



सीमा शुल्क(अपील) आयुक्त का कार्यालय, अहमदाबाद
 OFFICE OF THE COMMISSIONER OF CUSTOMS (APPEALS), AHMEDABAD,
 चौथी मंज़िल 4th Floor, हडको भवन HUDCO Bhawan, ईश्वर भुवन रोड Ishwar Bhuvan Road
 नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad – 380 009
 दूरभाष क्रमांक Tel. No. 079-26589281

DIN – 20250471MN0000000C52B

क	फाइल संख्या FILE NO.	(1) S/49-107/CUS/MUN/2023-24 (CAPPL/COM/CUSP/1538/2023-APPEAL) (2) S/49-111/CUS/MUN/2023-24 (CAPPL/COM/CUSP/1531/2023-APPEAL) (3) S/49-05/CA-2/CUS/MUN/2023-24 (CAPPL/COM/CUSD/176/2023-APPEAL)
ख	अपील आदेश संख्या ORDER-IN-APPEAL NO. (सीमा शुल्क अधिनियम, 1962 की धारा 128क के अंतर्गत)(UNDER SECTION 128A OF THE CUSTOMS ACT, 1962) :	MUN-CUSTM-000-APP-011 to 013-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals) Ahmedabad
घ	दिनांक DATE	28.04.2025
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:	28.04.2025
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	(1) M/s United Natural Stones F-325 to 327 & GI 296 to 298 RIICO Industrial Area, Bhamashah, Kaladwas Udaipur-313003. (2) Shri Ashok Kumar, Partner of M/s. United Natural Stones F-325 to 327 & GI 296 to 298 RIICO Industrial Area, Bhamashah, Kaladwas Udaipur-313003. (3) Asstt Commissioner, Import Assessment, Gr-III, Customs, Mundra

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 सं. 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 मदों के शीर्ष 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 रूपए 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 :				
	<table border="1"> <tr> <td>सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ</td><td>Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench</td></tr> <tr> <td>दूमरी मंजिल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016</td><td>2nd Floor, Bahumali Bhavan, Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016</td></tr> </table>	सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ	Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench	दूमरी मंजिल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016	2 nd Floor, Bahumali Bhavan, Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016
सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ	Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench				
दूमरी मंजिल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016	2 nd 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				
(b)	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 हैं, या दंड के %10 अदा करने पर, जहां केवल दंड विवाद में हैं, 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

M/s United Natural Stones (100% EOU), having IEC No. 1312006340, (formerly known as M/s. Eurasia Marble Pvt Ltd) situated at F-325 to 327 & GI 296 to 298, RIICO Industrial Area, Bhamashah, Kaladwas, Udaipur - 313003 (hereinafter referred to as 'the Appellant No.1') and Shri Ashok Kumar, Partner of M/s. United Natural Stones (100% EOU), (formerly known as M/s. Eurasia Marble Pvt Ltd), F-325 to 327 & GI 296 to 298, RIICO Industrial Area, Bhamashah, Kaladwas, Udaipur - 313003 (hereinafter referred to as 'the Appellant No.2') have filed the present appeals 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'). Further, the Assistant Commissioner, Import Assessment, Gr-III, Customs, Mundra (hereinafter referred to as 'the Appellant - Department') have also filed an appeal in terms of Section 129D (4) of the Customs Act, 1962, on the basis of authorization issued under Section 129D (2) of the Customs Act, 1962 by the Commissioner, Customs, Mundra.

2. Facts of the case, in brief, are that the Appellant No. 1 is engaged in manufacture & export of Marble Slabs, Granites Slabs, Tiles (Cut to size) & Blocks as mentioned in Letter of Permission (LOP) Dated 17.07.1999 issued by Secretariat for Industrial Assistance, EOU-MRI Section, Department of Industrial Policy and Promotion, New Delhi subject to fulfilment of certain conditions. Further, letter dated 14.12.2001 and letter 08.01.2002 were issued to M/s. Eurasia Marble Pvt. Ltd. (100% EOU) by the Assistant Development Commissioner, Noida Export Processing Zone, Noida for change of location from Jaipur to F-325 to 327 & GI-296 to 298, RIICO Industrial Area, Bhamashah, Kaladwas, Udaipur (Raj) and inclusion of additional items for export products viz. Marble Slabs/Tiles, Granites Slabs/tiles (Cut to size), Dressed Marble Blocks, Dressed Sand Stone Blocks, Marble Monuments, Sand Stone Monument & Dressed Granite Blocks. Further, LOP dated 17.07.1999 was changed and taken-over by Appellant No. 1 vide letter dated 25.06.2012 issued by the Assistant Development Commissioner, Noida Special Economic Zone, Noida. The Appellant No. 1 had executed B-17 bonds with Jurisdictional Deputy/Assistant Commissioner of Central Excise & Customs, wherein they had, inter alia, undertaken to observe all the provisions of the Customs Act, 1962, Central Excise Act, 1944, and the Rules and Regulations made thereunder, failing which they had undertaken to pay the Customs and Central Excise duties along with the interest on the same on demand being so made. In pursuance of acceptance of said Bond, Appellant No. 1 had been




granted permission under Section 58 and 65 of Customs Act, 1962 for private bonded warehouse vide Licence No. EOU/UDR/02/2012 dated 16.06.2012 issued under file C.No. V(EOU)30/UDR/UNS/238/12/8633 by the jurisdictional Deputy Assistant Commissioner of Central Excise & Customs subject to the fulfilment of certain conditions.

2.1 Information received by the officers of Directorate of Revenue Intelligence, Zonal Unit, Ahmedabad (DRI) indicated that Appellant No. 1 registered as an EOU was engaged in evasion of duty by diverting of rough marble blocks classifiable under Customs Tariff Heading 25151210, imported duty free by availing exemption under Notification No. 52/2003-Customs, dated 31.03.2003. Information further indicated that the goods imported by the Appellant No. 1 under Bill of Entry No. 8748306, dtd. 19.05.2022 through Mundra port was likely to be diverted to M/s Multi Marble Pvt. Ltd., Udaipur.

2.2 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 EOUs were issued. As per said Circular, DTA sale of marble by EOUs at concessional rate of duties as well as full duties under FTP Para 6.8(a) and Para 6.8(h) respectively, are not allowed. Further, it has also been decided by Board of Approval that EOUs cannot sale marble in DTA under Para 6.9(b) of FTP. Thus, no route is available for DTA sale of marble to EOUs. However, as it was pointed out by Association of marble Exporters/Importers that in spite of provisions as mentioned above, clandestine DTA sale of imported marble from EOUs still takes place. The matter was considered and to ensure that no clandestine DTA sale of imported marble is done by EOUs, it was decided that EOUs must mention quality of marble i.e. colour, type and name etc. in the relevant documents to be submitted at the time of both import as well as export of marble.

2.3 Acting upon the said information, simultaneous searches were conducted on 28.05.2022 and 29.05.2022 at the factory premises of Appellant No. 1 and M/s. Multi Marble Pvt. Ltd, as soon as the goods covered under the said Bill of Entry No. 8748306, dtd. 19.05.2022 were unloaded/ diverted to the other unit i.e. M/s. Multi Marble Pvt. Ltd. Incriminating documents pertaining to Appellant No. 1 and M/s. Multi Marble Pvt. Ltd along with electronic gadgets of concerned persons were seized under Panchnamas dated 28.05.2022 and 29.05.2022

2.4 During the course of search in the factory premises of Appellant No. 1, it was found that there was no electricity connection in the factory since lost one & half month. Further, the goods Imported by Appellant No. 1 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 & GI-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



Handwritten signature/initials

Appellant No. 1 vide Bill of Entry No. 8748306, dtd. 19.05.2022 in their factory premises nor, any documents for import of goods. Shri Raj Kumar Sharma in presence of panchas informed that all the activities related to Import & export were looked by Shri Ashok Kumar and Shri Bhagwan Lai Dangi.

2.5 During the search in the factory premises of M/s. Multi Marble Pvt. Ltd, on inquiry with the drivers of truck/trailer, who transported the goods from Mundra to Udaipur, it was found that goods imported by "the Appellant No. 1 vide Bill of Entry No. 8748306 dtd. 19.05.2022 was unloaded in the factory premises of M/s. Multi Marble Pvt. Ltd. Further, during the search, the said goods were found in the premises of M/s. Multi Marble Pvt. Ltd. On inquiry, 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.

2.6 It appeared that the goods imported by Appellant No. 1 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 M/s. Multi Marble Pvt. Ltd., behind Sukher Industrial Area, Sukher, Udaipur, Rajasthan. The said 9 imported Marble Blocks having Weight 164580 Kgs, valued at Rs. 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.

2.7 During the investigation, it was revealed that the Appellant No. 1 had imported 164.58 MT of Bocks of Rough Marble from by declaring total value of 14812.20 US\$ @90 US\$ Per MT. Thus, it was noticed that the Appellant No. 1 had imported the rough marble blocks below the Minimum Import Price as prescribed in Notification No. 99 (RE-2013)/2009-14 dated 20.11.2014 & Notification No. 27 (RE-2015)/2015-20 dated 17.09.2016 issued by the DGFT. As per Notification No. 99 (RE-2013)/2009-14 dated 20.11.2014 issued by the DGFT, the floor price under policy for issue of import licences of Rough Marble and Travertine Blocks is as under-

Floor Price- Licenses for Import of crude or roughly trimmed marble and travertine blocks or merely cut, by sawing or otherwise into blocks of a rectangular (including square) shape shall be subject to a floor price of US\$ 325 per Metric Ton (PMT), which shall be endorsed on all licences.

2.8 Further DGFT vide Notification No. 27 (RE-2015)/2015-20, dated 17.09.2016, removed the quantitative restrictions on import of Rough Marble Blocks w.e.f. 01.10.2016 and as such import of the same was made free on the condition that the CIF value is US\$ 200 or above per MT. Thus, from 01.10.2016, Appellant No.1 was required to import rough marble blocks at US\$ 200 or above Per MT CIF value. However from 01.10.2016, the Customs duty on import of

[Handwritten signature]



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

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

2.10 In view of the above facts, it appeared that the assessable value of 'Rough Marble block' declared by Appellant No. 1 at the time of clearance of the goods vide impugned Bill of Entry was below the Floor Price and same should be re-assessed/re-determined at the minimum price of US\$ 200 Per MT as per Notification No. 27(RE-2015)/2015-20 dated 17.09.2016 issued by the DGFT. Thus, it appeared that the total assessable value of 'Rough Marble block' assessed by the Customs authority as Rs. 11,54,119/- (as detailed in Annexure-A to the SCN) at the time of clearance of the goods in the impugned Bill of Entry is required to be re-determined as Rs. 25,64,710/- mentioned in Annexure-A to the SCN. Since the goods ie. 'Rough Marble block' imported duty free by Appellant No. 1 by availing exemption under Notification No. 52/2003-Customs, dated 31.03.2003 vide impugned Bill of Entry were diverted in the domestic market, the Customs duty @ 40% and IGST @12% required to be demanded on the re-determined value of goods, which comes to Rs. 14,56,755/- (as detailed in Annexure-A to the SCN).

2.11 Further from the facts and evidences available on record, it appeared that the Appellant No. 1 had imported duty free rough marble blocks vide impugned Bill of Entry without observing the condition of Notification No. 27(RE-2015)/2015-20 dated 17.09.2016 issued by the DGFT and FTP 2015-20. Thus, the Appellant No. 1 appeared to have contravened the provisions of Notification No. 27 (RE-2015)/2015-20 dated 17.09.2016 issued by the DGFT and FTP 2015-20. The Appellant No. 1 were required to export the said imported duty free marble blocks after processing into marble slabs/dressed marble blocks to fulfil their export obligations but instead of it, they diverted these imported duty free marble blocks vide impugned Bill of Entry in the domestic market without issue of any Invoice/bill with an intention to evade the Customs duty. The said duty free imports were made by them by availing the benefit of Notification No. 52/2003-Cur dated 31.03.2003, under 100% EOU-scheme, on the condition that the resultant product manufactured out of said marble blocks was to be exported in terms of the FTP 2015-2020. However the Appellant No. 1 sold the imported raw material as such in the local market without the cover of any invoice, without payment of duty and also suppressed the fact from the department about any such clearance of the said goods in local market, with an intent to evade the applicable Customs Duty leviable thereon. Thus, for the above reason, Section 28(4) of the Customs Act, 1962 is invocable for the recovery of the said Customs duty evaded in this manner. Therefore, the Appellant No. 1 appeared liable to pay the Customs duty amounting to Rs.14,56,755/- leviable on the diverted quantity of 164.580 MT of Rough marble blocks classifiable under Customs Tariff Heading 25151210, valued at Rs. 25,64,710/- as detailed in



42

Annexure-A to the SCN, by enforcing the B-17 Bond executed by them as required under Notification No. 52/2003-Cus. dated 31.03.2003 as amended read with Section 28(4) of the Customs Act, 1962. Further, the Appellant No. 1 have also violated the conditions of Notification No. 52/2003-Customs dated 31.03.2003, Foreign Trade Policy 2015-2020 & Customs Act, 1962 and thus appeared to have rendered the imported goods i.e 164.580 MT rough marble blocks valued at Rs. 25,64,710/- (re- determined) vide impugned Bill of Entry liable to confiscation under Section 111(o) of the Customs Act, 1962 for being imported without observing the conditions of the notifications.

2.12 Though Appellant No. 1, a 100% EOU could not sell imported rough marble blocks into DTA, they systematically defrauded the Govt. exchequer by diverting 164.580 MT rough marble blocks, imported duty free and value at Rs. 25,64,710/- in to domestic market without the cover of invoices and without payment of applicable Customs duty, in violation of conditions of Notification No. 53/2003-Customs, dated 31.03.2003 and Import Export Policy 2015-2020, which resulted in evasion of duty of Rs. 14,56,755/-. Further they have also failed to comply with conditions of Notification No. 27(RE-2015)/2015-20 Dated 17.09.2016 issued by DGFT, I.O.P No. PER (35)1999/EOB/52/99 dated 17.07.1999, provisions of the Customs Act 1962 read with Chapter 6.0 of the Foreign Trade Policy and Notification no. 52/2003-Customs dated 31.03.2003, as amended time to time and therefore they have rendered themselves liable for penal action under Section 112(a), 112(b) and Section 114A of the Customs Act, 1962.

2.13 From the investigations, it appeared that Shri Ashok Kumar, i.e Appellant No. 2 and Partner of Appellant No. 1, looked all the day to day affairs of the said unit and was responsible for the aforesaid diversion of the imported goods in local market without the cover of invoices and without payment of applicable Customs duty, in violation of conditions of Notification No. 52/2003-Customs, dated 31.03.2003 and Import Export Policy 2015-2020, as discussed herein above. Shri Ashok Kumar had knowingly Involved himself in evasion of Customs duty amounting to Rs. 14,56,155/- leviable on 154.580 MT imported Marble Block valued at Rs. 25,64,710/- imported duty free vide impugned Bill of Entry. The said acts on the part of the Appellant No. 2 appeared to have been done with the sole intention to evade the Customs duty. This fact has been corroborated by the evidences collected during investigation. The acts of omission and commission on the part of Appellant No. 2 constitute an offence of the nature as discussed above which have rendered the goods liable to confiscation under the provisions of Section 111 (o) of the Customs Act, 1962. The Appellant No. 2, knowingly concerned himself in diversion of the goods which he knew or had reasons to believe were liable to confiscation under the provisions of Customs Act, 1962 and thereby rendered himself liable for penal action under Section 114A/112(a), 112(b) of the Customs Act, 1962. The Appellant No. 2 was actively involved in day today business and had consciously indulged in illicit diversion of goods imported in the 100% EOU. Thus, it appeared that he had knowingly caused to made, signed or used, the declaration, and documents presented for import which were false or incorrect as discussed supra, in the transaction of his business for the purposes of the Customs Act 1962. Therefore, he is also liable for penal action under Section 114AA of Customs Act, 1962.




2.14 On completion of investigation, Appellant No. 1, Appellant No. 2 and other co-noticees were issued show cause notice vide F. No. GEN/ADJ/ADC/923/2022-Adjn-O/o Pr. Commr-Cus-Mundra dated 16.11.202 wherein it was proposed as under :-

- (i) The value of Rs. 11,54,119/- declared by Appellant No. 1/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 Appellant No. 1 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 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 Appellant No.1 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 them under the provisions of Section 114A of the Customs Act, 1962 for duty mentioned at (iii) above.
- (vii) Penalty should be imposed upon Appellant No. 2 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 and also other co-noticees viz. M/s. Multi Marble Pvt Ltd and 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



[Handwritten signature]

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 notice 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 Appellant No. 1 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 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 Appellant No. 1 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 Appellant No. 2 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 co-noticee 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 co-noticee 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 Appellant's EOU unit 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, the Appellant No.1 deposited the entire amount of Customs Duty on the enhanced value of goods from Rs. 11,54,119/- to Rs. 25,64,710/- alongwith 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 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, Appellant No.2 is partner in the firm of Appellant No.1. He 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. It was thought that the appellant will submit details of duty, interest and penalty paid at the time of personal hearing but the case was decided ex-parte and the appellant No. 1 could not submit any request to conclude the case. Thus, the Appellant No. 1 had deposited the entire duty demanded in section 28(4) of the Customs Act, 1962, the interest payable thereon under section 28AA and the penalty equal to fifteen percent of the duty specified in the impugned SCN within the time specified but the Appellant No. 1, due to situation as explained above could not intimate to the Adjudicating Authority hence in ex- parte proceeding, the redemption was also imposed on the Appellant No.1 besides the confirmation of duty, interest and penalty



Handwritten signature

and the penalties were imposed on co-noticees of the SCN's.

➤ The proceedings of the impugned SCN were liable to be concluded against all the noticees of the SCN but only due to non-submission of information of deposit of duty, interest and penalty, the case was decided ex-parte. Hence it is requested to give the benefit of Section 28(5) and 28(6) of the Customs Act, 1962 as demand was proposed and confirmed under Section 28(4) of the Customs Act, 1962 and considering the specific provisions the law, the redemption fine imposed against the appellant's no 1 and various penalties imposed on other co noticee's of the SCN may be set aside by concluding the proceedings of the impugned SCN under section 28(5) & 28(6) of the Customs Act, 1962 as it has deposited the entire amount of duty involved along with interest and 15% of duty amount as penalty as per details given here-in-above.

➤ 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 :-

a) The orders regarding confiscation of the goods imported by the appellant company are unjustified and unauthorized in the facts of this case. There is no dispute on the fact that the Bill of Entry was filed with the details of the goods which have been in accordance with the details of the goods in the import documents and thus the appellants have relied upon the import documents for declaring the goods to the Customs authorities in India. It is nobody's case in this proceedings that the import documents were manipulated in any manner. Therefore, no liability of confiscation (and also not that for any penalty) would arise for the goods in question in so far as the appellant company as an importer is concerned because the goods of the importer could not be confiscated when he had acted in accordance with the details received by him from the documents of the imported goods. Confiscation of goods is also an action of penal nature and therefore such action depriving the owner of the use of the goods could be resorted to only when the owner (i.e. importer) was involved in any deliberate mis-declaration in respect of such goods. In the facts of the present case, the appellants not being involved in any such illegal activity nor have the appellants acted in any dishonest or contumacious manner as regards submission of import documents and Bills of Entry. The confiscation of the goods is an action without justification and without any authority in law. There was no malafide intention. There was no electricity connection in the EOU since last one and half month. For this reason, there was no gantry crane operative to un-load such bulky goods. For this reason, the goods were unloaded in M/s Multi Marbles P Ltd. on temporary basis. The only difference in the OIO is that the duty free status was denied and duty on higher value was demanded The duty was demanded in excess of duty foregone under Section 28(4) of the Act. Confiscation under Section 111(o) was



File

not correct as the condition of exemption was not violated and demand under Section 28(4) of the Act was issued. Operation of Section 111(o) and Section 28(4) is mutually exclusive. It means either of them is operative. The goods were meant for use in the EOU for manufacture of export goods. Mention of Section 111(o) is meaningless as the demand has been confirmed at higher price which was minimum floor price. The goods were imported below floor price. The Customs duty was safe guard and so there is no question of confiscation and hence both the order of confiscation and imposition of redemption fine in lieu of confiscation was bad in law.

- b). Without prejudice it is alternatively submitted that in case of re-assessment no penalty was required to be imposed. The DRI seized the marble slabs on the ground that the goods that the goods were diverted in DTA. There was no intention to evade the Customs duty as it was explained valid reason for unload of goods in another unit. The appellant EOU is entitled to get duty free raw material in terms of Notification No. 52/2003-Cus for further manufacture. There was no allegation that the appellant EOU have no intention to use these goods. Therefore, charges of intention to evade duty were incorrect. The SCN was meant for re-assessment and for demand of Customs duty under Section 28(4) of Customs Act, 1962. The OIO while confirming duty only denied the duty free status of the goods in original Bills of Entry and re-assessed the goods on floor price which was in excess of original assessable value. The OIO re-assessed the Bill of Entry. Therefore, it is submitted that in cases of re-assessment only Customs duty and interest are payable and no penalty is imposable.
- c). Without prejudice to the above and other arguments on merit, it was submitted to the LD. Adjudicating Authority that the impugned alleged violation of condition of notification number 52/2003 CUS dated 31.03.2003 as amended because it had been alleged that imported marble blocks had been diverted instead of processing of the same for the purpose of export and hence the violation of provisions of Customs Act, 1962 appeared to be committed. Thus the proposed demand of Customs Duty had been made for violation of condition of notification number 52/2003 CUS dated 31.03.2003 as amended.

The reliance is placed in the case of M/s Bharat Tissues Pvt. Ltd., VERSUS C. C-BANGALORE-CUS 2020 (7) TMI 146 CESTAT BANGALORE (Customs Appeal No. 1139 of 2010) held that

" 21----- We find that the Bond submitted in terms of the Notification binds the appellants to pay back the duty and interest in the event of any violation. We find that the said Notification does not provide for imposition of any penalty and therefore, we set aside the penalty

A. V.

imposed. We also find that the appellant's submission vis-à-vis confiscation is also acceptable in terms of the Notification. We find that the Notification is a self-contained Notification and action can be taken by Revenue under the terms of the Notification. We find that the Notification also does not provide for confiscation and fine in lieu of confiscation. Moreover, as discussed above, Learned Commissioner finds that the appellants have imported the rejected goods even though the Serial No. 14 & 15 of Annexure-I to the Notification do not permit such imports. In such case, as submitted by the appellant, the fact that the respective Bills of Entry have been assessed by the proper officers at the time of import is also to be considered. In view of the same, penalty under Section 114A and other penal provisions cannot be invoked when the goods were permitted to be cleared by the officers. However, the Revenue will be free to recover duty along with interest in terms of the Notification. We find that Commissioner has not imposed any fine in lieu of confiscation."

The imported goods in question were properly imported which were properly cleared without payment of duty under Notification No 52/2003 Cus. by the port Customs Authorities hence in case the impugned goods were not found used for intended purpose, the duty along with interest was leviable in terms of specific condition of Notification 52/2003 Cus as enumerated above.

Considering the above decision, the penalty imposed under section 114A of the Customs Act, 1962 is liable to be set aside.

- The Adjudicating Authority has fallen into grave error by imposing the penalty of Rs. 2 lac imposed on Sh. Ashok Kumar, Appellant No.2 under Section 112(a) (i) of the Customs Act, 1962 which is evident on the grounds discussed below. -

(a) Appellant No. 2 is a partner in the firm M/s United Natural Stones, appellant No.1. The identity of the partner is not different from partnership firm. The liability of partnership firm is individually fastened to partners. Therefore, liability of partnership firm is born by partners. When no penalty was imposed on Appellant No. 1 under Section 112(a)(i) then penalty under Section 112(a)(i) on the partner is not legally correct. There is no specific reason assigned for imposing penalty under Section 112(a) (i) of the Act. When the case is of demand under Section 28(4) the confiscation under Section 111(o) was incorrect. The provisions of Section 125 were not correctly read while deciding the case. So, imposition of penalty on appellant No.1 and so on appellant No.2 under Section 112 is incorrect.

(b) Without prejudice to other submissions in this appeal memo, it is submitted



415

that SCN dated 16.11.2022 issued to United Natural Stones in which duty was proposed under 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 Multy Marbles Pvt Ltd, Udaipur. It is further fact on record that the LD. Adjudicating Authority has confirmed the said duty on United Natural Stones 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 Section 112(a) of the Customs Act, 1962 reads *"Any person (a) who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111 in the case of dutiable goods, other than prohibited goods, subject to the provisions of section 1144, to a penalty not exceeding ten per cent of the duty sought to be evaded or five thousand rupees, whichever is higher "*

(emphasis supplied)

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 of SCN) penalty has already been imposed on the main noticee 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.

(c) 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., Appellant No.1 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 Appellant No. 1 i.e the main noticees 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 2) is redundant and without jurisdiction.

- The Adjudicating Authority has fallen into grave error by imposing penalty of Rs. 1,50,000/- imposed on Sh. Ashok Kumar, the appellant No.2, partner of M/s United under Section 114AA of the Customs Act, 1962 which is evident on the grounds

[Handwritten signature]

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.
- When there was no manipulation in documents filed for imports, 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

THAT the learned Adjudicating Authority has completely failed to appreciate that ingredients of Section 114AA of the Customs Act, 1962 cannot 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 Adjudicating Authority erred in law by not considering that where the penalty had been imposed under Section 114A on the EOU appellant's firm, no separate penalty can be imposed on it under Section 114AA of the Customs Act, 1962.

Considering the above alternate grounds, the penalty imposed under section 114AA of the Customs Act, 1962 is liable to be set aside.



3.2 Being aggrieved with the impugned order passed by the adjudicating authority, the Department-Appellant has filed the present appeal on the following ground:-

- The adjudicating authority has erred in imposing penalty as prescribed under Section 114A of the Customs Act, 1962 as apparent in sub-para (v) of Para 22 of the impugned Order-in-Original.
- In present case, the penalty equal to the duty or interest so determined has to be imposed in terms of Section 114A of the Customs Act, 1962. However, the penalty imposed by the adjudicating authority, for short-levy, in terms of Section 114A of the Customs Act, 1962, does not appear proper as the penalty imposed to the tune of Rs. 2,00,000/- is not at par with the differential duty involved in the case. Therefore, the penalty imposed by the Additional Commissioner of Customs, Custom House, Mundra is neither proper nor justified. Accordingly, the Penalty imposed by the adjudicating authority in terms of Section 114A of the Customs Act, 1962 vide impugned order is required to be set aside and order of Adjudicating Authority imposing Penalty should be enhanced in this regard.

4. Shri R.S.Mangal, Chartered Accountant and Authorised Representative appeared for personal hearing on 16.04.2025 on behalf of Appellant No. 1, Appellant No. 2 and also as Respondent in appeal filed by Department. He reiterated the submission made at the time of filing appeal. He reiterated the submissions made at the time of filing of appeals. He also submitted additional submissions emphasizing further that the appellants be given the benefit of amnesty scheme under Section 28(5) read with Section 28(6) of the Customs Act, 1962 as the demand of Customs duty was proposed and confirmed under Section 28(4), the appellants fulfilled the conditions of Section 28(5) to avail the amnesty scheme. The related challan were submitted with appeal. He placed reliance on the Hon'ble CESTAT judgment dtd. 25.10.2024 in case of M/s. Karnawat International Pvt Ltd (100% EOU). He further submitted that they do not want to contest on merit. He filed additional submissions as under :-

- It is submitted that the appellants seek the benefit of amnesty scheme under Section 28(5) and 28(6) of the Customs Act, 1962 as the demand proposed through the impugned SCN 16.11.2022 (which was received on email on 21.11.2022) and confirmed through the impugned OIO dated 30.6.2023 was under Section 28(4) of the Customs Act, 1962 This fact is further confirmed from the departmental appeal in which they have sought to impose the equivalent penalty under Section 114(A) of the Customs Act, 1962 which is applicable only when the duty of customs is determined under Section 28 of the Customs Act, 1962.

In terms of requirement of availability of the amnesty scheme under Section 28(5) and



Handwritten signature

28(6) of the Customs Act, 1962, the appellant's had paid the entire the duty determined under section 28(4) of the Act ibid along-with applicable interest and the 15% of duty as penalty within 15 days from the receipt of the impugned SCN. The details of such duty etc payments with relevant TR 6 challans had been given in appeal memo.

- In recent CESTAT Ahmedabad judgment in the case of Karnawat International Limited (100% EOU) vide F.O. No 12515-12520/2024 dated 25.10.2024 in which the Hon'ble Tribunal held that " *In case demand under Section 28 (4) was applicable and duty was demandable then the party is very much entitled to claim the amnesty under Section 28 (5) and the same on following the requisite conditions*"
- In the present case of appeal, the appellants had fulfilled the conditions of paying the duty interest and 15% of duty as penalty within 30 days of receipt of impugned SCN, hence the appellant is entitled to avail the benefit as prayed hereinabove, hence the appeal may be allowed on above ground.
- The appellants do not want to contest on merit and therefore the relief sought as above may be allowed.

5. I have carefully gone through the Appeal Memorandum filed by the Appellant No. 1, Appellant No. 2 and also by Appellant Department 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 wherein the impugned goods have been held liable for confiscation under Section 111(o) of the Customs Act, 1962 and an option to redeem the said goods on payment of redemption fine of Rs. 4,00,000/- under Section 125 of the Customs Act, 1962 is given to the Appellant No.1 when the Customs Duty demanded under Section 28(4) of the Customs Act, 1962 has been paid 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.
- (ii) Whether the impugned order imposing penalty of Rs. 2,00,000/- on the Appellant No. 1 under Section 114A of the Customs Act, 1962, when the Customs Duty demanded under Section 28(4) of the Customs Act, 1962 has been paid 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.
- (iii) Whether the impugned order imposing penalty of Rs. 2,00,000/- on the Appellant No. 1 under Section 114A of the Customs Act, 1962 instead of penalty equal to the

Ant



duty determined under Section 28(4) of the Customs Act, 12962 i.e Rs.14,56,755/- in the facts and circumstances of the case, is legal and proper or otherwise.

- (iv) Whether the impugned order imposing penalty of Rs. 2,00,000/- and Rs.1,50,000/- on the Appellant No. 2(i.e Partner) under Section 112(a)(i) and Section 114AA of the Customs Act,1962 respectively, when the penalty has already been imposed on the Appellant No. 1 (i.e Partnership firm) under Section 114A of the Customs Act,1962, in the facts and circumstances of the case, is legal and proper or otherwise.

5.1 It is observed that the Appellant No 1 as well as Appellant No. 2 have categorically submitted that they do not want to contest on merits. Their only contention is that they may be allowed the amnesty available under Section 28(5) and 28(6) of the Customs Act, 1962 as they have paid the entire duty determined under Section 28(4) of the Customs Act, 1962 along with applicable interest and the 15 % of duty as penalty with in stipulated 30 days of receipt of SCN i.e 21.11.2022. The Appellant No 1 has submitted copies of two TR6 challans both dated 20.12.2022 along with appeal memorandum showing payment of dated Customs duty, Interest and Penalty as under :-

Sr No.	Challan No. & date	Amount paid
1	002 , dtd. 20.12.2022	Duty -900000/-
2	003, dtd.20.12.2022	Duty-556755/- Interest-135001/- Penalty-218514/-

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.

Handwritten signature/initials

(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 misstatement 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)."

On going through the above provisions as well as the impugned order, it is observed that the demand of Customs duty was raised in the SCN and also confirmed under Section 28(4) of the Customs Act, 1962. Hence I find that the Appellant No. 1 had the opportunity to exercise the benefit available under Section 28(5) by paying the Customs duty determined in the SCN along with applicable interest on the same and also penalty equal to 15% of the duty with in 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 Appellant No. 1 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. Now, in the appeal before me, the Appellant No 1 and Appellant No. 2 have submitted that their unit was closed since November-2022. They have also submitted that the SCN dated 16.11.2022 was received on e-mail on 21.11.2022 and no SCN was received on the address of factory premises. It is further submitted that the Appellant No. 1 i.e Partner of Appellant No. 1 was in USA since November-2022 and that since not notice of hearing was received, no reply was submitted. They have submitted that they thought that they will submit details of duty, interest and penalty paid at the time of hearing but the case was decided ex-parte and the Appellant No. 1 could not submit the request to conclude the case.



5.2 From the records available, I find that the intimation of payment of duty, interest and penalty by the Appellant No. 1 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 Appellant No. 1 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 appeal memorandums were also sent to the jurisdictional officer for comments. However, no response have been received from the jurisdictional office. Therefore, I find that remitting the case to the adjudicating authority for passing speaking order becomes sine qua non to meet the ends of justice. Accordingly, the case is 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 appellant 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.

5.3 The Appellant No. 2 has contended that penalty under Section 112 a (i) of the Customs Act, has been wrongly imposed because penalty under Section 114A of the Customs Act, 1962 has already been imposed on the main noticee i.e Appellant No.1. It is also contended that when penalty under Section 114A has been imposed on the firm, no separate penalty can be imposed under Section 114AA of the Customs Act, 1962. It is observed that in the SCN, penalty has been proposed on Partnership firm i.e Appellant No. 1 under Section 112(a), 112(b) as well as Section 114A of the Custom Act, 1962 whereas in the impugned order, penalty under Section 114A of the Customs Act, 1962 has been imposed on the Partnership firm i.e Appellant No. 1. The Appellant No. 1 has submitted that they have already paid Customs duty determined in the SCN along with applicable interest on the same and also penalty equal to 15% of the duty with in 30 days of receipt of the SCN in terms of Section 28(5) of the Customs Act, 1962 and requested for conclusion of proceedings as per Section 28(6) of the Customs Act, 1962. The appeal of Appellant No. 1 is remanded back to the adjudicating authority for examining their claim for conclusion of proceedings as per Section 28(6) of the Customs Act, 1962, as discussed in para supra. In view of the same, the appeal of Appellant No. 2, being the Partner is also remanded back to the adjudicating authority for deciding the issue i.e when the Partnership firm has paid duty determined in the SCN along with applicable interest and also penalty equal to 15% of the duty with in 30 days of receipt of the SCN in terms of Section 28(5) of the Customs Act, 1962 and if the proceedings of SCN are to be concluded under Section 28(6), whether penalty on



Handwritten signature

Partner i.e Appellant No. 2 is leviable. While deciding the issue of penalty on Appellant No. 2, the adjudicating authority shall keep in mind the following case laws :-

- (i) Jaybee Industries Vs. Commissioner of Central Excise, Gurgaon reported at 2004(168)ELT 316(Tri-Del) wherein the Hon'ble Tribunal has held as under :-
"7. -----It is settled law that, where a penalty is imposed on a partnership firm, no separate penalty shall be imposed on any of its partners. Accordingly, we set aside the penalty on the partners-----"
- (ii) Commissioner of Central Excise Vs. Ja' Pakash Motwani reported at 2010(258)ELT204 (Guj) wherein the Hon'ble High Court of Gujarat has held as under :-
" 6.-----Admittedly, a partner is not a separate legal entity and cannot be equated with the employees of a firm. Once the firm has already been penalized, separate penalty cannot be imposed upon the partner.----- "

5.4 Now coming to the appeal filed by the Appellant Department, I find that the adjudicating authority has imposed a penalty of Rs.2,00,000/- under Section 114A of the Customs Act, 1962 whereas amount of duty demanded and confirmed under Section 28(4) is Rs.14,56,755/-. The legal provisions of Section 114A is as under :-

"SECTION 114A. Penalty for short-levy or non-levy of duty in certain 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, the person who is liable to pay the duty or interest, as the case may be, as determined under [sub-section (8) of section 28] shall also be liable to pay a penalty equal to the duty or interest so determined"

From the above, I find that the penalty imposed in the impugned order is not legally not sustainable as the penalty of an amount equal to the duty amount i.e Rs.14,56,755/- only can be imposed as per Section 114A of then Customs Act, 1962 looking to the facts of the case. However, as per the submission of the Appellant No. 1, discussed above, they have already paid the penalty amount of 15% of the duty as per Section 28(5) of the Customs Act, 1962 which also takes into consideration that the penalty in such case is equal to the duty amount. Further, the Appellant No. 1 has not disputed the imposition of penalty under Section 114A of the Customs Act, 1962 but has only requested for conclusion of proceedings under Section 28(6) of the Customs Act, 1962. The appeal of the Appellant No. 1 covering the aspect of penalty under Section 114A is being remanded to the adjudicating authority, hence the adjudicating authority may also re-examine the issue of quantum of penalty under Section 114A of the Customs Act, 1962 during the remand proceedings. Hence, the appeal filed by the Appellant Department is also remanded to the adjudicating authority for passing fresh order after taking into consideration the submissions of Appellant -Department in the appeal before me.



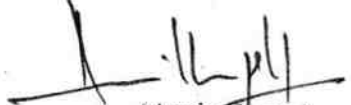
A-12

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



सत्यापित/ATTESTED

अधीक्षक/SUPERINTENDENT
सीमा शुल्क (अपील), अहमदाबाद
CUSTOMS (APPEALS), AHMEDABAD


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

Date:-28.04.2025

- (i) F.No. S/49-107/CUS/MUN/2023-24
(CAPPL/COM/CUSP/1538/2023-APPEAL)
- (ii) F.No. S/49-111/CUS/MUN/2023-24
(CAPPL/COM/CUSP/1531/2023-APPEAL)
- (iii) F.No. S/49-05/CA-2/CUS/MUN/2023-24
(CAPPL/COM/CUSD/176/2023-APPEAL)

By Registered post A.D/E-Mail

To,

- (1) M/s United Natural Stones
F-325 to 327 & GI 296 to 298
RIICO Industrial Area, Bhamashah, Kaladwas
Udaipur-313003.
- (2) Shri Ashok Kumar,
Partner of M/s. United Natural Stones
F-325 to 327 & GI 296 to 298
RIICO Industrial Area, Bhamashah, Kaladwas
Udaipur-313003.
- (3) Shri R S Mangal, Chartered Accountant
(Authorised Representative of Appellant No. 1 & 2)
502, 6th Floor, B-Block, Shubh Ashiana Apartment,
Opp Bharat Petrol Pump
100ft Road, Shobhagpura
Udaipur-313001
(Email- rsmangal@gmail.com)
- (4) The Asstt Commissioner of Customs,
Import Assessment, Gr-III,
Customs House, Mundra.

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.

