



सीमा शुल्क(अपील) आयुक्त का कार्यालय, अहमदाबाद .

OFFICE OF THE COMMISSIONER OF CUSTOMS (APPEALS), AHMEDABAD,  
चौथी मंज़िल 4th Floor, हड्डको भवन HUDCO Bhawan, ईश्वर भुवन रोड Ishwar Bhuvan Road  
नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad – 380 009

दूरभाष क्रमांक Tel. No. 079-26589281

DIN – 20250571MN0000308930

क	फाइल संख्या FILE NO.	(1) S/49-109/CUS/MUN/2023-24 (2) S/49-110/CUS/MUN/2023-24
ख	अपील आदेश संख्या ORDER-IN-APPEAL NO. (सीमा शुल्क अधिनियम, 1962 की धारा 128के अंतर्गत)(UNDER SECTION 128A OF THE CUSTOMS ACT, 1962) :	MUN-CUSTM-000-APP-028 to 029-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	21.05.2025
ङ	उद्भूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	Order – In – Original No. MCH/ADC/MK/102/2023-24, dated 30.06.2023 issued by the Additional Commissioner of Customs, Mundra
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	21.05.2025
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	(1) M/s Multi Marble Pvt. Ltd., Behind Sukher Industrial Area, Sukher, Udaipur.  (2) Shri Sanjeev Modi, Authorised Signatory of M/s. Multi Marble Pvt. Ltd., Behind Sukher Industrial Area, Sukher, Udaipur.



1	यह प्रति उस व्यक्ति के निजी उपयोग के लिए मुफ्त में दी जाती है जिनके नाम यह जारी किया गया है।
	This copy is granted free of cost for the private use of the person to whom it is issued.
2.	सीमाशुल्क अधिनियम 1962 की धारा 129 डी डी (1) (यथा संशोधित) के अधीन निम्नलिखित श्रेणियों के मामलों के सम्बन्ध में कोई व्यक्ति इस आदेश से अपने को आहत महसूस करता हो तो इस आदेश की प्राप्ति की तारीख से 3 महीने के अंदर अपर सचिव/संयुक्त सचिव (आवेदन संशोधन), वित्त मंत्रालय, (राजस्व विभाग) संसद मार्ग, नई दिल्ली को पुनरीक्षण आवेदन प्रस्तुत कर सकते हैं।
	Under Section 129 DD(1) of the Customs Act, 1962 (as amended), in respect of the following categories of cases, any person aggrieved by this order can prefer a Revision Application to The Additional Secretary/Joint Secretary (Revision Application), Ministry of Finance, (Department of Revenue) Parliament Street, New Delhi within 3 months from the date of communication of the order.
	निम्नलिखित सम्बन्धित आदेश/Order relating to :
(क)	बैगेज के रूप में आयातित कोई माल।
(a)	any goods imported on baggage
(ख)	भारत में आयात करने हेतु किसी वाहन में लादा गया लेकिन भारत में उनके गन्तव्य स्थान पर उतारे न गए माल या उस गन्तव्य स्थान पर उतारे जाने के लिए अपेक्षित माल उतारे न जाने पर या उस गन्तव्य स्थान पर उतारे गए माल की मात्रा में अपेक्षित माल से कमी हो।
(b)	any goods loaded in a conveyance for importation into India, but which are not unloaded at their place of destination in India or so much of the quantity of such goods as has not been unloaded at any such destination if goods unloaded at such destination are short of the quantity required to be unloaded at that destination.
(ग)	सीमाशुल्क अधिनियम, 1962 के अध्याय X तथा उसके अधीन बनाए गए नियमों के तहत शुल्क वापसी की अदायगी।
(c)	Payment of drawback as provided in Chapter X of Customs Act, 1962 and the rules made thereunder.
.3	पुनरीक्षण आवेदन पत्र संगत नियमावली में विनिर्दिष्ट प्रारूप में प्रस्तुत करना होगा जिसके अन्तर्गत उसकी जांच की जाएगी और उस के साथ निम्नलिखित कागजात संलग्न होने चाहिए :
	The revision application should be in such form and shall be verified in such manner as may be specified in the relevant rules and should be accompanied by :
(क)	कोर्ट फी एक्ट, 1870 के मद से. 6 अनुसूची 1 के अधीन निर्धारित किए गए अनुसार इस आदेश की 4 प्रतियां, जिसकी एक प्रति में पचास पैसे की न्यायालय शुल्क टिकट लगा होना चाहिए।
(a)	4 copies of this order, bearing Court Fee Stamp of paise fifty only in one copy as prescribed under Schedule 1 item 6 of the Court Fee Act, 1870.
(ख)	सम्बद्ध दस्तावेजों के अलावा साथ मूल आदेश की 4 प्रतियां, यदि हो
(b)	4 copies of the Order-in-Original, in addition to relevant documents, if any
(ग)	पुनरीक्षण के लिए आवेदन की 4 प्रतियां
(c)	4 copies of the Application for Revision.
(घ)	पुनरीक्षण आवेदन दायर करने के लिए सीमाशुल्क अधिनियम, 1962 (यथा संशोधित) में निर्धारित फीस जो अन्य रसीद, फीस, दण्ड, जब्ती और विविध मर्दों के शरीर के अधीन आता है में रु. 200/- (रुपए दो सौ मात्र)या रु.1000/- (रुपए एक हजार मात्र), जैसा भी मामला हो, से सम्बन्धित भुगतान के प्रमाणिक चलान टी.आर.6 की दो प्रतियां, यदि शुल्क, मांगा गया ब्याज, लगाया गया दंड की राशि और रुपए एक लाख या उससे कम हो तो ऐसे फीस के रूप में रु.200/- और यदि एक लाख से अधिक हो तो फीस के रूप में रु.1000/-
(d)	The duplicate copy of the T.R.6 challan evidencing payment of Rs.200/- (Rupees two Hundred only) or Rs.1,000/- (Rupees one thousand only) as the case may be, under the Head of other receipts, fees, fines, forfeitures and Miscellaneous Items being the fee prescribed in the Customs Act, 1962 (as amended) for filing a Revision Application. If the amount of duty and interest demanded, fine or penalty levied is one lakh rupees or less, fees as Rs.200/- and if it is more than one lakh rupees, the fee is Rs.1000/-.



4.	मद सं. 2 के अधीन सूचित मामलों के अलावा अन्य मामलों के सम्बन्ध में यदि कोई व्यक्ति इस आदेश से आहत महसूस करता हो तो वे सीमाशुल्क अधिनियम 1962 की धारा 129 ए (1) के अधीन फॉर्म सी.ए.-3 में सीमाशुल्क, केन्द्रीय उत्पाद शुल्क और सेवा कर अपील अधिकरण के समक्ष निम्नलिखित पते पर अपील कर सकते हैं।	
	In respect of cases other than these mentioned under item 2 above, any person aggrieved by this order can file an appeal under Section 129 A(1) of the Customs Act, 1962 in form C.A.-3 before the Customs, Excise and Service Tax Appellate Tribunal at the following address :	
	सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी श्वेतीय पीठ	<b>Customs, Excise &amp; Service Tax Appellate Tribunal, West Zonal Bench</b>
	दूसरी मंज़िल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016	2 <sup>nd</sup> Floor, Bahumali Bhavan, Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016
5.	सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (6) के अधीन, सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (1) के अधीन अपील के साथ निम्नलिखित शुल्क संलग्न होने चाहिए-	
	Under Section 129 A (6) of the Customs Act, 1962 an appeal under Section 129 A (1) of the Customs Act, 1962 shall be accompanied by a fee of -	
(क)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रुपए या उससे कम हो तो एक हजार रुपए।	
(a)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is five lakh rupees or less, one thousand rupees;	
(ख)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रुपए से अधिक हो लेकिन रुपये पचास लाख से अधिक न हो तो; पाँच हजार रुपए	
(ब)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than five lakh rupees but not exceeding fifty lakh rupees, five thousand rupees ;	
(ग)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पचास लाख रुपए से अधिक हो तो; दस हजार रुपए।	
(c)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than fifty lakh rupees, ten thousand rupees	
(घ)	इस आदेश के विरुद्ध अधिकरण के सामने, मांगे गए शुल्क के %10 अदा करने पर, जहां शुल्क या शुल्क एवं दंड विवाद में है, या दंड के %10 अदा करने पर, जहां केवल दंड विवाद में है, अपील रखा जाएगा।	
(d)	An appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.	
6.	उक्त अधिनियम की धारा 129 (ए) के अन्तर्गत अपील प्राधिकरण के समक्ष दायर प्रत्येक आवेदन पत्र- (क) रोक आदेश के लिए या गलतियों को सुधारने के लिए या किसी अन्य प्रयोजन के लिए किए गए अपील : - अथवा (ख) अपील या आवेदन पत्र का प्रत्यावर्तन के लिए दायर आवेदन के साथ रुपये पाँच सौ का शुल्क भी संलग्न होने चाहिए।	
	Under section 129 (a) of the said Act, every application made before the Appellate Tribunal-	
	(a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or (b) for restoration of an appeal or an application shall be accompanied by a fee of five Hundred rupees.	



ORDER - IN - APPEAL

The present two appeals have been filed by M/s. Multi Marble Pvt. Ltd., behind Sukher Industrial Area, Sukher, Udaipur (hereinafter referred to as 'the Appellant No.1') and Shri Sanjeev Modi, Authorised Signatory of M/s. Multi Marble Pvt. Ltd., behind Sukher Industrial Area, Sukher, Udaipur (hereinafter referred to as 'the Appellant No.2') in terms of Section 128 of the Customs Act, 1962, challenging the Order-In-Original No. MCH/ADC/MK/102/2023-24, dated 30.06.2023 (hereinafter referred to as the 'impugned order') passed by the Additional Commissioner, Customs, Mundra (hereinafter referred to as 'the adjudicating authority').

2. Facts of the case, in brief, are that the information received by the officers of Directorate of Revenue Intelligence, Zonal Unit, Ahmedabad (DRI) indicated that M/s. United Natural Stones (100%EOU) ( formerly known as M/s. Eurasia Marble Pvt Ltd ), F-325 to 327 & G1-296-298 RIICO Industrial Area, Bhamashah, Kaladwas, Udaipur was engaged in evasion of duty by diverting of rough marble blocks classifiable under Customs Tariff Heading 25151210, imported duty free by availing exemption under Notification No. 52/2003-Customs, dated 31.03.2003. Information further indicated that the goods imported by M/s. United Natural Stones ( 100% EOU) under Bill of Entry No. 8748306, dtd. 19.05.2022 through Mundra port was likely to be diverted to the premises of Appellant No. 1 i.e M/s Multi Marble Pvt. Ltd., Udaipur.

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

2.2 Acting upon the said information, simultaneous searches were conducted on 28.05.2022 and 29.05.2022 at the factory premises of M/s. United Natural Stones (100%EOU) and Appellant No.1 as soon as the goods covered under the said Bill of Entry No. 8748306, dtd. 19.05.2022 were unloaded/ diverted to the other unit i.e. Appellant No. 1. Incriminating documents pertaining to M/s. United Natural Stones( 100%EOU) and Appellant No. 1 along with electronic




gadgets of concerned persons were seized under Panchnamas dated 28.05.2022 and 29.05.2022

2.3 During the course of search in the factory premises of M/s. United Natural Stones (100%EOU), it was found that there was no electricity connection in the factory since last one & half month. Further, the goods Imported by M/s. United Natural Stones (100%EOU) vide Bill of Entry No. 8748306, dtd. 19.05.2022 were not found in their registered EOU premises i.e at F-325 to 327 & G-296 to 298, RICO Industrial Area, Bhamashah, Kaladwas, Udaipur (Raj). On inquiry, Shri Raj Kumar Sharma, Accountant of Appellant No. 1 in presence of Panchas stated that they had neither received goods imported by Appellant No. 1 vide Bill of Entry No. 8748306, dtd. 19.05.2022 in their factory premises nor, any documents for import of goods.

2.4 During the search in the factory premises of Appellant No. 1 , on inquiry with the drivers of truck/trailer, who transported the goods from Mundra to Udaipur, it was found that goods imported by M/s. United Natural Stones(100%EOU) vide Bill of Entry No. 8748306 dtd. 19.05.2022 were unloaded in the factory premises of Appellant No. 1. Further, during the search, the said goods were found in the premises of Appellant No. 1. On inquiry, the Appellant No. 2 i.e Shri Sanjeev Modi, Authorised Signatory of M/s. Multi Marble Pvt. Ltd in presence of Panchas accepted that they have received the 9 imported Marble Blocks in their factory, which were imported by Appellant No. 1 at Mundra port.

2.5 It appeared that the goods imported by M/s. United Natural Stones ( 100% EOU) vide Bill of Entry No. 8748306, dtd. 19.05.2022 at Nil rate of duty claiming exemption under Notification No. 52/2003-Customs, dated 31.03.2003 being registered 100% EOU were diverted without payment of duty and same were found in the factory premises of Appellant No. 1. The said 9 imported Marble Blocks having Weight 164580 Kgs, valued at Rs. 1,54,119/- were seized vide Seizure Memo dated 29.05.2022 under the reasonable belief that the said goods were liable for confiscation under the provisions of the Customs Act, 1962.

2.6 On completion of investigation, M/s. United Natural Stones (100%EOU), Shri Ashok Kumar , Partner of M/s. United Natural Stones ( 100%EOU), Appellant No. 1 and Appellant No. 2 were issued show cause notice vide F. No. GEN/ADJ/ADC/923/2022-Adjn-O/o Pr. Commr-Cus-Mundra dated 16.11.2022 wherein it was proposed as under :-

- (i) The value of Rs. 11,54,119/- declared by M/s. United Natural Stones (100%EOU)/assessed at the time of clearance of goods i.e. 164.580 MT of Blocks of Rough Marble classifiable under Customs Tariff Heading 25151210, imported by them under Bill of Entry No. 8748306 dtd. 19.05.2022, as detailed in Annexure-A to the SCN may be rejected under Rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and re- determined as Rs. 25,60,710/- as detailed in Annexure-A to the SCN as per Notification No. 27 (RE-2015)/2015-20 dated 17.09.2016 issued by the DGFT.



(ii) 164.580 MT of Blocks of Rough Marble classifiable under Customs Tariff Heading 25151210 valued at Rs. 25,64,710/- (re-determined) imported duty free under Bill of Entry No. 8748306 dtd. 19.05.2022, as detailed in Annexure-A to the SCN which were seized on 29.05.2022 may be confiscated under Section 111 (o) of the Customs Act, 1962 read with conditions of Notification No. 52/2003-Cus. dated 31.03.2003.

(iii) The Customs duty amounting to Rs. 14,56,755/- involved on the goods imported duty free under Bill of Entry No. 8746306 dtd. 19.05.2022, as detailed in Annexure-A to the SCN and diverted in DTA (including on goods seized on 29.05.2022) may be demanded and recovered from M/s. United Natural Stones (100%EOU) by enforcing the B-17 Bond executed by them under Notification No. 52/2003-Cus. dated 31.03.2003 as amended read with Section 28(4) of the Customs Act, 1962.

(iv) Interest at the applicable rate on the duty evaded should be recovered from M/s. United Natural Stones (100%EOU) in terms of conditions of B-17 Bond executed by them under Notification No. 52/2003-Cus. dated 31.03.2003 as amended, read with Section 28 AA of the Customs Act 1962

(v) Penalty should be imposed upon M/s. United Natural Stones ( 100% EOU) under the provisions of Section 112(a) and 112(b) of the Customs Act, 1962 for goods mentioned at (ii) above.

(vi) Penalty should be imposed upon M/s. United Natural Stones (100%EOU) under the provisions of Section 114A of the Customs Act, 1962 for duty mentioned at (iii) above.

(vii) Penalty should be imposed upon Shri Ashok Kumar , Partner of M/s. United Natural Stones ( 100%EOU) under Section 112(a), 112(b) and 114AA of the Customs Act, 1962 separately for his role as discussed in para supra.

(viii) Penalty should be imposed upon **Appellant No. 1 i.e M/s. Multi Marble Pvt Ltd and Appellant no. 2 i.e. Shri Sanjeev Modi, Authorised Signatory of M/s. Multi Marble Pvt Ltd**, under Section 112(a), 112(b) and 114AA of the Customs Act, 1962 separately for their role as discussed in SCN.

Personal Hearing in the matter of above SCN was given to the noticees on 02.02.2023, 15.02.2023 and 14.03.2023, but none of the noticee turned up for the hearing and also failed to submit their defence. Accordingly, the adjudicating authority decided the matter ex-parte on the basis of documentary evidences available on records. The adjudicating authority has vide impugned order passed orders as detailed below :-

(i) It was ordered to re-call Bill of Entry No. 8748306 dtd. 19.05.2022, and reject the Declared Value of the Imported Goods and re-determine the same as Rs. 25,64,710/- as



per Notification No. 27 (RE-2015)/2015-20 dated 17.09.2016 issued by the DGFT under the provision of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

- (ii) It was ordered to confiscate 164.580 MT of Bochs of Rough Marble classifiable under Customs Tariff Heading 25151210 valued at Rs. 25,64,710/- (re-determined) imported duty free under Bill of Entry No. 8748306 dtd. 19.05.2022 under Section 111 (o) of the Customs Act, 1962 read with conditions of Notification No. 52/2003-Cus. dated 31.03.2003. However, an option was given to redeem the goods on payment of redemption fine of Rs.4,00,000/- under Section 125 of the Customs Act, 1962 and to be brought back to 100% Export Oriented Unit for further use in the Export Oriented Unit as per prescribed procedure to be followed by the Export Oriented Unit on Conditional Duty Free Imported Goods.
- (iii) It was ordered to recover Customs duty amounting to Rs. 14,56,755/- including IGST as per the Provisions of the Customs Act, 1962 read with Section 5 of Integrated Goods and Service Tax Act, 2017 involved on the goods imported duty free under Bill of Entry No. 8748306 dtd. 19.05.2022, from M/s. United Natural Stones (100%EOU) by enforcing the B-17 Bond executed by them under Notification No. 52/2003-Cus. dated 31.03.2003 as amended, read with Section 28(4) of the Customs Act, 1962.
- (iv) It was ordered to recover Interest from M/s. United Natural Stones (100%EOU) at the applicable rate on the duty evaded in terms of conditions of B-17 Bond executed by them under Notification No. 52/2003-Cus. dated 31.03.2003 as amended, read with Section 28 AA of the Customs Act 1962 read with Section 50 of the Central Goods and Service Tax Act, 2017.
- (v) The adjudicating authority refrained from imposing penalty upon M/s. United Natural Stones (100%EOU) under the provisions of Section 112(a) (1) of the Customs Act, 1962 for goods mentioned at (ii) above but imposed penalty of Rs. 2,00,000/- on them under the provisions of Section 114A of the Customs Act, 1962 for duty mentioned at (iii) above.
- (vi) Imposed penalty of Rs. 2,00,000/- and Rs. 1,50,000/- upon Shri Ashok Kumar , Partner of M/s. United Natural Stones ( 100%EOU) under Section 112(a) (i) and Section 114AA of the Customs Act, 1962 respectively , separately for his role as discussed in para supra.
- (vii) Imposed penalty of Rs. 1,50,000/- and 100000/- upon **Appellant No. 1 i.e M/s. Multi Marble Pvt Ltd** under Section 112(b)(i) and 114AA of the Customs Act, 1962 separately for their role as discussed in SCN.
- (viii) Imposed penalty of Rs. 75,000/- and Rs. 50,000/- upon **Appellant No. 2 i.e. Shri**



**Sanjeev Modi, Authorised Signatory of M/s Multi Marble Pvt. Ltd** under Section 112(b)(i) and 114AA of the Customs Act, 1962 separately for his role as discussed in SCN.

3. Being aggrieved with the impugned order passed by the adjudicating authority, the Appellant No. 1 and Appellant No. 2 have filed the present appeals. They have, inter-alia, raised various contentions and filed detailed submissions which are similar and common for both and hence discussed together as under :-

- There was no electricity connection in the factory of the M/s. United Natural Stones (100%EOU) for last one & half month at the time of DRI officials on 28.05.2022. Therefore, the 9 marble blocks imported vide bill of Entry No. 8748306 dated 19.05.2022 were unloaded in M/s Multi Marble Pvt. Ltd. , Sukher, Udaipur as gantry crane required to unload marble blocks was not operational due to absence of electricity power,
- But to avoid litigation, M/s. United Natural Stones (100%EOU) deposited the entire amount of Customs Duty on the enhanced value of goods from Rs.11,54,119/- to Rs. 25,64,710/-along with the entire interest involved of Rs. 1,35,001/- and 15% of duty amount being Rs. 2,18,514/-as penalty within 30 days from the date of receipt of the impugned SCN. The details of deposit along with the relevant TR 6 challans had already been given by M/s. United Natural Stones (100%EOU) in its appeal filed against the impugned OIO which may be considered for deciding present appeal.
- The above amounts of duty, interest and penalty were deposited 20.12.2022 being within 30 days of the receipt of the SCN on 21.12.2022 on e-mail to get the impugned SCN concluded under Section 28(5) and Section 28(6) of the Customs Act, 1962.
- Shri Ashok Kumar, partner in M/s. United Natural Stones (100%EOU) was in USA since Nov., 2022 and the factory was closed since then. No notice of hearing was received and so, no reply was submitted by M/s. United Natural Stones (100%EOU). The Appellant's of this appeal took the adjournments as they were told by M/s. United Natural Stones (100%EOU) that they would take steps for concluding the impugned SCN at their end. But it appears that M/s. United Natural Stones (100%EOU) could not inform the Ld. Adjudicating Authority in time about the deposit of duty, interest and penalty hence the case was decided ex-parte.
- The case of the M/s. United Natural Stones (100%EOU) and all other Noticee's to the SCN including both the Appellant's of this appeal was liable to be concluded under provisions of section 28(5) & section 28(6) of the Customs Act, 1962.
- The Appellant's submit the following grounds of appeal on merit which may be considered when the Hon'ble Commissioner (Appeals) decides not to give the benefit of provisions of Section 28(5) and 28(6) of the Customs Act, 1962.



➤ The Ld. Adjudicating Authority has fallen into grave error by imposing the penalty of Rs. 1.5 lac imposed on M/s Multi Marble Pvt. Ltd., Udaipur, Appellant No.1 and penalty of Rs. 75,000/- on Sh. Sanjeev Modi, authorized signatory of M/s Multi Marble Pvt. Ltd., Udaipur, Appellant No.2 under Section 112(b)(i) of the Customs Act,1962 which is evident on the grounds discussed below: -

(a) M/s. United Natural Stones (100%EOU) is the importer and beneficiary of the provisions of 100% EOU. The Appellants had no interest in the impugned imports of M/s. United Natural Stones (100%EOU). When M/s. United Natural Stones (100%EOU) was not found fit for imposing penalty under Section 112, then penalty under Section 112(b)(i) on the appellants is bad in law.

(b) It was in knowledge of the Appellant No. 2 that the goods were duty paid and that the goods are un-loaded in the factory of the appellant No.2 as there was no electricity connection in the factory of M/s. United Natural Stones (100%EOU). Both the Appellants were in no case involved in diversion of goods in DTA by M/s. United Natural Stones (100%EOU).

➤ The Appellants are not importers. The goods were found in the premises of Appellant No. 1 but no malafide was proved. The penalty under Section 112(b)(i) has been imposed for confiscation of goods under Section 11(m) of the Act. This section reads as under:-

**“Section 111. Confiscation of improperly imported goods, etc.** -  
*The following goods brought from a place outside India shall be liable to confiscation: -*

*(m) 2[any goods which do not correspond in respect of value or in any other particular] with the entry made under this Act or in the case of baggage with the declaration made under section 77 3 [in respect thereof, or in the case of goods under trans-shipment, with the declaration for trans-shipment referred to in the proviso to sub-section (1) of section 54];”*

- Section 111(m) is invoked on goods imported which do not correspond to the value with Bill of entry but this is not the case. Even if this is true, then it relates to M/s. United Natural Stones (100%EOU) and not to the Appellants. Therefore, imposition of penalty under Section 112(b)(i) on both the Appellants is wrong.
- Without prejudice it is submitted that the penalty under section 112 of the Customs Act, 1962 was not permissible when penalty under section 114A of the Customs Act, 1962 has already been imposed
- Without prejudice to other submissions in this appeal memo, it is submitted that SCN dated 16.11.2022 issued to M/s United Natural Stones in which duty was proposed under



*X:17*

section 28(4) of the Customs Act, 1962 from the said main noticee's on the quantity of imported marble blocks procured by them without payment of duty which alleged to be diverted to M/s Multi Marbles Pvt Ltd, Udaipur. It is further fact on record that the LD. Adjudicating Authority has confirmed the said duty under section 28(4) of the Customs Act, 1962 and also imposed the penalty under section 114A of the Customs Act, 1962 in same OIO dated 11.07.2023. Kind attention is invited to the proviso to section 114A of the Customs Act, 1962 in which there is a specific provision that "where any penalty has been levied under this section, no penalty shall be levied under section 112 or section 114".

- The penalty under Section 112(b)(i) is not imposable to the appellants as prohibition on importation of goods was on M/s. United Natural Stones (100%EOU) as 100% EOU and not the Appellants.
- In view of the above legal provision in the law, the penalty under section 112b(i) of the Customs Act, 1962 has been wrongly imposed on the Appellants because such action of penalty under section 112 is not permissible under Customs law when on the same goods (held to be diverted from the EOU unit of main noticee's of SCN) penalty has already been imposed on the main noticee's of SCN under section 114A of the Customs Act, 1962 on which duty has been confirmed along with said penalty. On this ground alone, the penalty imposed under section 112 of the Customs Act, 1962 on Appellants of this appeal is liable to be quashed.
- Without prejudice, it is submitted that when the section 111 or Section for confiscation of seized goods were invoked against the main Noticee of the impugned SCN i.e., M/s United Natural Stones ( 100%EOU) then the penalty if any was required to be imposed under section 112 on the main noticee but no penalty under these section was imposed on M/s United Natural Stones (100%EOU), the main noticee's of the impugned SCN. In such a situation when no penalty has been imposed in OIO on main noticee's of the SCN under Section 112, penalty on co-noticee (now Appellant's no 1 & 2) is redundant and without jurisdiction.
- The Ld. Adjudicating Authority has fallen into grave error by imposing penalty of Rs. 75,000/- imposed on M/s Multi Marble Pvt. Ltd., Udaipur, Appellant No.1 and penalty of Rs. 50,000/- on Sh. Sanjeev Modi, authorized signatory of M/s Multi Marble Pvt. Ltd., Udaipur, Appellant No.2 under Section 114AA of the Customs Act, 1962 which is evident on the grounds discussed below: -
- The adjudicating authority has not given any specific finding for imposition of penalty under Section 114AA of the Customs Act, 1962. There was nothing in the SCN also which provides any justification for imposition of penalty under Section 114AA. The case was decided ex-parte and imposition of penalty was not properly founded. The




appellants are not importers and ingredients of Section 114AA are not satisfied by the appellants.

- When the appellants have not filed any documents, allegations of manipulation in documents filed for imports is bad in law. So, imposition of penalty under Section 114AA is incorrect.
- Thirdly without prejudice, it is submitted such allegations/finding of the impugned OIO cannot be subjected to impose penalty under Section 114AA of the Act ibid which is wholly inapplicable in the present case

Section 114AA are reproduced below for ready perusal: -

*" SECTION 114AA. Penalty for use of false and incorrect material. - 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."*

- THAT the learned Adjudicating Authority has completely failed to appreciate that ingredients of Section 114AA of the Customs Act, 1962 cannot be pressed into for allegation. Neither the impugned SCN nor the impugned OIO had mentioned as to why the provision of section 114 AA would be applicable against the appellant company where the provisions of Section 114AA is intended to penalize situation where there is paper transaction without any actual import or export of goods. He failed to point as to what document, declaration or statement were signed by the appellants in the transaction of business related to Customs Act, 1962 which were false or incorrect in any material particular so as to justify the penalty under that section. Thus the penalty under Section 114AA of the Customs Act, 1962 had been wrongly imposed on the appellant's Company on such flimsy ground.
- Without prejudice to above grounds on merit it is submitted that the Ld. Adjudicating Authority erred in law by not considering that where the penalty had been imposed under Section 114A on the EOU firm, no separate penalty can be imposed on it under Section 114AA of the Customs Act, 1962. Imposing penalty on M/s Multi Marble Pvt. Ltd. (appellant No. 1) and their authorized signatory Sh. Sanjeev Modi (Appellant No.2) is duplicity of penalty.
- Considering the above alternate grounds, the penalty imposed under section 114AA of the Customs Act, 1962 is liable to be set aside.



4. Shri R.S.Mangal, Chartered Accountant and Authorised Representative appeared for personal hearing on 15.05.2025 in virtual mode on behalf of Appellant No. 1 and Appellant No. 2. He reiterated the submissions made at the time of filing of appeals.

5. I have carefully gone through the Appeal Memorandum filed by the Appellant No. 1, and Appellant No. 2 as well as the documents and evidences available on record. The issues to be decided in the present appeals are as under: -

(i) Whether the impugned order imposing penalty on the Appellant No. 1 and Appellant No.2 under Section 112(a)(i) and Section 114AA of the Customs Act,1962 respectively, when the Customs Duty demanded under Section 28(4) of the Customs Act, 1962 has been paid by the main noticee i.e M/s United Natural Stones ( 100%EOU) along with interest and 15 % penalty within 30 days of receipt of SCN in terms of Section 28(5) of the Customs Act, 1962 in the facts and circumstances of the case, is legal and proper or otherwise.

5.1 I have carefully gone through the case records, impugned order passed by the Additional Commissioner, Customs House, Mundra and the defense put forth by the Appellants in the appeal. The Appellants have filed the present appeals on 18.09.2023. In the Form C.A.-1, the Appellants has mentioned date of communication of the Order-In-Original dated 30.06.2023 issued on 11.07.2023 as 24.07.2023. Therefore, both the appeals have been filed with in stipulated period of 60 days under Section 128(1) of the Customs Act, 1962. The Appellant No. 1 has submitted a copy of the TR-6/GAR7 Challan dtd 14.09.2023 towards payment of pre-deposit of Rs. 18,750/- which is 7.5% of the total penalty imposed i.e Rs.2,50,000/- whereas the Appellant No. 2 has submitted a copy of the TR-6/GAR7 Challan dtd 14.09.2023 towards payment of pre-deposit of Rs. 9375/- which is 7.5% of the total penalty imposed i.e Rs.1,25,000/- under the provisions of Section 129E of the Customs Act, 1962. As both the appeals have been filed with in the stipulated time limit and on payment of pre-deposit , the same are admitted and taken up for disposal on merits.

5.2 It is observed that the Appellant No 1 as well as Appellant No. 2 have mainly contended that that they may be allowed the amnesty available under Section 28(5) and 28(6) of the Customs Act, 1962 as the main noticee i.e M/s United Natural Stones ( 100%EOU) have paid the entire Customs duty determined under Section 28(4) of the Customs Act, 1962 along with applicable interest and 15 % of duty as penalty with in stipulated 30 days of receipt of SCN i.e 21.11.2022.

5.3 The legal provisions of Section 28(4), 28(5) and 28(6) of Customs Act, 1962 are reproduced as under :-

***"SECTION [28. Recovery of [duties not levied or not paid or short-levied or short-paid] or erroneously refunded. —***




(4) Where any duty has not been [levied or not paid or has been short-levied or short-paid] or erroneously refunded, or interest payable has not been paid, part-paid or erroneously refunded, by reason of, —

- (a) collusion; or
- (b) any wilful mis-statement; or
- (c) suppression of facts,

by the importer or the exporter or the agent or employee of the importer or exporter, the proper officer shall, within five years from the relevant date, serve notice on the person chargeable with duty or interest which has not been [so levied or not paid] or which has been so short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice.

(5) Where any [duty has not been levied or not paid or has been short-levied or short-paid] or the interest has not been charged 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 by the importer or the exporter or the agent or the employee of the importer or the exporter, to whom a notice has been served under sub-section (4) by the proper officer, such person may pay the duty in full or in part, as may be accepted by him, and the interest payable thereon under section 28AA and the penalty equal to [fifteen per cent.] of the duty specified in the notice or the duty so accepted by that person, within thirty days of the receipt of the notice and inform the proper officer of such payment in writing.

(6) Where the importer or the exporter or the agent or the employee of the importer or the exporter, as the case may be, has paid duty with interest and penalty under sub-section (5), the proper officer shall determine the amount of duty or interest and on determination, if the proper officer is of the opinion —

(i) that the duty with interest and penalty has been paid in full, then, the proceedings in respect of such person or other persons to whom the notice is served under sub-section (1) or sub-section (4), shall, without prejudice to the provisions of sections 135, 135A and 140 be deemed to be conclusive as to the matters stated therein; or

(ii) that the duty with interest and penalty that has been paid falls short of the amount actually payable, then, the proper officer shall proceed to issue the notice as provided for in clause (a) of sub-section (1) in respect of such amount which falls short of the amount actually payable in the manner specified under that sub-section and the period of [two years] shall be computed from the date of receipt of information under sub-section (5)."

It is observed that the Board has vide its Circular No. 11/2016- Custom dtd. 15.03.2016 has clarified the issue regarding extension of benefit of amnesty provided under Section 28(5) and Section 28(6) of the Customs Act, 1962 to other co-noticees. The relevant portion of the said circular is reproduced as under :-

"(5) The provision of deemed conclusion is contingent upon the person to whom a SCN has been issued under sub-section (1) or sub-section (4) paying up all the dues of duty, interest and penalty as the case may be. Only in such a circumstance of compliance, shall closure of proceedings against other persons come into effect. Therefore, as a corollary, other persons implies person(s) to whom no demand of duty is envisaged with notice served under sub-section (1) or sub-section (4) as the case may be. Other persons who happen to be co-noticees in the SCN for their acts of commission

or omission other than demand of duty would be benefitted by the deemed closure in cases where the compliance of conditions mentioned in proviso to sub-section (2) or clause (i) of sub-section (6), as the case may be, by the main noticee to whom inter alia a demand of duty has been issued has been fulfilled. Further, all such cases where proceedings reach closure stage under the provisions of Section 28, an order to the effect must be invariably issued by the concerned adjudicating authority.

(6) Section 28 primarily deals with the recovery of duty or erroneous refund. While introducing the facility of deemed conclusion, enabling provision was made for payment of interest and/or penalty. Therefore, all such SCNs or cases which involve duty, interest and/or payment of penalty shall be covered by the above clarification. Further, it may be noted that the cases involving seizure of goods under Section 110 of the Customs Act, or cases where confiscation provisions under sections 111, 113, 115, 118, 119, 120 and 121 are invoked, would be out of purview of this Circular."

On going through the above legal provisions as well as the Board's clarification, it is observed that Appellants in the present appeals can claim amnesty under Section 28(5) and Section 28(6) of the Customs Act, 1962 subject to fulfillment of requirement of Section 28(5) by the main Noticee to whom a SCN has been issued under sub-section (1) or sub-section (4) paying up all the dues of duty, interest and penalty as the case may be within 30 days of receipt of the SCN and inform about such payment to the proper officer in writing. Further as per Section 28(6) of the Customs Act, 1962, if the proper officer is of the opinion that duty with interest and penalty has been paid in full, then, the proceedings in respect of such person or other persons to whom the notice is served under sub-section (1) or sub-section (4) of Section 28 of Customs Act, 1962, shall, be deemed to be conclusive. However, there is nothing available on record to show that the main noticee i.e M/s United Natural Stones (100%EOU) had informed to the proper officer i.e adjudicating authority about the payment of duty, interest and penalty as above. From the impugned order, it is observed that the three different dates of hearing were fixed by the adjudicating authority but none of the noticee appeared for the hearing and the SCN was decided on ex-parte basis.

5.4 From the impugned order as well as records available, I find that the intimation of payment of duty, interest and penalty by the main noticee i.e M/s. United Natural Stones (100%EOU) as per Section 28(5) of the Customs Act, 1962 has not been communicated to the adjudicating authority who is the proper officer in this regard. Further, the decision on the request of main noticee i.e M/s. United Natural Stones (100%EOU) for conclusion of proceedings as per Section 28(6) of the Customs Act, 1962 can only be taken by the adjudicating authority which has also not been done in the present case. Copy of present appeal memorandums were also sent to the jurisdictional officer for comments. However, no response have been received from the jurisdictional office. It is pertinent to mention here that this office had also received appeals filed by the main noticee i.e M/s. United Natural Stones (100%EOU) as well as Shri Ashok Kumar, Partner of main noticee i.e M/s. United Natural Stones (100%EOU) against the impugned order wherein they have claimed amnesty under Section 28(5) and Section 28(6) of the Customs Act, 1962. Both the said appeals have been remanded to the adjudicating authority vide OIA No. MUN-CUSTM-000-APP-011 to 013-25-26 dtd.



28.04.2025 for verification of the claims of the said appellants.

5.5 In view of the above, I find that the issue raised in present appeals filed by the both the Appellants being co-noticees are subject to the outcome of the decision regarding closure of proceedings as per Section 28(6) of the Customs Act, 1962 against the main noticee. Since the appeal of the main notice is already remanded to the adjudicating authority, I find that remitting the present two appeals to the adjudicating authority for passing speaking order becomes sine qua non to meet the ends of justice. Accordingly, both the present appeals are required to be remanded back to the adjudicating authority, in terms of sub-section (3) of Section 128A of the Customs Act, 1962, for passing speaking order on the submissions made by the Appellants regarding conclusion of proceeding under Section 28(6) of the Customs Act, 1962 as above following the principles of natural justice. In this regard, I also rely upon the judgment of Hon'ble High Court of Gujarat in case of Medico Labs – 2004 (173) ELT 117 (Guj.), judgment of Hon'ble Bombay High Court in case of Ganesh Benzoplast Ltd. [2020 (374) E.L.T. 552 (Bom.)] and judgments of Hon'ble Tribunals in case of Prem Steels P. Ltd. [2012-TIOL-1317-CESTAT-DEL] and the case of Hawkins Cookers Ltd. [2012 (284) E.L.T. 677(Tri. – Del)] wherein it was held that Commissioner (Appeals) has power to remand the case under Section-35A(3) of the Central Excise Act, 1944 and Section-128A(3) of the Customs Act, 1962.

6. In light of discussions, as recorded above, I allow the appeals of the Appellant No.1 and Appellant No. 2 by way of remand.



  
(Amit Gupta)  
Commissioner (Appeals),  
Customs, Ahmedabad

Date:- 21.05.2025

- (i) F.No. S/49-109/CUS/MUN/2023-24
- (ii) F.No. S/49-110/CUS/MUN/2023-24

By Registered post A.D/E-Mail

To,

(1) M/s Multi Marble Pvt. Ltd.,  
Behind Sukher Industrial Area, Sukher,  
Udaipur.

(2) Shri Sanjeev Modi,  
Authorised Signatory of M/s. Multi Marble Pvt. Ltd.,  
Behind Sukher Industrial Area, Sukher,  
Udaipur.

सत्यापित/ATTESTED

  
अधीक्षक/SUPERINTENDENT  
श्रीमा. शुल्क (अपील्स), अहमदाबाद,  
CUSTOMS (APPEALS), AHMEDABAD

(3) Shri R S Mangal, Chartered Accountant  
(Authorised Representative of Appellant No. 1 & 2)  
502, 6<sup>th</sup> Floor, B-Block, Shubh Ashiana Apartment,  
Opp Bharat Petrol Pump, 100Ft Road, Shobhagpura  
Udaipur-313001  
( Email- rsmangal@gmail.com)

Copy to:

- 1. The Chief Commissioner of Customs, Gujarat, Custom House, Ahmedabad.
- 2. The Pr. Commissioner of Customs, Custom House, Mundra
- 3. The Additional Commissioner of Customs, Custom House, Mundra
- 4. Guard File.

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