 07.08.2023 issued to **M/s. Monark India Pvt. Ltd. (IEC-0511031874),** Plot No-884, Phase-V, Udhyog Vihar, Gurgaon-122016, calling upon to show cause to the Commissioner of Customs, Ahmedabad as to why:-

(i) The declared classification of the subject goods under Customs Tariff Heading No.25181000 in the Bills of Entry as detailed in Annexure-A, Annexure-B (at Sr.No.1), and Annexure-C should not be rejected, why the goods should not be re-classified under the Customs Tariff Heading No.25151210 of the First Schedule to the Customs Tariff Act, 1975 and why the subject Bills of Entry should not be reassessed;

(ii) The declared classification of the subject goods under Customs Tariff Heading No.68022900 in the Bills of Entry as detailed in Annexure-B (at Sr.No.2)should not be rejected, why goods should not be re-classified under the Customs Tariff Heading No.68022190 of the First Schedule to the Customs Tariff Act, 1975 and why the subject Bills of Entry should not be reassessed;

(iii) The goods valued at **Rs.18,81,421/-(Rs. Eighteen Lakhs Eighty One Thousand Four Hundred and Twenty One only)** as detailed in Annexure A, attached to this Show Cause Notice which were seized on 03.12.2020 should not be confiscated under Section 111 (m) of the Customs Act, 1962. However, as the goods are not available for confiscation being released provisionally, why fine in lieu of confiscation should not be imposed;

(iv) Differential/Short paid Customs Duty amounting to **Rs.9,50,212/- (Rs. Nine Lakhs Fifty Thousand Two Hundred and Twelve Only)** as detailed in Annexure-A attached to Show Cause Notice involved on the goods seized on 03.12.2020 should not be demanded and recovered from them under Section 28(4)of the Customs Act, 1962 alongwith applicable interest under Section 28AAibid;

(v) The Bond for **Rs.18,81,421/-(Rupees Eighteen Lakhs Eighty One Thousand Four Hundred and Twenty One only)**and the Bank Guarantee of **Rs.12,32,425/-(Rupees Twelve Lakhs Thirty Two Thousand Four Hundred and Twenty Five only)** furnished by M/s. Monark India Pvt. Ltd.against goods imported vide Bills of Entry as detailed in Annexure A, attached to Show Cause Notice should not be enforced/en-cashed for the purpose of recovery of Custom dues, fine, penalty, etc;

(vi) The goods valued at **Rs. 4,02,67,650/-(Rs. Four Crores Two Lakhs Sixty Seven Thousand Six Hundred and Fifty only)** as detailed in Annexure B & C, attached to Show Cause Notice should not be held liable for confiscation under the provisions of Section 111(m) of the Customs Act, 1962; however the same have been cleared and are not physically available for confiscation;

(vii) Differential/Short paid Customs Duty amounting to **Rs.1,89,17,531/- (Rs. One Crore Eighty Nine Lakhs Seventeen Thousand Five Hundred and Thirty One Only)** as detailed in Annexure-B & C attached to Show Cause Notice should not be demanded and recovered from them under Section 28(4)of the Customs Act, 1962 alongwith applicable interest under Section 28AAibid;

(viii) 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 (iii & vi) above;

(ix) Penalty should not be imposed upon them under the provisions of Sections 114A, 114AA and 117 of the Customs Act, 1962.

25.1 Show Cause Notice No VIII/10-35/Commr./O&A/2022-23 dated 07.08.2023 issued to **Shri Salim Khan, Director of M/s. Monark India Pvt. Ltd.,** Gurgaon-122016 calling upon to show cause, to the Commissioner of Customs, Ahmedabad , as to why:-

Penalty should not be imposed upon him under Sections 112(a),112(b), 114AA and 117 of the Customs Act, 1962 separately for his role as discussed in paras supra.

25.2 Show Cause Notice No VIII/10-35/Commr./O&A/2022-23 dated 07.08.2023 issued to, **M/s. International Cargo Corporation,** Mumbai-400080calling upon to show cause to the Commissioner of Customs, Ahmedabadas to why:-

Penalty should not be imposed upon them under Sections 112(a),112(b) and 114AA of the Customs Act, 1962 separately for their roles as discussed in paras supra.

25.3 Show Cause Notice No VIII/10-35/Commr./O&A/2022-23 dated 07.08.2023 issued to, **Shri Rupesh Jivanbhai Katariya, Authorized Signatory of M/s. International Cargo Corporation**, Mumbai-400080, calling upon to show cause to the Commissioner of Customs, Ahmedabad as to why:-

Penalty should not be imposed upon him under Sections 112(a),112(b) and 114AA of the Customs Act, 1962 separately for his roles as discussed in paras supra.

Written Submission:

26. Importer M/s. Monark India Pvt. Ltd and its Director Shri Salim Dad Khan filed their written submission vide letter dated 05.06.2024 wherein they interalia stated as under:

26.1 That they had had imported subject four consignments of 'Rough Dolomite Blocks' of Greece and Turkish origin under Bs/E No. 8857370 and 8857392, both dated 18.09.2020 enlisted in Annexure-A, B/E No. 7716262 dated 21.05.2020 enlisted in Annexure-B through ICD, Tumb and B/E No. 6901605 dated 15.02.2020 enlisted in Annexure-C through JNCH, Nhava Sheva claiming classification under CTH 2518 10 00 and assessment under S. No. 120 of Notification No. 50/2017-Cus dated 30.06.2017; and one consignment of 'Polished Dolomite Slabs' of Greece origin under B/E No. 8281788 dated 25.07.2020 enlisted in Annexure-B through ICD, Tumb claiming classification under CTH 6802 29 00 and assessment under S. No. 120 of Notification No. 50/2017-Cus dated 30.06.2017; that out of impugned 05 consignments, 03 consignments enlisted in Annexure-B and Annexure-C were cleared by the Proper Officers at the respective ports after scrutiny of documents furnished along with Bs/E; and in 02 consignments, afterdue physical examination of consignments; and testing of representative samples by Central Revenue Control Laboratory and enclosed copy of CRCL report.

26.2 That out of prior to conclusion of Purchase Contract in respect of each consignment, the query owner had caused testing of the rocks by Government authorised Testing Agencies in the respective Country of Origin and in all the aforesaid Test Reports, authorised Testing Agencies have certified the rocks to be Dolomite;

26.3 That in the entire investigation, though nothing came to the fore to conclusively suggest that Dolomite Blocks and Dolomite Slabs imported by Noticee were in fact Marble Blocks/Marble Slabs, however, on patently wrong interpretation of documents/test reports and extraneous evidences, DRI somehow formed an opinion that the goods were mis-declared and issued a

perverse Investigation Report, which ultimately culminated into impugned Show Cause Notice;

26.4 That that 'Marble Blocks' are covered under Customs Tariff Heading No. 2515120 whereas 'Dolomite Blocks' are covered under Customs Tariff Heading No. 25181000; that also referred the HSN Explanatory Notes to 2515 and 2518;

26.5 That they referred Heading of 68022900 of the Customs Tariff and further stated that as per Geology.com, 'Marble' is a metamorphic rock composed primarily of the mineral calcite ($CaCO_3$) and usually contains other minerals, such as clay minerals, micas, quartz, pyrite, iron oxides, and graphite whereas Dolomite is a common rock-forming mineral i.e. a calcium magnesium carbonate with a chemical composition of $CaMg(CO_3)_2$and annexed a copy of relevant page;

26.6 That as per para 30.6 of Indian Minerals Year Book 2020 issued by Government of India, Ministry of Mines, Indian Bureau of Mines, Dolomite (CaCO3.MgCO3) theoretically contains CaCO3 54.35% and MgCO3 45.65% or CaO 30.4%, MgO 21.9% and CO2 47.7%; that however, in nature, Dolomite is not available in this exact proportion, hence, in commercial parlance, the rock containing 40-45% MgCO3 is usually called Dolomite; that as per para 30.06 of Indian Minerals Year Book 2020, issued by Government of India, Ministry of Mines, Indian Bureau of Mines, in terms of geological definition, Marble is a metamorphosed limestone produced by re-crystallisation under conditions of thermal and regional metamorphism; that in commercial parlance, all calcareous rocks capable of taking polish are classed as marbles. Furthermore, serpentine rocks containing little calcium or magnesium carbonates, if attractive and capable of taking good polish are also classed as marbles;

26.7 That the essential characteristics and difference between Marble and Dolomite as per standard literature and research papers published by experts in the field may be enumerated as under –

Particulars	Marble	Dolomite
Constituents	Consists essentially of Calcium Carbonate $CaCO_3$ with no Magnesium Molecule	Natural double Carbonate of Calcium and Magnesium. The primary constituent being Calcium Magnesium Carbonoate i.e. $CaMg(CO_3)_2$.
Nature	Metamorphic Rock	Sedimentary as well as Metamorphic. If the rock bed is nearer to sea, the rock is Metamorphic. If the rock bed is away from sea, it is Sedimentary.
Specific Gravity	2.71 +/- 0.1 gm/cm^3	2.85 +/- 0.01 gm/cm^3
Basic Test	Concentrated H_2SO_4, when poured on the rock, same corrodes. If powdered Marble is reacted with H_2SO_4, powder dissolves in the acid leaving no	Concentrated H_2SO_4, when poured, rock does not corrode and when H_2SO_4 is reacted with powdered Dolomite, the acid reacts with

	sediments.	effervescence and turn the powder brown.
Hardness	Hard Rock capable of Polishing (3 MOHS)	Hard Rock capable of Polishing (3.5 – 4 MOHS)

26.8 That, in terms of Customs Tariff Headings 2515 and 2518, HSN Explanatory Notes of the said Tariff Headings,details available for 'Marble' and 'Dolomite' in Geology.com, as well the data available in Indian Minerals Year Book 2020, issued by Government of India, Ministry of Mines, Indian Bureau of Mines, following salient features came to fore -

(a) Marble:

- It is a hard calcareous stone, homogenous and fine-grained, often crystalline and either opaque or translucent which is usually variously tinted by the presence of mineral oxides (coloured veined marble, onyx, marble, etc.) but there are pure white varieties.
- 'Marble' is a metamorphic rock composed primarily of the mineral calcite ($CaCO_3$) and usually contains other minerals, such as clay minerals, micas, quartz, pyrite, iron oxides and graphite.
- In commercial parlance, all calcareous rocks capable of taking polish are classed as marbles. Further, serpentine rocks containing little calcium or magnesium carbonates, if attractive and capable of taking good polish are also classed as marbles.
- 'Marble Blocks' are classifiable under Customs Tariff Heading No. 25151210.

(b) Dolomite:

- It is a natural double of Calcium and Magnesium.
- Dolomite is a common rock-forming mineral i.e. a Calcium Magnesium Carbonate with a chemical composition of $CaMg(CO_3)_2$.
- Dolomite (CaCO3 .MgCO3) theoretically contains CaCO3 54.35% and MgCO3 45.65% or CaO 30.4%, MgO 21.9% and CO2 47.7%. However, in nature, Dolomite is not available in this exact proportion. Hence, in commercial parlance, the rock containing 40-45% MgCO3 is usually called Dolomite.
- 'Dolomite Blocks' are classifiable under Customs Tariff Heading No. 25181000.

26.9 That out of impugned 05 consignments, 02 consignments covered under B/E No. 7716262 dated 21.05.2020enlisted in Annexure-B and B/E No. 6901605 dated 15.02.2020 enlisted in Annexure-C were cleared after due physical examination and testing of the representative samples drawn from the consignments by CRCL.As per test reports of CRCL, the goods were found as declared on testing, whereas consignment of Polished Dolomite Slab covered under B/E 8217288 dated 25.07.2020 was cleared by the Proper Officer after due physical examination and satisfaction that the goods were as declared and

submitted summary of declaration and findings of CRCL as reported in Test Reports as tabulated below for ready reference:-

B/E No. & Date	Description as per B/E	Findings returned in Test Reports
7716262 dated 21.05.2020	Rough Dolomite Blocks (Santa Maria)	The sample is in the form of white broken pieces of irregular shape & size. It is composed of carbonates of Calcium & Magnesium (Dolomite).
6901605 dated 15.02.2020	Rough Dolomite Blocks	The sample is in the form of white colour hard broken pieces of varying shapes and size. It is mainly composed of carbonate of Calcium & Magnesium (Dolomite) together with traces of Iron & Siliceous matter.

26.10 That DRI has, however, not disclosed the aforesaid conspicuous fact in the impugned Show Cause Notice and deliberately suppressed these Reports, which clearly depicts DRI prejudicial approach and conclusively proves that the goods imported under the contextual Bs/E were Dolomite; that later consequent to initiation of investigation, DRI detained 02 consignments of Rough Dolomite Blocks covered under Bs/E No. 8857370 and 8857392, both dated 18.09.2020 enlisted in Annexure-A at ICD, Tumband forwarded samples drawn from the consignments to Geological Survey of India, Jaipur as against the standard practice of forwarding samples for technical analysis to Central Revenue Control Lab, the apex laboratory under Customs and Indirect Tax Administration;.

26.11 That as per CRCL's Manual, the Chief Chemist-CRCL is the final authority for determination of technical aspects/questions relating to classification etc. of imported/export consignments and therefore, it was incumbent for DRI to have referred the samples to Director/Chief Chemist-CRCL for authoritative decision qua the technical characteristics and testing. The relevant part of CRCL's Manual is extracted below for Hon'ble Commissioner's kind perusal –

"13. The Chief Chemist is also the appellate testing authority when a party demands a retest or when the Collector of Customs, the Collector of Central Excise or any higher authority desires to have a second technical opinion.

The test report of the Chief Chemist who acts as an Appellate testing authority is final."

In the instant case, as DRI has chosen to obtain opinion from a lab other than the one empowered and specifically tasked by Board to carry out such testing and give opinion for the purpose of administration of Customs and allied laws, reliance on test reports obtained by DRI from GSI Laboratory in respect of impugned 02 consignments covered under Bs/E No. 8857370 and 8857392, both dated 18.02.2020 is ex-facie wrong;

26.12 That Department has also drawn sample of a consignment of Rough Dolomite Blocks imported by Noticee under B/E No. 9879849 dated 08.12.2020 and forwarded the sample drawn from the said consignment to CSIR – National

Geophysical Research Institute, Hyderabad for testing. Department though released aforesaid consignment under CTH 2515 12 10, however,despite the mandate of Section 17(5) of the Customs Act, 1962 that wherever assessment done under Section 17(4) is contrary to self-assessment done by the Importer, Proper Officer shall issue a Speaking Order, no Order has been passed in respect of aforesaid B/E No. 9879849 dated 08.12.2020 till date. Therefore, as the assessment of contextual B/E No. 9879849 dated 08.12.2020 has not become final and as B/E No. 9879849 dated 08.12.2020 is not subject matter of present Show Cause Notice, the report of CSIR-NGRI obtained by DRI in respect of said consignment covered under the aforesaid B/E has no bearing for classification ofimpugned 05 consignments; that the contents of para 8 comprising sub-para 8.1 to 8.4 are therefore, extraneous and cannot be relied for determination of classification of impugned 05 consignments;

26.13 That the reports given by GSI/CSIR-NGRI Laboratories are inadmissible in evidence being contrary toauthorised practice prescribed for Customs formations, even those reports do not conclusively establish that the samples tested by them were not Dolomite; that HSN Explanatory Notes to CTH 2518 specifically states that Dolomite is a natural mixture of Calcium and Magnesium and it is an unhydrus carbonate material composed of Calcium Magnesium Carbonate, Chemical Formula being CaMg $(CO_3)_2$ and as per Test Report, the samples of the consignment satisfy aforesaid parameters; that moreover, theseReports pressed into service by DRI are also non-specific, inconclusive and vague as the reports do not categorically state that the samples were Marble and not Dolomite but give an vague and elusive description that the samples were "Dolomitic Marble" and thus Department's contention that the goods are not Dolomiteon the basis of these reports also, is ex-facie wrong;

26.14 That the report obtained by DRI from GSI Laboratory in respect of consignments enlisted in Annexure-A, contrary to established practice, otherwise also cannot be applied in respect of the other 03 consignments enlisted in Annexure-B & C of the Show Cause Notice as it is settled law laid down by the Hon'ble Tribunal in the matter of Shalimar Paints Vs. Commissioner, Central Excise, Kolkata – 2001 (134) ELT 285 which is affirmed by the Hon'ble Supreme Court as reported in 2002 (145) ELT A 242.

26.15 That in the impugned Show Cause Notice, Department has placed huge reliance on the material available on the website of the original supplier to allege that the goods were Marble and not Dolomite, which in Noticee's respectful submission, *ex-facie* wrong insofar as the original supplier who had dispatched the goods directly from the place of origin to India in all the documents viz. Invoices, Packing Lists and Bills of Lading, had categorically declared the goods to be Rough Dolomite Blocks/Rough Polished Dolomite Slabs and indicated HSN Codes as 2518 10 00 and 6802 99 00; that even in the Country of Origin Certificates issued by the Statutory Authorities in the originating countries, have categorically declared the goods to be Rough Dolomite Blocks and Polished Dolomite Slabs, HS Code being 2518 10 00 and thus, Department's reliance on the overseas supplier's website to allege that the goods were Marble Blocks/Marble Slabs, is ex-facie wrong being contrary to the declarations made by the original supplier in the Country of Origin Certificate and Bs/L.;

26.16 That it is settled law that declared description and claimed classification which are supported by documentary evidence, cannot be disputed on the basis of unsubstantiated claims made in the website and in support of aforesaid submission, placed reliance on the judgments of Hon'ble Tribunal in the matter of HEDE Ferrominas Pvt. Ltd. Vs. Commissioner of Customs (Import), Mumbai – 2016 (334) ELT 540 (Tri. – Bom);

26.17 That the Department has also relied on Delivery Challans issued by Noticee for dispatch of goods imported under B/E No. 7716262 dated 25.02.2020 to Royal Impex, the job worker in Silvasa for further processing of the material, wherein the description of goods was mentioned as Santa Marina Rough Marble Blocks to buttress the allegation of mis-declaration; that this was an error committed by Dispatch Clerk while preparing the Delivery Challans as except for these Challans, all other documents issued by original suppliers viz. Eagle S.A., Greece; consignees of the impugned consignments viz. Edifice Ventures Ltd. HK; and Noticee's Sales Invoices to DLF unequivocally declared the goods to be Dolomite. Hence, in the face of all these documents duly accepted by the Customs Authorities in the Country of Origin, in Consignees' Country and by Indian Customs, Department's selective reliance on erroneous documents, is ex-facie arbitrary and wrong.

26.18 That the documents viz. Invoice, Packing List, Bill of Lading, Country of Origin Certificate pertaining to 05 consignments issued by the original suppliers namely Eagle S.A., Greece/ DerbentMaden A.S., Turkey/Mermaid MadencilikihracatIthalatSan.Ve.Tic Turkey and the overseas sellers namely Edific Ventures Ltd. HK/Market First Group LLC, USA, which documents clearly depict that the goods were Dolomite: that even the test reports of laboratories in the Country of Origin have found the goods to be Dolomite on testing.

26.19 That Department has made certain incorrect averments in the show Cause Notice to sustain allegation; that the demand is not sustainable even under the provisions of Section 28(4) of the Customs Act, 1962; that in respect of all the 02 consignments enlisted in Annexure-A, has been proposed invoking provisions of Section 28(4) of the Customs Act, 1962, in Noticee's respectful submission, the invocation is ex-facie wrong as the consignments covered under Bs/E No. 8857370 and 8857392, both dated 18.09.2020 were cleared provisionally under the provisions of Section 18 of the Customs Act, 1962 read with Section 110A of the Act ibid and thus, invoking the provisions of Section 28(4) in respect of those 02 consignments is otherwise also unsustainable in law;

26.20 That demand of duty amounting to Rs. 1,89,75,531/- in respect of Bs/E No. 7716262 dated 21.05.2020 and 8281788 dated 25.07.2020 enlisted in Annexure-B and B/E No. 6901605 dated 15.02.2020 enlisted in Annexure-C, is ex-facie barred by limitation as the aforesaid consignments were cleared on 01.06.2020, 29.07.2020 and 25.02.2020 respectively, whereas Show Cause Notice in the instant case was issued on 07.08.2023, hence, the demand having been issued beyond the period of limitation of two years prescribed under Section 28(1) of the Customs Act, 1962, is barred by limitation and cannot be sustained; that the Department has demanded of duty in respect of consignments covered under aforesaid Bs/E invoking extended period of limitation under Section 28(4) of the Customs Act, 1962, which is ex-facie arbitrary; that as the Bs/E were assessed after due scrutiny of declarations made in the Bs/E and documents enclosed therewith and were passed Out of Customs Charge after due physical examination and testing of samples from CRCL, invocation of extended period of limitation in respect of these Bs/E is also wrong and unlawful; that cited the decision of Hon'ble Supreme Court in the matter of Uniworth Textiles Ltd. Vs. Commissioner of Central Excise, Raipur – 2013 (288) ELT 161 (SC) and AbanLoyds Chiles Offshore Ltd. Vs. Commissioner of Customs, Maharashtra – 2006 (200) ELT 370 (SC) and Tribunal's decision in the matter of Sab Nife Power Systems Ltd. Vs. Commissioner of Customs, Chennai – 2000 (124) ELT 1080 (Tribunal).

26.21 That the dispute being purely of classification, invocation of the provisions Section 111(m) of the Customs Act, 1962 for confiscation of goods, cannot be countenanced being ex-facie arbitrary and perverse; that cited decision of Tribunal in the matters of Ashwani Kumar Jain Vs. Commissioner of Central Excise, Meerut - 2011 (270) ELT 245 (T); Commissioner of Customs (Import), Mumbai Vs. Finesse Creation Inc. – 2009 (248) ELT 122 (Bom.); and Commissioner of Customs, Amritsar Vs. Raja Impex (P) Ltd. – 2008 (229) ELT 185 (P&H).

26.22 That that invocation of provisions of Section 112, 114A, 117 and Section 114AA of Customs Act, 1962 in the facts and circumstances of the present case is also not sustainable as the very charge of misdeclaration/misclassification and liability to confiscation being not tenable, invocation of penal provisions also cannot be countenanced; .That they cited the decision of Hon'ble Tribunal in the matters of Commissioner of Cus., Sea, Chennai-II Vs. Sri Krishna Sounds and Lightings - 2019(370)ELT594(Tri. - Chennai), Bosch Chassis Esystems India Ltd. – 2015(325)ELT372 (Tri. - Del) and Decision of Hon'ble Supreme Court in case of Hindustan Steel V/s State of Orissa 1978 (2) ELT J 159 (SC);

27. M/s International Cargo Corporation, Mulund (West), Customs Broker and Shri Rupesh Jivanbhai Katariya, an Authorised signatory of the Customs Broking firm M/s International Cargo Corporation, Mulund (West), Customs Broker filed their common written submission dated 05.12.2023 wherein they interalia stated as under:

27.1 That the allegations made against the Noticees are completely baseless and devoid of any substance and as such, cannot be legally sustained in the absence of any credible evidence; that it is on record that the Importer has not implicated the Noticees herein in any of their statements; that Shri Salim Khan, Director of the Importer has categorically deposed that he was responsible for all imports and that he used to interact with overseas supplier and personally visited the overseas supplier and also decided classification of the goods imported as per his knowledge; that no incriminating evidence is forthcoming from the statements of the Noticee either; that following documents purported to be documentary evidence is relied upon in the SCN against them for showing their knowledge of wrong doing by the Importer. (i) commercial invoice, packing list issued by original supplier from originating country(ii) declaration filed by original supplier of goods at load port (iii) purchase orders placed by M/s Monark to overseas supplier for purchase of goods; that the said so-called documents purported to be evidence against the Noticee were not provided by the Importer to the Noticee while filing the Bills of entry at all; that they had prepared all the Bills of entry based on the Import documents such as commercial invoice, packing Lists, B/L etc. of the Shipper which were provided to them by the Importer via E- mail and based on the same, they had prepared checklists which were approved by the Importer. The import documents were uploaded on E- Sanchit on the basis of which the goods were assessed by the Proper officers of Customs. It is further submitted that on no occasion, the invoices of original supplier (procurement invoice) and declaration of goods at the load port purportedly made by the original supplier of the goods were provided to the Noticee by the Importer. There is no such evidence forthcoming from the statements of the Importer and the Customs broker recorded by the DRI; that as per the normal practice of assessment, such procurement invoice from original shipper is requisitioned only if the proper officer of customs doubts the declared value of goods while doing the assessment and also in cases where any benefit of concessional duty based on country of origin of the goods is claimed by the assessee.

27.2 That the other documents relied upon in the SCN for proving knowledge of the Noticee namely(i) purchase order placed by M/s DLF Home Developers Ltd on local buyers of marble slabs in India(ii) Delivery challans issued by Monark India Pvt Ltd for job work etc are in the nature of post clearance documents and as such, are not required by the proper officer for facilitating assessment of the goods and accordingly, there is neither any warrant nor any obligation casts on the Customs Broker under the Customs Act, 1962 to solicit such documents from the Importer. Customs Broker is not privy to the post import/ post clearance activities of the Importer. As a customs broker, his job is limited to filing the Bill of entry based on the Import documents so as to facilitate assessment of goods by the proper officer of customs before the delivery and once this is done, he has no further role to play; that so far as the test/ analysis report in respect of (2) live Bills of entry covered under Annexure-A to SCN is concerned, the same shall not be used to cause any prejudice to the Noticee considering the fact that it was the Noticee who had asked for First Check examination of goods and drawl of samples a day ahead of intervention by the DRI; that in the absence of any credible evidence to prove complicity of the Noticee CB in the alleged act of misdeclaration/ misclassification by the Importer, the allegations and the charges made against the Noticees in the SCN cannot be legally sustained. Therefore, the SCN deserves to be dropped.

27.3 That the third limb of Section 107 of the IPC which defines" abetment" requires that a person intentionally aids by any act or illegal omission the doing of that thing; that in the absence of any evidence to establish knowledge of the Noticee CB in the acts of commission or omission by the Importer to misdeclare or misclassify the goods, the charge of abetment against the Noticee so as to render the goods liable to confiscation under the provisions of Section 111(m) of the Customs Act ,1962 cannot be legally sustained and consequently, no penalty is imposable on the Noticee under Section 112 of the Customs Act, 1962;

27.4 That from para 20 of the SCN that the respondents have recorded a clearcut finding that the actual facts were only known to the Importer about the product and its classification; that without prejudice to above factual position, even otherwise, it is settled law that the Customs Broker is no way responsible for deciding classification of the goods and that classification is the prerogative of the officers of customs only;

27.4 That they relied upon a decision of Hon CESTAT Ahmedabad in the case of Adani Wilmar Ltd vs Commissioner of Customs (Prev) Jamnagar reported in 2015(330) ELT 549(Tri-Ahmd) and Hon. CESTAT Mumbai in the case of Sarosh Nagarwala v/s Commr of Customs (Export) Nhava Sheva reported in 2017(358) ELT 542 (Tri-Mum); decision of Hon. CESTAT New Delhi in the case of Him Logistics Private Ltd v/s Commissioner of Customs New Delhi reported in 2016(338) ELT 721 (TRI-Del).Brijesh international v/s Commissioner of Customs, New Delhi 2017 (352) ELT 229 (Tri), Prime Forwarders v/s Commissioner of Customs, Kandla 2008(222)ELT 137 (Tri-Ahm) Escorts heart institutes & research centre v/s Commissioner of Customs, New Delhi 2016 (336) ELT 185 (Tri) upheld by Hon'ble Supreme Court 2017 (348) ELT A131,Commissioner of Customs v/s Vaz forwarding Ltd2011 (266) ELT 39 (Guj),Cargo & Travel Services Pvt Ltd v/s Commissioner of Customs 2010 (252) ELT 82 (Tri),Premier instruments & controls ltd v/s CC 2008 (227) ELT 139 (Tri),Panjrath Road Carriers v/s Commissioner of Ludhiana 2018 (359) ELT 408 (Tri) Fast Cargo Movers v/s Commissioner of Customs, Jodhpur reported in 2018(362) ELT 184 (Tri-Delhi),Lewek Altair Shipping Pvt Ltd v/s Commissioner of Cus, Vijaywada reported in 2019(366) ELT 318(Tri-Hyd),CCE vs. Vetril Electronics Pvt. Ltd. 2012 (281) ELT 222 (Kar.),Essar Telecom Infrastructure Pvt. Ltd. vs. UOI, 2012 (275) ELT 167 (Kar.),CCE vs. ITC Ltd., 2010 (257) ELT

514 (Kar.) and M/s Fairdeal Shipping Agency Pvt Ltd v/s Commissioner of Customs (General) Mumbai reported in 2019-TIOL-990-CESTAT-MUM.

27.5 That in view of the aforesaid submissions, no penalty can be imposed on the Noticee in terms of section 112(a)/ 112(b) and 114AA of the Customs Act, 1962 and as such, the SCN issued to the Noticee the deserves to be dropped.

28. Personal Hearing : The Personal Hearing was fixed on 05.06.2024 for M/s. Monark India Pvt. Ltd. and Shri Salim Khan, Director of M/s. Monark India Pvt. Ltd., M/s. International Cargo Corporation and Shri Rupesh Katariya, Authorised Signatory of M/s. International Cargo Corporation. Shri Piyush Kumar, Advocate appeared alongwith Shri Salim Khan, Director for Personal Hearing for M/s. Monark India Pvt. Ltd. and its Director Shri Salim Khan wherein they reiterated their submission dated 05.06.2024 filed for M/s. Monark India Pvt. Ltd. and Shri Salim Khan, Director of M/s. Monark India Pvt. Ltd. respectively. Further, they submitted compilation of case laws. Further, Shri Girish Nadkarni, Advocate appeared for the personal hearing on 05.06.2024 alongwith Shri Rupesh Katariya, Authorised Signatory of M/s. International Cargo Corporation for M/s. International Cargo Corporation wherein they reiterated their submission as detailed in their written submission dated 05.06.2024.

29. Findings: I have carefully gone through the Show Cause Notices dated 07.08.2023 written submission dated 05.06.2024 filed by M/s. Monark India Pvt. Ltd. and Shri Salim Khan, Director of M/s. Monark India Pvt. Ltd. respectively and case laws submitted by their advocate during the Personal Hearing held on 05.06.2024. I have also gone through the written submission dated 05.06.2024 filed by M/s. International Cargo Corporation and its Authorised Signatory Shri Rupesh Katariya and submission made during the course of Personal Hearing.

30. The issues for consideration before me in these proceedings are as under:-

(a) Whether the declared classification of the subject goods under Customs Tariff Item No.25181000 in the Bills of Entry as detailed in Annexure-A, Annexure-B (at Sr.No.1), and Annexure-C should be rejected and the goods should be re-classified under the Customs Tariff Item No.25151210 of the First Schedule to the Customs Tariff Act, 1975 and whether the subject Bills of Entry should be re-assessed?

(b) Whether the declared classification of the subject goods under Customs Tariff Item No.68022900 in the Bills of Entry as detailed in Annexure-B (at Sr.No.2)should be rejected and goods should be re-classified under the Customs Tariff Heading No.68022190 of the First Schedule to the Customs Tariff Act, 1975 and whether the subject Bills of Entry should be reassessed?

(c) Whether the goods valued at **Rs.18,81,421/-(Rs. Eighteen Lakh, Eighty One Thousand Four Hundred and Twenty One only)** as detailed in Annexure A, attached to Show Cause Notice seized on 03.12.2020 is liable for confiscation under Section 111 (m) of the Customs Act, 1962?

(d) Whether differential/short paid Customs Duty amounting to **Rs.1,98,67,743/- (Rs. One Crore, Ninety Eight lakh, Sixty Seven Thousand, Seven Hundred and Forty Three Only)** as detailed in Annexure-A, B &C attached to the Show Cause Notice should be demanded and recovered under Section 28(4)of the Customs Act, 1962 alongwith applicable interest under Section 28AAibid?

(e) Whether the Bond for **Rs.18,81,421/-(Rupees Eighteen Lakh, Eighty One Thousand, Four Hundred and Twenty One only)** and the Bank Guarantee of **Rs.12,32,425/-(Rupees Twelve Lakh, Thirty Two Thousand, Four Hundred and Twenty Five only)** furnished by M/s. Monark India Pvt. Ltd. against goods imported vide Bills of Entry as detailed in Annexure A, attached to Show Cause Notice should be enforced/en-cashed for the recovery of Custom dues, fine, penalty, etc.;

(f) Whether the goods valued at **Rs. 4,02,67,650/-(Rs. Four Crore, Two Lakh, Sixty Seven Thousand, Six Hundred and Fifty only)** as detailed in Annexure B & C, attached to Show Cause Notice should be held liable for confiscation under the provisions of Section 111(m) of the Customs Act, 1962 as the same have been cleared and are not physically available for confiscation?

(g) Whether, Penalty should be imposed under the provisions of Section 112(a) and 112(b) of the Customs Act, 1962?

(h) Whether Penalty should be imposed under the provisions of Sections 114A, 114AA and 117 of the Customs Act, 1962

(i) Whether, Penalty under Section 112(a) & (b), Section 114AA and Section 117 of the Customs Act, 1962 should be imposed on Shri Salim Khan, Director of M/s. Monark India Pvt. Ltd., Gurgaon-122016?

(j) Whether, Penalty under Section 112(a), (b), and Section 114AA of the Customs Act, 1962 should be imposed on M/s. International Cargo Corporation, Mumbai-400080?

(k) Whether, Penalty under Section 112(a), (b) and Section 114AA of the Customs Act, 1962 should be imposed on Shri Rupesh Jivanbhai Katariya, Authorized Signatory of M/s. International Cargo Corporation, Mumbai-400080?

31. The most vital question that comes up for consideration in case on hand is (a) whether the goods in question are 'Rough Marble Blocks', classifiable under Customs Tariff Item No.25151210, as per Annexure-A , Sr. No.1 of Annexure B and Annexure-C of the Show Cause Notice, or 'Rough Dolomite Blocks' classifiable under Customs Tariff Item No.25181000', as per the Importer; and

(b) whether the goods ' Polished Marble Slabs' covered under Bill of Entry No. 8281788 dated 25.07.2020 (Sr. No.2 of Annexure-B to SCN) is classifiable under Customs Tariff Item No. 68022190 or " polished Dolomite Slabs' classifiable under Customs Tariff Item No. 68029900.

I find that Para 30(c) to 30(k) would be relevant only if the goods in question are found as Rough Marble Blocks, classifiable under Tariff Item 25151210 and ' Polished Marble Slabs' classifiable under Customs Tariff Item No. 68022190. For the purpose of ascertaining the same, it would be appropriate firstly to make a reference to the Customs Tariff Headings 2515 and 2518 as appearing in the Customs Tariff Act, 1975 as well as the HSN Explanatory Notes for the said Tariff Headings.

31.1 Customs Tariff Heading No.2515 reads as under:

2515 MARBLE, TRAVERTINE, ECAUSSINE AND OTHER CALCAREOUS MONUMENTAL OR BUILDING STONE OF AN APPARENT SPECIFIC GRAVITY OF 2.5 OR MORE, AND ALABASTER, WHETHER OR NOT ROUGHLY TRIMMED OR MERELY CUT, BY SAWING OR OTHERWISE, INTO BLOCKS OR SLABS OF A RECTANGULAR (INCLUDING SQUARE) SHAPE

- Marble and travertine :

2515 11 00 -- Crude or roughly trimmed

2515 12-- *Merely cut, by sawing or otherwise, intoblocks or slabs of a rectangular (includingsquare) shape :*

2515 12 10--- Blocks

2515 12 20--- Slabs

2515 12 90 --- Other

2515 20 --- *Ecaussine and other calcareous monumental or building stone; alabaster :*

2515 20 10 --- Alabaster.

2515 20 90 --- Other

31.2 Customs Tariff Heading No.2518 reads as under:

2518 DOLOMITE, WHETHER OR NOT CALCINED OR SINTERED, INCLUDING DOLOMITE ROUGHLY TRIMMED OR MERELY CUT, BY SAWING OR OTHERWISE, INTO BLOCKS OR SLABS OF A RECTANGULAR (INCLUDING SQUARE) SHAPE; DOLOMITE RAMMING MIX

2518 10 00 - Dolomite not calcined or sintered.

2518 20 00 - Calcined or sintered dolomite.

2518 30 00 - Dolomite ramming mix

It can be seen from the above that 'Marble Blocks' are covered under Customs Tariff Item No.25151210 whereas 'Dolomite Blocks' are covered under Customs Tariff Item No.25181000,

31.3 HSN Explanatory Notes to Customs Tariff Heading No.2515 reads as under:

Marble *is a hard calcareous stone, homogeneous and fine-grained, often crystalline and either opaque or translucent. Marble is usually variously tinted by the presence of mineral oxides (coloured veined marble, onyx, marble, etc.) but there are pure white varieties.*

Travertines *are varieties of calcareous stone containing layers of open cells.*

Ecaussine *is extracted from various quarries in Belgium and particularly at Ecaussines. It is a bluish grey stone with an irregular crystalline structure and contains many fossilised shells. On fracture Ecaussine shows a granular surface similar to granite and is therefore sometimes known as 'Belgian granite', 'Flanders granite' or 'Petit granit'.*

The heading covers ***other similar hard calcareous monumental or building stones, provided their apparent specific gravity is 2.5 or more*** *i.e. effective weight in kg/ 1.000 cm3. Calcareous monumental or building stones of an apparent specific gravity of less than 2.5 are classified in heading 25.16.*

The heading also includes both ***gypseous alabaster,*** *which is usually white and uniformly translucent, and* ***calcareous alabaster,*** *normally yellowish and veined.*

The heading is restricted to the stones specified, presented in the mass or roughly trimmed or merely cut, by sawing or otherwise, into blocks or slabs of a rectangular (including square) shape. In the form of granules, chippings or powder, they fall in ***heading 25.17.***

Blocks etc., which have been further worked, i.e. bossed, dressed with the pick, bushing hammer or chisel etc., sand-dressed, ground, polished, chamfered, etc., are classified in ***heading 68.02****. The same classification applies to blanks of articles.*

The heading also excludes:

(a)Serpentine or ophite (a magnesium silicate sometimes called marble) ***(heading 25.16).***
(b)Limestone (known as 'lithographic stone' and used in the printing industry) ***heading 25.30*** *when in the crude state).*
*(c)Stones identifiable as mosaic cubes or as paving flagstones, even if merely shaped or processed as specified in the text of this heading (****heading 68.02 or 68.01*** *respectively).*

31.4 HSN Explanatory Notes to Customs Tariff Heading No.2518 reads as under: ***Dolomite is a natural double of calcium and magnesium.***

The heading covers crude dolomite as well as calcined and sintered dolomite. Dolomite is calcined at a temperature range of 700oC – 1000oC to convert it into magnesium and calcium oxides by releasing carbon dioxide. On the other hand, sintered dolomite is obtained by heating dolomite to a temperature range of 1700o C – 1900o C when it becomes a refractory material. The heading also includes dolomite which has been roughly trimmed or merely cut, by sawing or otherwise, into blocks or slabs of a rectangular (including square) shape.

The heading further includes dolomite ramming mixes which are used as refractory materials (e.g. for furnace lining). These products are traded in powder or granular form consisting predominantly of crushed sintered dolomite. Depending on the field of application or temperature at which the mix will be used, different non-hydraulic binding agents (e.g. tar, pitch, resins) are used.

However, the heading does not cover crushed dolomite for concrete aggregates, road metalling or railway ballast ***(heading 25.17)***

35.5 Further, as per Geology.com, 'Marble' is a metamorphic rock composed primarily of the mineral calcite ($CaCO_3$) and usually contains other minerals, such as clay minerals, micas, quartz, pyrite, iron oxides, and graphite whereas Dolomite is a common rock-forming mineral i.e. a calcium magnesium carbonate with a chemical composition of $CaMg(CO_3)_2$.

31.6 As per Para 30.6 of Indian Minerals Year Book 2020 (59th Edition) ,issued by Government of India, Ministry of Mines, Indian Bureau of Mines, Dolomite (CaCO3 .MgCO3) theoretically contains CaCO3 54.35% and MgCO3 45.65% or CaO 30.4%, MgO 21.9% and CO2 47.7%. However, in nature, Dolomite is not available in this exact proportion. Hence, in commercial parlance, the rock containing 40-45% MgCO3 is usually called Dolomite.

31.7 As per Para 30.15 of Indian Minerals Year Book 2020 (59th Edition), issued by Government of India, Ministry of Mines, Indian Bureau of Mines,in terms of geological definition, **Marble** is a metamorphosed limestone produced by re-crystallisation under conditions of thermal and regional metamorphism. In commercial parlance, all calcareous rocks capable of taking polish are classed as marbles. Furthermore, serpentine rocks containing little calcium or magnesium carbonates, if attractive and capable of taking good polish are also classed as marbles.

31.8 In Indian Standard Specification for **Marble, IS:1130-1969**, Entry No. 0.2 marbles have been described as *metamorphic rocks capable of taking polish, formed from the re-crystallization of limestones or* ***dolomitic limestones*** *and are distinguished from limestone by even visibly crystallined nature and non-flaggy stratification.* (**Note**-Sometimes rocks, such as serpentine are also polished and used in trade as marble.)

Further, the Government of India, Ministry of Mines, Indian Bureau of Mines has also defined the marble in geological term as *"it is a metamorphosed limestone produced by recrystallisation under condition of thermal and also regional metamorphism. In commercial parlance, all calcareous rocks capable of polish are classed as marbles. Furthermore, serpentine rocks, containing little calcium or magnesium carbonates, if attractive and capable of taking good polish are also classed as marbles. The calcareous stones like onyx, travertine and some limestone have also been classed as marbles."*

31.9 As per the classification provided by the Government of India, Ministry of Mines, Indian Bureau of Mines vide the Indian Minerals Yearbook 2013 (Part- III : Mineral Reviews) the marbles are first classified on the basis of colour, shade and pattern and second on the basis of their genesis and chemical composition.The Indian Bureau of Mines classified marbles by their genesis and chemical composition as under:

i) **Calcite Marble:** It is a crystalline variety of limestone containing not more than 5% magnesium carbonate. Colour and design wise, it may vary from grey to white to any colour, and even figurative light- brown to pink.

ii) **Dolomitic Marble**: It is a crystalline variety of limestone containing not less than 5% or more than 20% magnesium carbonate as dolomite molecules.

iii) **Dolomite Marble:** It is a crystalline variety of dolomite containing in excess of 20% magnesium carbonate as dolomite molecules. It has variegated colours and textures. As the whiteness increases, the lustre and translucency increases to an extent that it starts resembling with onyx. The main advantage of this marble is availability of exotic colours and patterns and its low maintenance cost. Marbles of Banswara in Rajasthan and Chhota Udaipur in Gujarat belong to this category.

iv) **Siliceous Limestone:** It is a limestone containing high silica with smooth appearance due to fine-grained texture. It is difficult to cut and polish this type of marble but once polished, it gives a pleasant look. It is available in several colours and designs. The pink marble of Babarmal and Indo-Italian variety from Alwar belongs to this category.

v) **Limestone:** Several varieties of limestone are being exploited and used as marble. The Oolitic limestone of UK, Black Marble of Bhainslana, Katra & Sirohi and Golden-yellow Marble of Jaisalmer belong to this category. This type requires frequent maintenance in the form of polishing as they are non-metamorphosed and hence are softer in nature.

vi) **Serpentine or Green Marble:** This marble is characterised mainly by the presence of a large amount of serpentine mineral. It has various shades of green varying from parrot-green to dark-green and is known for having varying degrees of veinlet intensities of other minerals, chiefly carbonate of calcium and magnesium. Most of the green marbles from Gogunda, Rikhabdeo, Kesariyaji and Dungarpur belong to this category. This marble is mostly used for anelling. The darker variety of this marble, which is so dark-green that it looks like black, has been termed as Verde Antique.

vii) **Onyx:** It is a dense crystalline form of lime carbonate deposited usually from cold water solutions. It is generally transparent to translucent and shows a characteristic variegated colour layering due to mode of deposition. Such type of marble is found in Kupwara district in Jammu and Kashmir. It is used for making decorative articles.

viii) **Travertine Marbles:** It is a variety of limestone regarded as a product of chemical precipitation from hot springs. The depositional history has left exotic patterns, when this is cut into thin slabs and polished, it become translucent.

Marble is a metamorphic rock that forms when limestone is subjected to the heat and pressure of metamorphism. Marble is composed primarily of the mineral calcite (CaCO3) and usually contains other minerals, such as clay minerals, micas, quartz, pyrite, iron oxides, and graphite. Under the conditions of metamorphism, the calcite in the limestone recrystallizes to form a rock that is a mass of interlocking calcite crystals. Dolomite Marble is also a form of marble, which is a crystalline variety of dolomite containing in excess of 20% magnesium carbonate as dolomite molecules.

31.10 I find it is needless to re-produce the Test Report forwarded to the Geological Survey of India, Western Region, Jaipur as it is already stated at Para No. 5 to 5.2.4 inthe Show Cause Notice. However, I would like to re-produce the reply to the queries to the Test Memo No. 1 and 2 given by the Geological Survey of India, Western Region, Jaipur which clearly depicts the concise of the Test reports.

Query	Response to Query in respect of Test memo-1	Response to Query in respect of Test memo-2
Whether the rock is sedimentary or metamorphic in nature?	Metamorphic	Metamorphic
Specific gravity of the rock.	2.72	2.77
Chemical composition of the rock	Chemical analysis report attached herewith	Chemical analysis report attached herewith
Whether the stone is formed from the re-crystallization of limestone and/ or dolomitic limestone?	The sample is formed from dolomitic limestone	The sample is formed from dolomitic limestone
Whether the rock is sufficiently hard and capable of taking polish and can be used as marble slabs?	Yes	Yes
Petrographic analysis of the rock	Petrology laboratory report attached herewith	Petrology laboratory report attached herewith
Whether it meets the specifications of marble? If yes, which type of marble it is?	Yes, Physical property and based on the petrography, chemical composition and specific gravity data, the same meets the specification of marble. More precisely, it is dolomitic marble.	Yes, Physical property and based on the petrography, chemical composition and specific gravity data, the same meets the specification of marble. More precisely, it is dolomitic marble.

31.11 Further, I find that during the investigation, sample 'Rough Dolomite Blocks' imported vide Bill of Entry No. 9879849 dated08.12.2020 at ICD Tumb,

were sent to the CSIR-National Geophysical Research Institute, Uppal Road, Hyderabad under Test memo No.1078183 dated 11.12.2020. The Test Report dated 29.01.2021received from the CSIR-National Geophysical Research Institute, Hyderabad has given Test Report considering different parameters/analysis viz. Physical properties, Optical properties & Chemical properties along with queries & response. The details of the Test Report are found as under:

1) The rock is a metamorphic rock.
2) Specific gravity of the rock is 2.73
3) Sample rock is formed from re-crystallization of limestone and/ or Dolomitic limestone.
4) Rock is enough hard to be polished and can be used as marble slabs.
5) Based on petrography, chemical composition and specific gravity data, the sample meets the specification of Marble.
6) Rock is identified as **Dolomite Marble**.

31.12 On harmonious reading of the Customs Tariff Headings 2515 and 2518, the HSN Explanatory Notes of the said Tariff Headings, Classification provided by the Government of India, Ministry of Mines, Indian Bureau of Mines vide the Indian Minerals Yearbook 2013,Indian Standard Specification for Marble, IS:1130-1969, Para 30.6 and 30.15 of Indian Minerals Year Book 2020 (59th Edition) and Test Reports given by Geological Survey of India, Western Region, Jaipur and Test Report of CSIR-National Geophysical Research Institute, Uppal Road, Hyderabad in respect of 'Rough Dolomite Blocks' imported vide Bill of Entry No. 9879849 dated08.12.2020 by the importer, I find that imported goods is Dolomitic Marble and its merit classification is Customs Tariff Item No. 25151210 and not Customs Tariff Item No. 25181000 as claimed by the importer.

31.13 I find that there are documents available which also corroborate that the goods imported by the importer as "Rough Dolomite Blocks" were actually Block of Dolomite Marble. On scrutiny of Commercial Invoice No. 87 dated 23.12.2019 issued by overseas supplier M/s. Eagle S.A., Greece, it reveals that description of goods was mentioned as "Marble Blocks" and in packing list it was mentioned that "20 Marble Blocks having 283.94 MT" of weight were supplied to M/s. Edifice Ventures Limited, Hong Kong and actual goods was delivered to the importer. Further, the export declaration filed by the overseas supplier as mentioned at Para 12.5 (v) and 12.6 (i) of SCN, the goods was declared as Block of Marble'. Further, Importer had placed the Purchase Order No. MIPL/ELV/ST/1/1920-Amend-1 dated 04.03.2020 to overseas supplier M/s. Edifice Venture Ltd., Hong Kong for purchase of Rough Marble Blocks of various trade names viz. Dark Emperador, Pietra Grey & Black Mariquina, Rough Dolomite Block (Butterfly). Thus, it clearly sustains that Importer had imported marbles only. Further, Purchase Order No. CFT/POD/00019/1920 dated 30.03.2020 placed by M/s. DLF Home Developers Ltd, a buyer in India to the Importer was for " Supply of Marble/Stone slabs". Further, from the website of M/s. Eagle Sa, Greece i.e. eagle-sa.gr/thassos who was one the supplier of Importer that goods imported by the importer was Dolomite Marble., Further, Shri Krishnan Kumar, Partner of M/s. Royal Impex, Silvasa to whom the Importer had sent the impugned goods for job work has admitted in his statement dated 15.09.2022 that their company has received 'Rough marble block' from the Importer imported vide Bill of Entry No. 7716262 dated 21.05.2020. Also Shri Salim Khan, Director of Import Company in his statement dated 30.07.2021 & 22.09.2022 at Para No. 10.17 has admitted that "that after going through the content of websites and available in open source, the Dolomite Blocks/Dolomite Slabs imported by 'M/s Monark' were Dolomitic Marble Blocks

and Dolomitic Marble Slabs only and Dolomitic Marble Blocks were treated/ processed the same as Marble Blocks on job work basis and the resultant Marble/Slabs were traded/sold as Santa Marina, White Wave, Dark Emperador, Pietra Grey, Black Mariquinab &Thassos White."

31.14 Thus, from the above discussion and findings, I find that goods covered under Bills of Entry as mentioned in Annexure-A , Sr. No.1 of Annexure B and Annexure-C of the Show Cause Notice are 'Rough Marble Blocks', classifiable under Customs Tariff Item No.25151210, and accordingly Bills of Entry are required to be reassessed. Further, the goods covered under Bill of Entry No. 8281788 dated 25.07.2020 (Sr. No.2 of Annexure-B to SCN) is ' Polished Marble Slabs' classifiable under Customs Tariff Item No. 68029900 and therefore the said Bill of Entry is also required to be re-assessed.

31.15 I find that importer has contended that DRI has chosen to obtain opinion from a lab other than the one empowered and specifically tasked by Board to carry out such testing and give opinion for the purpose of administration of Customs and allied laws; reliance on test reports obtained by DRI from GSI Laboratory in respect of impugned 02 consignments covered under B/E No. 8857370 and 8857392, both dated 18.02.2020 is ex-facie wrong. This contention is not acceptable, as in the identical import of " Rough Dolomite Block/Dolomite Block" imported by M/s. Nitco Limited, the DRI has sent samples of said goods to CRCL, Vadodara vide Letter dated 27.10.2020.CRCL, Vadodara on 20.11.2020 reported the chemical composition of the rock and informed that they could not test the sample to ascertain other parameters like nature of the rock, specific gravity and petrographic test for want of facility. In the present case, DRI had sent samples for testing to Geological Survey of India, Western Region, Jaipur vide letter F.No. DRI/AZU/CI/ENQ-53/INT-11/2020)dated 04.12.2020 which is subsequent to the CRCL, Vadodara's report dated 20.11.2020 showing inability to carry out vital parameters like nature of the rock, specific gravity and petrographic test.

Further, I find that the CRCL's Manual says that "The Chief Chemist is also the appellate testing authority when a party demands a retest or when the Collector of Customs, the Collector of Central Excise or any higher authority desires to have a second technical opinion.". In the present case, the importer has merely contended that DRI has chosen to obtain opinion from a lab other than the one empowered and specifically tasked by Board to carry out such testing and give opinion for the purpose of administration of Customs and allied laws, reliance on test reports obtained by DRI from GSI Laboratory in respect of impugned 02 consignments covered under Bs/E No. 8857370 and 8857392, both dated 18.02.2020 is ex-facie wrong. Whereas as per above referred CRCL, Manual, the importer has not requested for re-testing of samples. Therefore, said plea is not tenable.

31.16 Further, I find that importer has contended that out of impugned 05 consignments, 02 consignments covered under B/E No. 7716262 dated 21.05.2020 enlisted in Annexure-B and B/E No. 6901605 dated 15.02.2020 enlisted in Annexure-C were cleared after due physical examination and testing of the representative samples drawn from the consignments by CRCL.As per test reports of CRCL, the goods were found as declared on testing, whereas consignment of Polished Dolomite Slab covered under B/E 8217288 dated 25.07.2020 was cleared by the Proper Officer after due physical examination and satisfaction that the goods were as declared and submitted summary of declaration and findings of CRCL as reported in Test Reports as tabulated below for ready reference:-

B/E No. & Date	Description as per B/E	Findings returned in Test Reports
7716262 dated 21.05.2020	Rough Dolomite Blocks (Santa Maria)	The sample is in the form of white broken pieces of irregular shape & size. It is composed of carbonates of Calcium & Magnesium (Dolomite).
6901605 dated 15.02.2020	Rough Dolomite Blocks	The sample is in the form of white colour hard broken pieces of varying shapes and size. It is mainly composed of carbonate of Calcium & Magnesium (Dolomite) together with traces of Iron & Siliceous matter.

I find from the perusal of the said report of CRCL, that CRCL have merely reported that it is composed of carbonates of Calcium & Magnesium (Dolomite) whereas CRCL has not given Test Reports regarding important parameter such as nature of the rock, specific gravity and petrographic test. Therefore, the said CRCL report cannot be considered as conclusive Test Report. Further, there is no dispute that goods covered in the said two Bills of Entry No. 7716262 dated 21.05.2020 and 6901605 dated 15.02.2020 were purchased from the same overseas supplier and test report in subsequent import of same goods confirms it is Dolomitic Marble.

31.17 I find that importer has cited the decision of Shalimar Paints Vs. Commissioner, Central Excise, Kolkata – 2001 (134) ELT 285 s affirmed by the Hon'ble Supreme Court as reported in 2002 (145) ELT A 242 and contended that Test Report from GSI laboratory in respect of consignments enlisted in Annexure-A, cannot be applied in respect of the other 03 consignments enlisted in Annexure-B & C of the Show Cause Notice.

I find that the ratio of said case law is not applicable to the present case, as in the said case, classification in question covered about 30 products and test reports were relatable to only 4 products, whereas in present case there is no change in product and it was from the same supplier and with same description. Apart from the Test Report in respect of goods covered under Annexure-A to Show Cause Notice, Test Report in respect of Bill of Entry No. 9879849 dated08.12.2020 by the importer, samples were got tested from CSIR-National Geophysical Research Institute, Uppal Road, Hyderabad who vide Test Report dated 29.01.2021 has also given their report that the goods was Dolomite Marble Rock with specific gravity of rock as 2.73. Thus, I find that there is consistency in the Test Report of Geological Survey of India, Western Region, Jaipur and CSIR-National Geophysical Research Institute, Uppal Road, Hyderabad and therefore, it can safely be concluded that the importer had imported the same goods as Marble Blocks and therefore the Test Report of Geological Survey of India, Western Region, Jaipur is also applicable to all imports covered under Annexure-B to C of the Show Cause Notice.

32. Whether the goods valued at Rs. 4,21,49,071/- (Rs. Four Crore, Twenty One Lakh, Forty Nine Thousand and Seventy One only) as detailed in Annexure A, B & C, attached to Show Cause Notice should be held liable for confiscation under the provisions of Section 111(m) of the Customs Act, 1962?;

32.1 Show Cause Notice proposes confiscation of the impugned imported goods under Section 111(m) of the Customs Act, 1962. If the goods have been described wrongly or the value of the goods has been incorrectly declared, such goods would come under the purview of Section 111(m) of Customs Act, 1962. It is to reiterate that in the present case it is an admitted fact that the classification of

the product are mis-declared in the concerned import documents as "Rough Dolomite Blocks" and "Polished Dolomite Slabs" under Customs Tariff Item No. 25181000 and 68029900 respectively with an intention to avoid higher rate of Customs Duty applicable to the correct declaration of the goods as **'Rough Marble block' and 'Polished Marble Slabs'** having merit classification under Customs Tariff Item No. 25151210 and 680222190 respectively. The Importer has mis-classified the said goods imported by them thereby contravening the provisions of Section 47 of the Customs Act, 1962 since the Bills of Entry have not been filed in compliance to Section 46 of the Customs Act, 1962. Thus, the said goods imported by them are liable for confiscation under Section 111(m) of the Customs Act, 1962.

32.2 I find that in terms of Section 46 (4) of the Customs Act, 1962, the importer was required to make declaration as regards the truth of contents of the Bill of Entry submitted for assessment of Customs Duty but they have contravened the provisions of Section 46(4) of the Customs Act, 1962 in as much as they have mis-classified the goods imported and thereby short paid the duty with clear intent to evade payment of Customs Duty. Accordingly, the importer has willfully mis-stated about the goods imported. Thus, I find that they have violated the provisions of Section 46 (4) of the Customs Act. All these acts on the parts of the importer have rendered the imported goods liable to confiscation under Section 111 (m) of the Customs Act, 1962.

32.3 I find that the importer had imported 563.86 MTS totally valued at Rs. **2,79,92,294/- by mis-declaring as** 'Rough Dolomite Block'/'Rough Dolomite Block White'/'Rough Dolomite Block Grey' and mis-classifying the same under Customs Tariff Item No.25181000 By way of this mis-classification, they wrongly availed the exemption from payment of BCD under Sr.No.120 of Notification No.050/2017-Cus dated 30.06.2017 and also availed the exemption from payment of GST under Notification No.01/2017-Integrated Tax (Rate) dated 28.06.2017 in importation of Marble Block. Further, the said importer imported 1434.1 MTS of "Polished Marble Slabs" totally valued at Rs. **1,22,75,356/- by mis-declaring as** 'Polished Dolomite Slabs Thassos' and mis-classifying the same under Customs Tariff Heading No.68022900. By way of this mis-classification, they short paid the duty as effective BCD Rate was 40% for Customs Tariff Heading No.68022900 whereas they mis classified the same under Customs Tariff Item No. 68022900 and paid the BCD @ 10%. Thus, by mis classifying the goods under Tariff Item No. 68022900 , importer short paid the Basic Customs Duty in importation of Polished Marble Slabs. The said goods had been imported in contravention of the provisions of Section 46(4) of the Customs Act, 1962. For these contraventions and violations, the aforementioned goods fall under the ambit of smuggled goods within meaning of Section 2(39) of the Customs Act, 1962 and hence I hold them liable for confiscation under the provisions of Section 111(m) of the Customs Act, 1962

32.4 I find that Importer had mis-declared imported goods as "Rough Dolomite Block'/'Rough Dolomite Block White'/'Rough Dolomite Block Grey' and mis-classified the same under Customs Tariff Item No.25181000 in respect of Bills of Entry Nos. 8857370 dated 18.09.2020 and 8857392 dated 18.09.2020(Annexure-A to SCN) totally valued at Rs. 18,81,421/- [Assessable Value] and wrongly availed the exemption from payment of BCD under Sr.No.120 of Notification No.050/2017-Cus dated 30.06.2017 and also availed the exemption from payment of GST under Notification No.01/2017-Integrated Tax (Rate) dated 28.06.2017, therefore, the goods covered under aforesaid B/Es (Annexure-A to SCN) seized on 03.12.2020 under Section 110(1) of Customs Act, 1962 is also liable for confiscation under Section 111(m) of Customs Act, 1962. The said seized goods was subsequently released provisionally under Section

110A of the Customs Act, 1962 on execution of the Bond for Rs. 18,81,421/- and Bank Guarantee of Rs. 12,32,425/- .

32.5 As the impugned goods are found liable to confiscation under Section 111 (m) of the Customs Act, 1962, I find it necessary to consider as to whether redemption fine under Section 125(1) of Customs Act, 1962 can be imposed in lieu of confiscation in respect of the imported goods, which are not physically available for confiscation. Section 125 (1) of the Customs Act, 1962 reads as under: -

> "**125 Option to pay fine in lieu of confiscation** –
>
> *(1) Whenever confiscation of any goods is authorised by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods [or, where such owner is not known, the person from whose possession or custody such goods have been seized,] an option to pay in lieu of confiscation such fine as the said officer thinks fit..."*

32.6 I find that the importer has wrongly availed the exemption from payment of BCD under Sr.No.120 of Notification No.050/2017-Cus dated 30.06.2017 and also availed the exemption from payment of GST under Notification No.01/2017-Integrated Tax (Rate) dated 28.06.2017 by resorting to the mis classification of the imported goods. I rely on the decision in the matter of Weston Components Ltd. v. Collector reported as 2000 (115) E.L.T. 278 (S.C.) wherein Hon'ble Supreme Court has held that:

> *"It is contended by the learned Counsel for the appellant that redemption fine could not be imposed because the goods were no longer in the custody of the respondent-authority. It is an admitted fact that the goods were released to the appellant on an application made by it and on the appellant executing a bond. Under these circumstances if subsequently it is found that the import was not valid or that there was any other irregularity which would entitle the customs authorities to confiscate the said goods, then the mere fact that the goods were released on the bond being executed, would not take away the power of the customs authorities to levy redemption fine".*

In view of the above, I find that imported goods mis-declared as 'Rough Dolomite Block'/'Rough Dolomite Block White'/'Rough Dolomite Block Grey' and mis-classified under Customs Tariff Item No.25181000 in respect of Bills of Entry Nos. 8857370 dated 18.09.2020 and 8857392 dated 18.09.2020(Annexure-A to SCN) totally valued at Rs. 18,81,421/-which was seized on 03.12.2020 and which was subsequently provisionally released on furnishing Bond and Bank Guarantee are liable for confiscation under Section 111(m) of the Customs Act, 1962. Accordingly, Redemption is also required to be imposed under Section 125 (1) of the Customs Act, 1962. Further, I find that the Bond for Rs. 18,81,421/- executed for provisional release of said seized goods is required to be enforced and Bank Guarantee of Rs. 12,32,425/- furnished thereof is also required to be encashed.

32.7 I further find that even in the case where goods are not physically available for confiscation, redemption fine is imposable in light of the judgment in the case of **M/s. Visteon Automotive Systems India Ltd. reported at 2018 (009) GSTL 0142 (Mad)** wherein the Hon'ble High Court of Madras has observed as under:

"....

....

....

23. *The penalty directed against the importer under Section 112 and the fine payable under Section 125 operates in two different fields. The fine under Section 125 is in lieu of confiscation of the goods. The payment of fine followed up by payment of duty and other charges leviable, as per sub-section (2) of Section 125, fetches relief for the goods from getting confiscated. By subjecting the goods to payment of duty and other charges, the improper and irregular importation is sought to be regularised, whereas, by subjecting the goods to payment of fine under sub-section (1) of Section 125, the goods are saved from getting confiscated. Hence, the availability of the goods is not necessary for imposing the redemption fine. The opening words of Section 125, "Whenever confiscation of any goods is authorised by this Act ....", brings out the point clearly. The power to impose redemption fine springs from the authorisation of confiscation of goods provided for under Section 111 of the Act. When once power of authorisation for confiscation of goods gets traced to the said Section 111 of the Act, we are of the opinion that the physical availability of goods is not so much relevant.The redemption fine s in fact to avoid such consequences flowing from Section 111 only. Hence, the payment of redemption fine saves the goods from getting confiscated. Hence, their physical availability does not have any significance for imposition of redemption fine under Section 125 of the Act. We accordingly answer question No. (iii).*

....

....

...."

32.8 I also find that Hon'ble High Court of Gujarat by relying on this judgment, in the case of **Synergy Fertichem Ltd. Vs. Union of India, reported in 2020 (33) G.S.T.L. 513 (Guj.),** has held *inter alia* as under: -

".

.

.

174. ***.....*** *In the aforesaid context, we may refer to and rely upon a decision of the Madras High Court in the case of M/s. Visteon Automotive Systems v. The Customs, Excise & Service Tax Appellate Tribunal, C.M.A. No. 2857 of 2011, decided on 11th August, 2017 [2018 (9) G.S.T.L. 142 (Mad.)], wherein the following has been observed in Para-23;*

"23. The penalty directed against the importer under Section 112 and the fine payable under Section 125 operate in two different fields. The fine under Section 125 is in lieu of confiscation of the goods. The payment of fine followed up by payment of duty and other charges leviable, as per sub-section (2) of Section 125, fetches relief for the goods from getting confiscated. By subjecting the goods to payment of duty and other charges, the improper and irregular importation is sought to be regularised, whereas, by subjecting the goods to payment of fine under sub-section (1) of Section 125, the goods are saved from getting confiscated. Hence, the availability of the goods is not necessary for imposing the redemption fine. The opening words of Section 125, "Whenever confiscation of any goods is authorised by

this Act....", brings out the point clearly. The power to impose redemption fine springs from the authorisation of confiscation of goods provided for under Section 111 of the Act. When once power of authorisation for confiscation of goods gets traced to the said Section 111 of the Act, we are of the opinion that the physical availability of goods is not so much relevant. The redemption fine is in fact to avoid such consequences flowing from Section 111 only. Hence, the payment of redemption fine saves the goods from getting confiscated. Hence, their physical availability does not have any significance for imposition of redemption fine under Section 125 of the Act. We accordingly answer question No. (iii)."

175. We would like to follow the dictum as laid down by the Madras High Court in Para-23, referred to above."

In view of the above, I find that 563.86 MTS totally valued at Rs. **2,79,92,294/-** by mis-declaring as 'Rough Dolomite Block'/'Rough Dolomite Block White'/'Rough Dolomite Block Grey' and mis-classifying the same under Customs Tariff Heading No.25181000 and imported 1434.1 MTS of "Polished Marble Slabs" totally valued at Rs. **1,22,75,356/-** by mis-declaring as 'Polished Dolomite Slabs Thassos' and mis-classifying the same under Customs Tariff Heading No.68022900 though not available are liable for confiscation under Section 111(m) of the Customs Act, 1962.

32.9 In view of the above, I find that redemption fine under Section 125 (1) is liable to be imposed in lieu of confiscation of subject goods having total assessable value of **Rs. 4,02,67,650/-,** as detailed in Annexure B & C to Show Cause Notice.

33. Whether differential/short paid Customs Duty amounting to Rs.1,98,67,743/- (Rs. One Crore, Ninety Eight lakh, Sixty Seven Thousand, Seven Hundred and Forty Three Only) as detailed in Annexure-A, B & C attached to Show Cause Notice should be demanded and recovered under Section 28(4)of the Customs Act, 1962 alongwith applicable interest under Section 28AA ibid?

33.1 Keeping the aforesaid discussions in mind, I proceed to examine the duty liability. The importer has filed Bills of Entry covering the period as detailed in Annexure A , B & C to the Show Cause Notices for clearance of goods by declaring the description **as** 'Rough Dolomite Block'/'Rough Dolomite Block White'/'Rough Dolomite Block Grey' classifying the same under Customs Tariff Item No.25181000 and for clearance of goods by declaring the description **as**of 'Polished Dolomite and classifying the same under Customs Tariff Item No.68022900 respectively. As discussed at paras supra, the goods imported are found as mis-classified under Customs Tariff Item No.25181000 and68022900instead of correct classification of the product which is Customs Tariff Item No. 25151210and 68022190 respectively which has resulted in evasion of Customs duty amounting to **Rs.1,98,67,743/-** by the said importer. I find that in terms of Section 46 (4) of the Customs Act, 1962, the importer was required to make declaration as regards the truth of contents of the Bill of Entry submitted for assessment of Customs Duty but they have contravened the provisions of Section 46(4) of the Customs Act, 1962 in as much as they have mis-classified the goods imported and thereby short paid the duty with clear intent to evade payment of Customs Duty.

33.2 I find that apart from the Test Report received from Geological Survey of India, Western Region, Jaipur and Test Report of CSIR-National Geophysical Research Institute, Uppal Road, Hyderabad in respect of 'Rough Dolomite Blocks' imported vide Bill of Entry No. 9879849 dated08.12.2020 there are ample corroborative documents found during the investigation from the importer which also sustains that importer with clear intent to evade the payment of higher Customs duty had resorted to the mis-declaration of the description of goods and its merit classification under relevant Customs Tariff Item . I find on scrutiny of Commercial Invoice No. 87 dated 23.12.2019 issued by overseas supplier M/s. Eagle S.A., Greece, that description of goods was mentioned as "Marble Blocks" and in packing list it was mentioned that "20 Marble Blocks having 283.94 MT" of weight were supplied to M/s. Edifice Ventures Limited, Hong Kong and actual goods was delivered to the importer. Further, the export declaration filed by the overseas supplier as mentioned at Para 12.5 (v) and 12.6 (i) of SCN, the goods was declared as Block of Marble'. Further, Importer had placed the Purchase Order No. MIPL/ELV/ST/1/1920-Amend-1 dated 04.03.2020 to overseas supplier M/s. Edifice Venture Ltd., Hong Kong for purchase of Rough Marble Blocks of various trade names viz. Dark Emperador, Pietra Grey & Black Mariquina, Rough Dolomite Block (Butterfly). Thus, it clearly sustains that Importer had imported marbles only. Further, Purchase Order No. CFT/POD/00019/1920 dated 30.03.2020 placed by M/s. DLF Home Developers Ltd, a buyer in India to the Importer was for " Supply of Marble/Stone slabs". Further, Shri Krishnan Kumar, Partner of M/s. Royal Impex, Silvasa to whom the Importer had sent the impugned goods for job work has admitted in his statement dated 15.09.2022 that their company has received 'Rough marble block' from the Importer who imported vide Bill of Entry No. 7716262 dated 21.05.2020. Also Shri Salim Khan, Director of Import Company in his statement dated 30.07.2021 & 22.09.2022 at Para No. 10.17 has admitted that "that after going through the content of websites and available in open source, the Dolomite Blocks/Dolomite Slabs imported by 'M/s Monark' were Dolomitic Marble Blocks and Dolomitic Marble Slabs only and Dolomitic Marble Blocks were treated/ processed the same as Marble Blocks on job work basis and the resultant Marble/Slabs were traded/sold as Santa Marina, White Wave, Dark Emperador, Pietra Grey, Black Mariquinab & Thassos White."

33.3 Thus, from the above discussion, I find that the Importer had knowingly and deliberately indulged in suppression of facts and had wilfully misrepresented/mis-stated the material facts regarding the goods imported by them, in the declarations made in the import documents including Check lists presented for filing of Bills of Entry presented before the Customs at the time of import for assessment and clearance, with an intent to evade payment of applicable Customs Duty. Therefore, the Duty not paid/short paid is liable to be recovered from the Importer by invoking the extended period of five years as per Section 28 (4) of the Customs Act, 1962, in as much as the Duty is short paid on account of wilful mis-statement as narrated above. Accordingly, the total differential Customs Duty amounting to **Rs. 1,98,67,743/-**in respect of impugned good cleared under the Bills of Entry as detailed in Annexure-A, B & C to the Show Cause Notice is required to be demanded and recovered from the Importer invoking the provision of extended period under Section 28(4) of the Customs Act, 1962. Further, I find that Bond for Rs. 18,81,421/- executed for provisional release of goods seized on 03.12.2020 is required to be enforced and Bank Guarantee of Rs. 12,32,425/- furnished thereof is also required to be encashed for the recovery of the differential duty alongwith interest, fine and penalties.

33.4 It has also been proposed in the Show Cause Notice to demand and recover interest on the aforesaid differential Customs Duty under Section 28AA

of the Customs Act, 1962. Section 28AA ibid provides that when a person is liable to pay Duty in accordance with the provisions of Section 28 ibid, in addition to such Duty, such person is also liable to pay interest at applicable rate as well. Thus the said Section provides for payment of interest automatically along with the Duty confirmed/determined under Section 28 ibid. I have already held that Customs Duty is liable to be recovered under Section 28(4) of the Customs Act, 1962. Therefore, I hold that interest on the said Customs Duty determined/confirmed under Section 28(4) ibid is to be recovered under Section 28AA of the Customs Act, 1962.

34. Whether, Penalty under Section 112(a), (b), and Section 114A, Section 114AA and Section 117 of the Customs Act, 1962 should be imposed on importer M/s. Monark India Pvt. Ltd., Plot No-884, Phase-V, Udhyog Vihar, Gurgaon-122016M/s. International Cargo Corporation, Mumbai-400080?

34.1 Penalty under Section 114A of the Customs Act, 1962: Now, I proceed to consider the proposal of penalty under Section 114A of the Customs Act, 1962 against the importer. I find that Show Cause Notice is issued under Section 28(4) of the Customs Act,1962.

I find that in order to sensitize the Importer and Exporter about its benefit and consequences of mis-use, Government of India has issued 'Customs Manual on Self-Assessment 2011'. Under para-1.3 of Chapter-1 of the above manual, Importers/Exporters who are unable to do the Self-Assessment because of any complexity, lack of clarity, lack of information etc. may exercise the options as (a) Seek assistance from Help Desk located in each Custom Houses, or (b) Refer to information on CBEC/ICEGATE web portal (www.cbic.gov.in),or (c) Apply in writing to the Deputy/Assistant Commissioner in charge of Appraising Group to allow provisional assessment, or (d) An importer may seek Advance Ruling from the Authority on Advance Ruling, New Delhi if qualifying conditions are satisfied. Para 3 (a) of Chapter 1 of the above Manual further stipulates that the Importer/Exporter is responsible for Self-Assessment of duty on imported/exported goods and for filing all declarations and related documents and confirming these are true, correct and complete. Under para-2.1 of Chapter-1 of the above manual, Self-Assessment can result in assured facilitation for compliant importers. However, delinquent and habitually non-compliant importers/ exporters could face penal action on account of wrong Self-Assessment made with intent to evade Duty or avoid compliance of conditions of Notifications, Foreign Trade Policy or any other provision under the Customs Act, 1962 or the Allied Acts.

I find that Importer was in complete knowledge of the correct nature of the goods nevertheless, the Importer claimed undue benefit of the aforesaid Notifications for the said goods in order to clear the goods by wrongly availing Customs Duty exemption from payment of BCD under Sr.No.120 of Notification No.050/2017-Cus dated 30.06.2017 and also availed the exemption from payment of GST under Notification No.01/2017-Integrated Tax (Rate) dated 28.06.2017 by resorting to misclassification of "'Rough Dolomite Block' under Customs Tariff Item No. 25181000 and " 'Polished Dolomite Slabs under Customs Tariff Item No. 68029900 respectively instead of merit Customs Tariff Item No. 25151210 and 68022190 respectively. It is also seen from the commercial invoice of the overseas supplier and export declaration at the load port that the goods exported were actually Marble Blocks. Thus, with the introduction of self-assessment under Section 17, more faith is bestowed on the importers, as the practices of routine assessment, concurrent audit etc. have been dispensed with. As a part of self-assessment by the Importer, the Importer has been entrusted with the responsibility to correctly self-assess the Duty.

However, in the instant case, the Importer intentionally abused this faith placed upon him by the law of the land. Therefore, it appears that the Importer has wilfully violated the provisions of Section 17(1) of the Act inasmuch as they have failed to correctly classify the impugned goods and has also wilfully violated the provisions of Sub-section (4) and (4A) of Section 46 of the Customs Act, 1962, hence, I find that this is a fit case for imposition of quantum of penalty equal to the amount of Duty in terms of Section 114A of the Customs Act, 1962.

Further, I find that demand of differential Customs Duty amounting to **Rs. 1,98,67,743/-**has been made under Section 28(4) of the Customs Act, 1962, which provides for demand of Duty not levied or short levied by reason of collusion or wilful mis-statement or suppression of facts. Hence as a naturally corollary, penalty is imposable on the Importer under Section 114A of the Customs Act, which provides for penalty equal to Duty plus interest in cases where the Duty has not been levied or has been short levied or the interest has not been charged or paid or has been part paid or the Duty or interest has been erroneously refunded by reason of collusion or any wilful mis statement or suppression of facts. In the instant case, the ingredient of suppression of facts and wilful mis-statement by the importer has been clearly established as discussed in foregoing paras and hence, I find that this is a fit case for imposition of quantum of penalty equal to the amount of Duty plus interest in terms of Section 114A ibid.

34.2 Penalty under Section 114 AA of the Customs Act, 1962:

34.2.1 I also find that the Show Cause Notice proposes to impose penalty on the importer under Section 114AA of the Customs Act, 1962. The text of the said statute is reproduced under for ease of reference:

"If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, ***any declaration****, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods."*

34.2.2 I find that importer was well aware that goods viz. "Rough Dolomite Block' and " Plolished Dolomite Slabs" imported were actually 'Rough Marble Block" and
"Polished Marble Slabs" mis-classifying under Customs Tariff Item No. 25181000 and 6802990 respectively instead of merit classification under Customs Tariff Item No. 25151210 and 68022190 and intentionally availed the benefit of Customs Duty exemption from payment of BCD under Sr.No.120 of Notification No.050/2017-Cus dated 30.06.2017 and also availed the exemption from payment of GST under Notification No.01/2017-Integrated Tax (Rate) dated 28.06.2017by declaring in Bill of Entry with clear intent to evade the payment of duty and contravened the provision of Section 46 (4) of the Custom Act, 1962 by making *false declarations in the Bill of Entry,*. Hence, I find that the importer has knowingly and intentionally mis declared the false/incorrect description of goods and its Tariff Item No. and Notification No. in respect of imported goods. Hence, for the said act of contravention on their part, the Importer is liable for penalty under Section 114AA of the Customs Act, 1962. Further, from the invoice of the overseas supplier M/s. Eagle S.A., Greece, it reveals that description of goods was mentioned as "Marble Blocks" and in packing list it was mentioned that "20 Marble Blocks having 283.94 MT" of weight were supplied to M/s. Edifice Ventures Limited, Hong Kong and actual goods was delivered to the importer. Further, the export declaration filed by the overseas supplier as mentioned at

Para 12.5 (v) and 12.6 (i) of SCN, the goods was declared as Block of Marble'. Further, Importer had placed the Purchase Order No. MIPL/ELV/ST/1/1920-Amend-1 dated 04.03.2020 to overseas supplier M/s. Edifice Venture Ltd., Hong Kong for purchase of Rough Marble Blocks of various trade names viz. Dark Emperador, Pietra Grey & Black Mariquina, Rough Dolomite Block (Butterfly). Thus, it clearly sustains that Importer with clear intent to evade the payment of appropriate Customs Duties have resorted to mis-classification of the imported goods in Bill of Entry and therefore, I find that Importer is liable for penalty under Section 114 of the Customs Act, 1962.

34.2.3 Further, to fortify my stand on applicability of Penalty under Section 114AA of the Customs Act, 1962, I rely on the decision of Principal Bench, New Delhi in case of Principal Commissioner of Customs, New Delhi (import) Vs. Global Technologies & Research (2023)4 Centax 123 (Tri. Delhi) wherein it has been held that *"Since the importer had made false declarations in the Bill of Entry, penalty was also correctly imposed under Section 114AA by the original authority"*.

34.3 Penalty under Section 112 of the Customs Act, 1962:

34.3.1 The Show Cause Notice also proposes imposition of penalty under Section 112(a) and 112 (b) of the Customs Act, 1962 on the Importer. In this regard, it is to mention that the fifth proviso to section 114A of the Customs Act, 1962 provides that penalty under Section 112 shall not be levied if penalty under Section 114A of the Customs Act, 1962 has been imposed and the same reads as under:

> *"Provided also that where any penalty has been levied under this Section, no penalty shall be levied under Section 112 or Section 114."*

In the instant case, I have already found that Importer M/s. Monark India Pvt. Ltd., Plot No-884, Phase-V, Udhyog Vihar, Gurgaon-122016 is liable to penalty under Section 114A of the Customs Act, 1962 and therefore, penalty under Section 112 is not imposable in terms of the 5th proviso to Section 114A of the Customs Act, 1962.

34.5 Penalty under Section 117 of the Customs Act, 1962:

34.5.1 I find that Show Cause Notice also proposes Penalty under Section 117 of the Customs Act, 1962. Section 117 of the Customs Act, 1962 reads as under:

117. Penalties for contravention, etc., not expressly mentioned.—Any person who contravenes any provision of this Act or abets any such contravention or who fails to comply with any provision of this Act with which it was his duty to comply, where no express penalty is elsewhere provided for such contravention or failure, shall be liable to a penalty not exceeding [one lakh rupees].

I find that this is a general penalty which may be imposed for various contravention and failures where no express penalty is elsewhere provided in the Customs Act, 1962. In present case, since express penalty under Section 114 A of the Customs Act,1962 for short payment of duty by reason of wilful mis-statement and suppression of facts, and penalty under Section 114AA of the Customs Act, 1962 for false declaration in Bills of Entry have already been found imposable on the Importer as discussed herein above, therefore, I hold that Penalty under Section 117 of the Customs Act, is not warranted and legally not sustainable.

35. Whether, Penalty under Section 112(a) & (b), Section 114AA and Section 117 of the Customs Act, 1962 should be imposed on Shri Salim Khan, Director of M/s. Monark India Pvt. Ltd., Gurgaon-122016?

I find that mis-declaration of description and mis-classification of goods in the import documents viz. Bills of Entry presented by Importer before the Customs authorities, was done on the directions and under the guidance of Shri Salim Khan, Director of 'M/s. Monark India Pvt. Ltd. to willfully suppress the correct description and classification of goods with an intent to evade payment of applicable Customs Duty. Shri Salim Khan had full knowledge about the mis-classification of the said imported goods in as much as Shri Salim Khan was responsible for all imports and finalization of classification of imported goods. He managed documents for mis-classification of goods from the overseas supplier and instructed the Customs Broker to produce the same before Customs for clearance, to file the Bills of entry. Test/Analysis Report along with response of queries received from the Geological Survey of India, Western Region, Jaipur and CSIR-National Geophysical Research Institute, Hyderabad confirmed that the sample drawn from the import consignments of Importer meets the specifications of "Marble". Further, 'Importer M/s. Monark India Pvt. Ltd. had received the Commercial Invoice, packing list issued by the original supplier from the originating country, declaration filed at load port by the original supplier of goods, wherein description of goods was mentioned as Rough marble Block but Shri Salim Khan instructed Customs Brokers to file the Bills of entry under Customs Tariff Item No. 25181000 to evade duty. Shri Salim Khan was aware that the consignments imported by them were actually Rough Marble Block falling under Customs Tariff Item No.25151210, as it was evident from the documents available in the form of Commercial Invoice, packing list issued by the original supplier from the originating country, declaration filed by the original supplier of goods at load port, Purchase order placed by M/s. DLF Home Developers Limited, local buyer of Marble slabs in India, Purchase order placed by M/s. Monark India Pvt. Ltd. to overseas supplier for purchase of goods, Delivery challans issued by M/s. Monark India Pvt. Ltd. for job work and statement of Custom Broker. Further, as per literature of the Marble, editions released by Government of India, Ministry of Mines, Indian Bureau of Mines and admitted by Shri Salim Khan, Director of 'M/s Monark', Rough Marble Block falls under Customs Tariff Item No.25151210 and Polished Marble Slabs falls under Customs Tariff Item No.68022190. All the aforesaid acts of commissions and omissions on the part of Shri Salim Khan have rendered the imported goods liable for confiscation under Section 111 (m) of the Customs Act, 1962, and consequently rendered himseld liable for penalty under Section 112(a)(ii) of the Customs Act, 1962.

Further, I find that that Shri Salim Khan had knowingly and intentionally made, signed or used the declaration, statements and/or documents and presented the same to the Customs authorities, which were incorrect in as much as they were not representing the true, correct and actual classification of the imported goods, and therefore he rendered himself liable for penalty under Section 114AA of the Customs Act, 1962

I find that penalty under Section 117 of the Customs Act,1962 is a general penalty which may be imposed for various contravention and failures where no express penalty is elsewhere provided in the Customs Act, 1962. In the present case, since express penalty under Section 112 (a) (ii) of the Customs Act,1962 for the act of goods liable for confiscation under Section 111(m) of the Customs Act, 1962 and Penalty under Section 114 AA of the Customs Act,1962 for false declaration in Bills of Entry have already been found imposable on the Shri Salim Khan, Director of M/s. Monark India Pvt. Ltd., as discussed herein above,

therefore, I hold that Penalty under Section 117 of the Customs Act, is not warranted and legally not sustainable.

36. Whether, Penalty under Section 112(a), (b), and Section 114AA of the Customs Act, 1962 should be imposed on M/s. International Cargo Corporation, Mumbai-400080?

36.1 Penalty under Section 112 (a) of the Customs Act, 1962:

36.1.1 M/s. International Cargo Corporation, the Customs Broker who handled clearance activities in the capacity as the Custom Broker is responsible for having indulged in mis-declaration of description and mis-classification of goods. The Custom Broker firm, M/s. International Cargo Corporation along with Shri Salim Khan, Director of 'M/s Monark' cleared the 'Rough Marble Blocks' and 'Polished Marble Slabs' without payment of applicable Customs Duty by knowingly mis-declaring its description and correct Customs Tariff Item Number. The Custom Broker Firm was very much aware that the consignments imported by the Importer by declaring as 'Dolomite Blocks' were actually 'Rough Marble Blocks' falling under Customs Tariff Item No.25151210 and Dolomite Slabs' were actually 'Polished Marble Slabs' falling under Customs Tariff Item No.68022190. The commissions and omissions on the part of M/s. International Cargo Corporation who is a Licensed Customs Broker Firm, was in violation of the obligations cast on them in terms of Regulation 10 of the Customs Broker License Regulations, 2018. By these deliberate acts and omissions, they abetted 'importer mis-declaring the description of goods and mis-classifying the Customs Tariff Item Number of imported goods in the Bills of Entry filed by Importer. Thus acts of commissions and omissions on part of the aforesaid Customs Broker, have rendered the imported goods liable for confiscation under Section 111(m) of the Customs Act, 1962 and therefore, penalty under Section 112 (a) (ii) is required to be imposed.

36.1.2 The question for determination is whether the Customs Broker can be held responsible for the mis-classification of imported goods. The obligations have been imposed upon the Customs Brokers by the Customs Broker License Regulations 2018. These obligations cast upon the Customs Broker created a link between Customs Authorities and the Importers with an object of facilitating the clearances at Customs. The Customs Broker is thus supposed to safeguard the interests of both the Customs as well as the Importers. Hon'ble Supreme Court in KM Ganatra and Co. case while relying upon the decision of Mumbai Tribunal in the case of Noble Agency Vs. Commissioner of Customs, Mumbai reported in 2002 (142) E.L.T. 84 has held as follows:

> *"The CHA occupies a very important position in the Customs House. The Customs procedures are complicated. The importers have to deal with a multiplicity of agencies viz. carriers, custodians like BPT as well as the Customs. The importer would find it impossible to clear his goods through these agencies without wasting valuable energy and time. The CHA is supposed to safeguard the interests of both the importers and the Customs. A lot of trust is kept in CHA by the importers/exporters as well as by the Government Agencies. To ensure appropriate discharge of such trust, the relevant regulations are framed. Regulation 14 of the CHA Licensing Regulations lists out obligations of the CHA. Any contravention of such obligations even without intent would be sufficient to invite upon the CHA the punishment listed in the Regulations...."*

36.1.3 I rely on the decision of Hon'ble Delhi High Court in case of Jasjeet Singh Marwaha Vs. Union of India 2009 (239) ELT 407 (Del.) wherein it is held as "since a CHA acts on behalf of the importer, it is not only his obligation to ensure

that the entries made in the bill of entry are correct but also that a true and correct declaration of value and description of goods is made, and in the event of any infraction such as mis-declaration, he can be penalized under the Regulation 20 of CHALR, 2004 if it results in a misconduct which is of the nature which renders him unfit to transact the business of a CHA, at the Customs Station."

36.1.4 It becomes clear from the above provisions and the decision of the Hon'ble Apex Court that Customs Broker is not supposed to be a formal agent either of Customs House or of the importer. But the utmost due diligence in ascertaining the correctness of the information related to clearance of cargo is the Customs Broker 's duty. He is not only supposed to advise the importer/exporter about the relevant provisions of law and the mandate of true compliance thereof but is also responsible to inform the Department if any violation of the provisions of the Customs Act appears to or have been committed by his client at the time of the clearances.

36.1.5 Customs Broker in their written submission dated 05.06.2024 has pointed out some case laws and further pleaded that allegation levelled against them is neither proved by the Department nor the allegation stated in the Show Cuase Notice is legally sustainable. The core point involved in all these cases is that the CHA had prepared documents in a bona-fide manner based upon the declaration made by the importer/exporter, the CHA cannot be penalized under Customs Act. In the present case, there is nothing on record to suggest that the Customs Broker had acted in a bona-fide manner but they had not exercised due diligence in declaring correct classification of the goods. Hence ratio of these case laws would not help them to get impunity from punishment.

36.1.6 As per Regulation 10 (d), (e), (f) and (m) of CBLR,2018, it was the responsibility of the Custom Broker to advise their client to comply with the provisions of the Act, other allied Act and the rules and regulation thereof, and in case of non-compliance, bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be and exercise due diligence to ascertain the correctness of any information which he imparts to a client with reference to any work related to clearance of cargo or baggage and also discharge his duties as Customs Broker with utmost speed and efficiency and without any delay. However, in the instant case, it is observed that the Custom Broker did not file the Bills of Entry correctly and abetted the importer in mis-classification of the goods and availing the lower rate of duty. Thus, by their act of omission and commission, the Customs Broker **M/s. International Cargo Corporation** have rendered themselves liable for penal action under Section 112 (a)(ii) of the Customs Act, 1962.

36.2 Penalty under Section 114AA of the Customs Act, 1962:

36.2.1 I find that Custom Broker M/s. International Cargo Corporation acted on behalf of Importer for clearance of consignments of 'Rough Marble Blocks' and 'Polished Marble Slabs' from customs. M/s. International Cargo Corporation along with Shri Salim Khan, Director of Importer M/s. Monark India Pvt. Cleared the 'Rough Marble Blocks' and 'Polished Marble Slabs' without payment of applicable Customs Duty by willfully mis-declaring its description and correct Customs Tariff Item No. .The Custom Broker Firm was very much aware that the consignments imported by 'Importer by declaring as 'Dolomite Blocks' were actually 'Rough Marble Blocks' falling under Customs Tariff Item No.25151210 and Dolomite Slabs' were actually 'Polished Marble Slabs' falling under Customs Tariff Item No.68022190, as it was evident from the documents available in the form of Chemical analysis/Test Reports of samples taken from import consignments and other evidences available in the form of Commercial Invoice,

packing list issued by the original supplier from originating country, declaration filed by the original supplier of goods at load port, Purchase order placed by M/s. DLF Home Developers Limited, local buyer of Marble slabs in India, Purchase order placed by M/s. Monark India Pvt. Ltd. to overseas supplier for purchase of goods, Delivery challans issued by Importer for job work. By these deliberate acts and omissions, M/s. International Cargo Corporation abetted Importer in mis-declaring the description of goods and mis-classifying the Customs Tariff Heading Item Number of imported goods in the Bills of Entry filed by them. M/s. International Cargo Corporation connived with Importer and facilitated them in the import of goods without payment of applicable Customs Duty in contravention of the provisions of Customs Act, 1962, the Customs Brokers Licensing Regulations, 2018 and other statutes. M/s. International Cargo Corporation prepared/got prepared, signed/got signed documents which they had reasons to believe were false and thereby rendered themselves liable for penalty under Section 114AA of the Customs Act, 1962.

37. Whether, Penalty under Section 112(a), (b) and Section 114AA of the Customs Act, 1962 should be imposed on Shri Rupesh Jivanbhai Katariya, Authorized Signatory of M/s. International Cargo Corporation, Mumbai-400080?

37.1 I find that that mis-declaration of description and mis-classification of the goods in the import documents viz. Bills of Entry filed by M/s. International Cargo Corporation on behalf of Importer before the Customs authorities, was done on the direction of Shri Rupesh Jivanbhai Katariya, Authorized Signatory of M/s. International Cargo Corporation. Shri Salim Khan, Director of 'M/s Monark' handed over the documents to Shri Rupesh Jivanbhai Katariya for filing of Bills of Entry and to arrange clearance of the goods. Shri Rupesh Jivanbhai Katariya was aware of the correct classification of the goods but as per the directions of Shri Salim Khan, Director of M/s. Monark India Pvt. Ltd. Shri Rupesh Jivanbhai Katariya, Authorized Signatory of M/s. International Cargo Corporation, who handled clearance activities in the capacity as the Custom Broker is responsible for having indulged in mis-declaration of description and mis-classification of goods. Shri Rupesh Jivanbhai Katariya along with Shri Salim Khan, Director of 'M/s. Monark' cleared the 'Rough Marble Blocks'& 'Polished Marble Slabs' without payment of applicable Customs Duty by willfully mis-declaring its description and correct Customs Tariff Heading Number. Shri Rupesh Jivanbhai Katariya wasvery much aware that the consignments imported by 'M/s. Monark' by declaring as 'Rough Dolomite Blocks' were actually 'Rough Marble Blocks' falling under Customs Tariff Item No.25151210 and Dolomite Slabs' were actually 'Polished Marble Slabs' falling under Customs Tariff Item No.68022190, as it was evident from the documents available in the form of Chemical Analysis/Test Reports of samples taken from import consignments of Importer. Thus, commissions and omissions on the part of Shri Rupesh Jivanbhai Katariya, Authorized Signatory of the Licensed Customs Broker Firm was in violation of the obligations cast on such Licensed Customs Brokers in terms of Regulation 10 of the Customs Broker License Regulations, 2018. By these deliberate acts and omissions, they abetted importer in mis-declaring the description of goods and mis-classifying the Customs Tariff Item Number of imported goods in the Bills of Entry filed by them. Shri Rupesh Jivanbhai Katariya facilitated, Importer who intended to clear the imported goods without payment of applicable Customs Duty which was in contravention of the provisions of the Customs Act, 1962. All the aforesaid acts of commission and omission on the part of Shri Rupesh Jivanbhai Katariya have rendered the imported goods liable for confiscation under Section 111(m) of the Customs Act, 1962. Further, he had consciously dealt with the said goods which he knew or

had reasons to believe, were liable to confiscation under the Customs Act, 1962. By these acts, Shri Rupesh Jivanbhai Katariya, Authorized Signatory of M/s. International Cargo Corporation has rendered himself liable to penalty under the provisions of Section 112 (a)(ii) of the Customs Act, 1962.

37.2 Further, I find that Shri Rupesh Jivanbhai Katariya prepared/got prepared, signed /got signed documents which he had reasons to believe were false and thereby rendered himself liable for penalty under Section 114AA of Customs Act, 1962.

38. In view of my findings in the paras *supra,* I pass the following order:

:: ORDER ::

38.1 I reject the declared classification of the subject good viz. "Rough Dolomite Block" under Customs Tariff Item No.25181000 as listed in Annexure A, B (except Sr. No.2) and C to Show Cause Notice and order to re-classify the said goods under Customs Tariff Item No.25151210 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) and reassess the subject Bill of Entry accordingly;

38.2 I reject the declared classification of the subject good viz. "Polished Dolomite Slab" under Customs Tariff Item No.68022900 listed at Sr. No. 2 to Annexure –B of the Show Cause Notice and order to re-classify the same Customs Tariff Item No.68022190 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) and reassess the subject Bill of Entry accordingly;

38.3 I hold the seized 43.66 Mts of declared goods viz. " Rough Dolomite Block White Wave" and 46.94 Mts of declared goods viz. "Rough Dolomite Blocks Grey Elegante" imported vide Bills of Entry Nos. 8857370 dated 18.09.2020 and 8857392 dated 18.09.2020 respectively (Annexure-A to SCN) totally valued at Rs. 18,81,421/- liable for confiscation under Section 111 (m) of the Customs Act, 1962. However, I give M/s. Monark India Pvt. Ltd, the option to redeem the goods on payment of Fine of **Rs.2,00,000/- (Rupees Two Lakh only)** under Section 125 of the Customs Act, 1962.

38.4 I order enforcement of the Bond for **Rs.18,81,421/-(Rupees Eighteen Lakh, Eighty One Thousand, Four Hundred and Twenty One only)** and the Bank Guarantee of **Rs.12,32,425/-(Rupees Twelve Lakh, Thirty Two Thousand, Four Hundred and Twenty Five only)** furnished by M/s. Monark India Pvt. Ltd for provisional release of the seized goods imported under Bills of Entry Nos. 8857370 dated 18.09.2020 and 8857392 dated 18.09.2020 (Annexure-A to Show Cause Notice) and the same should be appropriated towards the recovery of confirmed duty, interest, fine and penalties etc.

38.5 I hold the subject goods valued at **Rs. 4,02,67,650/-(Rs. Four Crores Two Lakhs Sixty Seven Thousand Six Hundred and Fifty only)** as declared in Bills of Entry as detailed in Annexure B & C, to Show Cause Notice, liable for confiscation under Section 111 (m) of the Customs Act, 1962. However, I give M/s. Monark India Pvt. Ltd, the option to redeem the goods on payment of Fine of **Rs. 40,00,000/- (Rupees Forty Lakh only)** under Section 125 of the Customs Act, 1962.

38.6 I confirm the demand of Differential Customs Duty amounting to **Rs.1,98,67,743/- (Rupees One Crore, Ninety Eight Lakh, Sixty Seven Thousand, Seven Hundred and Forty Three only)**, leviable on 'Rough Marble

Block' and "Polished Marble Slabs' imported by M/s. Monark India Pvt. Ltd declaring as 'Rough Dolomite Block' and "Polished Dolomite Slabs" as detailed in Annexures A, B & C to the Show Cause Notice issued under Section 28(4) of the Customs Act, 1962, under the provisions of Section 28(8) of the Customs Act, 1962 and order to recover the same.

38.7 Interest at the appropriate rate shall be charged and recovered from M/s. Monark India Pvt. Ltd, under Section 28AA of the Customs Act,1962 on the duty confirmed at Para 38.6 above.

38.8 I impose penalty of **Rs.1,98,67,743/- (Rupees One Crore, Ninety Eight Lakh, Sixty Seven Thousand, Seven Hundred and Forty Three only**) plus penalty equal to the applicable interest under Section 28AA of the Customs Act, 1962 payable on the Duty demanded and confirmed above on M/s. Monark India Pvt. Ltd under Section 114A of the Customs Act, 1962 in respect of Bills of Entry detailed in Show Cause Notice. However, I give an option, under proviso to Section 114A of the Customs Act, 1962, to the Noticee, to pay 25% of the amount of total penalty imposed, subject to the payment of total duty amount and interest confirmed and the amount of 25% of penalty imposed within 30 days of receipt of this order.

38.9 I refrain from imposing any penalty on M/s. Monark India Pvt. Ltd under Section 112(a) & (b) of the Customs Act,1962.

38.10 I impose a penalty of **Rs. 2,00,000/- (Rs. Two Lakh only)** on M/s. Monark India Pvt. Ltd under Section 114AA of the Customs Act,1962.

38.11 I refrain from imposing any penalty on M/s. Monark India Pvt. Ltd under Section 117 of the Customs Act,1962.

38.12 I impose a penalty of **Rs. 5,00,000/- (Rupees Five Lakh only)** on Shri Salim Khan, Director of M/s. Monark India Pvt. Ltd., under Section 112(a)(ii) of the Customs Act, 1962.

38.13 I impose a penalty of **Rs. 2,00,000/- (Rs. Two Lakh only)** on Shri Salim Khan, Director of M/s. Monark India Pvt. Ltd., under Section 114AA of the Customs Act, 1962.

38.14 I refrain from imposing any penalty on Shri Salim Khan, Director of M/s. Monark India Pvt. Ltd., under Section 117 of the Customs Act,1962.

38.15 I impose a penalty of **Rs. 1,00,000/- (Rupees One Lakh only)** on M/s. International Cargo Corporation, 221, Ecstasy, 1st Floor, Business Park, City of Joy, Mulund(W), Mumbai-400080, under Section 112(a)(ii) of the Customs Act, 1962.

38.16 I impose a penalty of **Rs.50,000/- (Rs. Fifty Thousand only)** on M/s. International Cargo Corporation, 221, Ecstasy, 1st Floor, Business Park, City of Joy, Mulund(W), Mumbai-400080 under Section 114AA of the Customs Act, 1962.

38.17 I impose a penalty of **Rs. 50,000/- (Rupees Fifty Thousand only)** on Shri Rupesh Jivanbhai Katariya, Authorized Signatory of M/s. International Cargo Corporation, Mumbai-400080, under Section 112(a)(ii) of the Customs Act, 1962.

38.18 I impose a penalty of **Rs. 50,000/- (Rupees Fifty Thousand only)** on Shri Rupesh Jivanbhai Katariya, Authorized Signatory of M/s. International Cargo Corporation, Mumbai-400080 under Section 114AA of the Customs Act, 1962.

39 This order is issued without prejudice to any other action that may be taken under the provisions of the Customs Act, 1962 and Rules/Regulations framed thereunder or any other law for the time being in force in the Republic of India. .

40. The Show Cause Notice No. VIII/10-35/Commr./O&A/2022-23 dated 07.08.2023 is disposed off in above terms.

3.7.2024

(Shiv Kumar Sharma)
Principal Commissioner

DIN-20240771MN0000000E11

F.No. VIII/10-35/Commr./O&A/2022-23 Date:03.07.2024

By Speed Post/E Mail/Notice Board

To

(1) **M/s. Monark India Pvt. Ltd.,** Plot No-884, Phase-V, Udhyog Vihar, Gurgaon-122016.
(2) **Shri Salim Khan, Director of M/s. Monark India Pvt. Ltd.,** Plot No-884, Phase-V, Udhyog Vihar, Gurgaon-122016.
(3) **M/s. International Cargo Corporation,** 221, Ecstasy, 1st Floor, Business Park, City of Joy, Mulund(W), Mumbai-400080.
(4) **Shri Rupesh Jivanbhai Katariya, Authorized Signatory of M/s. International Cargo Corporation**, 221, Ecstasy, 1st Floor, Business Park, City of Joy, Mulund(W), Mumbai-400080.

COPY TO:-

1) The Chief Commissioner of Customs. Gujarat Zone, Ahmedabad for information please.
2) The Additional Director General, Directorate of Revenue Intelligence, Zonal Unit, 15, Magnet Co-operate Park, Near Sola Bridge, S.G. Highway, Thaltej, Ahmedabad-380054 for information please.
3) The Pr. Commissioner of Customs, Nhava Sheva, JNCH, Raigadh for information please.
4) The Deputy Commissioner of Customs, ICD, Tumb for information.
5) The Superintendent of Customs(Systems), Ahmedabad in PDF format for uploading on the website of Customs Commissionerate, Ahmedabad.
6) Guard File.