अपर आयुक्त का कार्यालय, सीमा शुल्क

Office of the Additional Commissioner of Customs

आई .सी .डी - .तुम्ब

Inland Container Depot (ICD) - Tumb

सर्वे .न :.४४/१/पी.के.२, गाँव – तुम्ब, तालुका-उमरगाँव, जिला -वलसाड, गुजरात :- ३९६१५०

(S. No. 44/1/P.K. 2, Village-Tumb, Tal.: Umbergaon, Dist.: Valsad, Gujarat-396150)

e-mail: cusicd-tumb@gov.in

F. No.	:	**CUS/APR/INV/79/2025-ICD-UMGN-CUS-COMMRTE-AHMEDABAD**
Name and Address of the Importer & CHA	:	**1. M/s. Akash Universal Limited, (IEC Code No. 0395041881), 5, Survey No.910/6/1/1, Amli, Dokmardi, Opp. Lohia Machinery, Silvassa, Dadra and Nagar Haveli-396230** **2. Shri Aniket Khetan, Manager and Authorized Signatory, M/s. Akash Universal Limited, 5, Survey No.910/6/1/1, Amli, Dokmardi, Opp. Lohia Machinery, Silvassa, Dadra and Nagar Haveli-396230.** **3. M/s. International Cargo Corporation (Customs Broker) 221, Ecstasy, 1st Floor, Business Park, City of Joy, Mulund (W), Mumbai – 400080.**
Show cause Notice & Date		**CUS/APR/INV/79/2025-ICD-UMGN-CUS-COMMRTE-AHMEDABAD DATED 07.08.2025**
Order – in – Original No.		**02/LD/ADC/TUMB/2026-27**
DIN		**20260471MN0000823564**
Passed by	:	**Lokesh Damor** **Additional Commissioner, Customs.**
Date of Order	:	**17.04.2026**
Date of Issue	:	**17.04.2026**

(1) जिस व्यक्ति(यों) को यह प्रति भेजी जाती है, उसके/उनके निजी प्रयोग के लिए मुफ्त प्रदान की जाती है।

(1) This copy is granted free of charge for the use of the person, to whom it is issued.

(2) इस आदेश से असन्तुष्ट कोई भी व्यक्ति इस आदेश के विरूद्ध अपील, इसकी प्राप्ति से 60 (साठ) दिन के अन्दर आयुक्त (अपील), सीमाशुल्क, चौथा तल, हुडको भवन, स्टेडियम के पास, आश्रम रोड, नवरंगपुरा, अहमदाबाद, 380009 में दाखिल कर सकता है।

(2) Any person deeming himself aggrieved by this order may appeal against the order to the Commissioner of Customs (Appeal), 4th Floor, HUDCO Bhawan, Near Stadium, Navarangpura, Ahmedabad – 380 009 within sixty (60) days from the date of receipt of the order.

(3) इस अपील पर रू. 2.00 (दो रूपये) का न्यायालय शुल्क टिकट लगा होना चाहिए। उक्त अपील के साथ निम्नलिखित दस्तावेज संलग्न किए जाएं।

i. उक्त अपील की प्रति।

ii. निर्णय की प्रतियाँ अथवा जिस आदेश के विरूद्ध अपील की गई है, उनमें से कम से कम एक प्रमाणित प्रति हो, या दूसरे आदेश की प्रति जिस पर रू. 2.00 (दो रूपये) का न्यायालय शुल्क टिकट लगा होना चाहिए।

(3) The appeal should bear a Court fee stamp of Rupees Two only (Rs. 2.00/), and it must be accompanied by:

i. A copy of the appeal and

ii This copy or any copy of this order will must bear a Court fee Stamp of Rupees Two only (Rs. 2.00/-).

(4) इस आदेश के विरूद्ध आयुक्त (अपील), सीमाशुल्क,में शुल्क के 7.5% जहां शुल्क अथवा शुल्क एवं जुरमाना का विवाद है अथवा जुरमाना जहां शीर्फ जुरमाना के बारेमे विवाद है उसका भुकतान करके अपील की जा शकती है। ऐसा न करने पर ये अपील सीमाशुल्क अधिनियम, 1962 की धारा 129 के प्रावधानों के तहत अस्वीकार कर दिया जा सकता है।

(4) An appeal against this order shall lie before the Commissioner of Customs (Appeal) on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute" and failing which the appeal is liable to be rejected for non-compliance of the provisions of Section 129 of the Customs Act, 1962.

Sub: Adjudication of Show Cause Notice No. CUS/APR/INV/79/2025-ICD-UMGN-CUS-COMMRTE-AHMEDABAD DATED 07.08.2025 issued by the Additional Commissioner, Customs Commissionerate, Ahmedabad to M/s. Akash Universal Limited, (IEC Code No. 0395041881), 5, Survey No.910/6/1/1, Amli, Dokmardi, Opp. Lohia Machinery, Silvassa, Dadra and Nagar Haveli-396230 & Others.

Brief facts of the case:

M/s. Akash Universal Limited, (IEC Code No. 0395041881), 5, Survey No.910/6/1/1, Amli, Dokmardi, Opp. Lohia Machinery, Silvassa, Dadra and Nagar Haveli-396230 , (hereinafter referred to as 'M/s. Akash Universal /'the importer'/ 'the Noticee' for the sake of brevity) is engaged in processing of Marble Blocks into Slabs and trading of Marble Slabs and imports Rough Marble Blocks for processing into Marble Slabs.

2. M/s. Akash Universal have imported goods declared as: Rough Dolomite Blocks, classifying the goods under CTH 25181000 at ICD Tumb (INSAJ6) vide Bill of Entry No. 8704561 dated 04.09.2020 for which Customs Out of Charge was granted on 11.09.2020 -(**RUD-01).** The representative samples of the subject imported goods were forwarded vide letter dated 07.09.2020 to the Chemical Examiner, Central Excise & Customs Laboratory, Vadodara on 08.09.2020. The Chemical Examiner has sent the test reports dated 09.09.2020 stating that the sample is composed of Carbonates of Calcium & Magnesium (Dolomite)

3. Information received by the Department indicated that the goods "Rough Dolomite Block" were actually "Rough Marble Blocks" and same should be classified under CTH 25151210, however, the importer was claiming and availing classification of the product under CTH 25181000. Information also indicated that, such mis- declaration of description and classification is being done with the intention to evade payment of higher rate of Customs duties including IGST (hereinafter mentioned as Customs duty) applicable on CTH 25151210 in comparison to CTH 25181000.

3.1 The information further indicated that the chemical analysis of samples taken from the imported marble blocks were not correct in as much as:

(i) Test report was issued in very short period;
(ii) The critical parameter i.e. specific gravity was intentionally not tested to draw right conclusion on the sample;
(iii) It was ignored as to whether the sample has property to accept polish or not;
(iv) Deliberately avoided terminology and characteristic properties of Marble dimension stone as per ASTM 503 /C503M, wherein it is very clearly mentioned that dolomite having specific gravity above 2.5 is considered as marble;
(v) The officer (Chemical Examiner) has technically cleared and certified that the sample is dolomite block and wilfully attempted to certify them as marble.

3.2 Such mis-declaration of description and classification is being done with the intention to evade payment of higher rate of Customs duties including IGST (hereinafter mentioned as Customs duty) applicable on CTH 25151210 in comparison to CTH 25181000. The comparative duty structure of CTH 25151210 vis- à-vis CTH 25181000 at the material time is as under:

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

3.3 From the above duty structure, it emerges that the import items when classified under CTH 25181000, the Basic Customs Duty (BCD) leviable on such imports was 5% of the Assessable value during the period of import. However, if the import items were classified under CTH 25151210, they attracted ad-valorem BCD @40% during the relevant period. Further, import items, when classified under CTH 25181000 attract 5% IGST vis-à-vis IGST @ 12% on item classified under CTH 25151210 during the period of import.

3.4 Acting on the information and looking to the difference in rate of customs duty, the available samples of the goods imported by the importer declaring 'Rough Dolomite Blocks' at ICD Tumb were packed and sealed under Panchnama dated 21.08.2023

TESTING OF SAMPLES:

4.1 The representative samples packed and sealed under Panchnama dated 21.08.2023 in respect of the following Bill of Entry No. 8704561 dated 04.09.2020 - filed by M/s. Akash Universal Limited, declaring the goods as 'Rough Dolomite Blocks', claiming and availing classification under CTH 25181000 were sent to the Geological Survey of India, Central Region, Nagpur vide following letters reference F. No. alongwith test memo No. mentioned below:

BE No. & Date	ICD Tumb's letter reference No. & date	Test Memo No. & date with the letter	Test query in the test memo
8704561 dated 04.09.2020	VIII/24/ICD-Tumb/2023-24 dated 26.08.2023	ICD-Tumb/I-119/23-24 dated 26.08.2023	(1) Whether the sample confirm to the description "Rough Dolomite Block" (2) If sample is other than Rough Dolomite Block kindly specify, exact description of the sample

4.2 The Geological Survey of India, Central Region, Nagpur has sent the Petrological Test Reports in respect of the above samples as detailed below: -

BE No. & Date	GSI, Nagpur's letter reference No. & date	Samples identified/name of the rock recorded in the test report
8704561 dated 04.09.2020	71/Customs/TCS/GSI/CR/202 dated 28.09.2023, alongwith Petrological Test Reports dated 27.09.2023	Based on above physical, optical and limited chemical properties of rock sample interpreted as Dolomitic Marble

4.3 For the sake of clarity, the Petrology Laboratory Reports, Chemical Analysis Reports of the samples conveyed by the Geological Survey of India, Central Region, Nagpur are reproduced below:

भारत सरकार /GOVERNMENT OF INDIA
भारतीय भूवैज्ञानिक सर्वेक्षण/GEOLOGICAL SURVEY OF INDIA
शैलीकी विभाग/PETROLOGY DIVISION
मध्य क्षेत्र/CENTRAL REGION
नागपुर/NAGPUR

Petrological Test Report

Sender's Name	Office of the Deputy Commissioner of Customs, Inland Container Depot (ICD)-Tumb (Survey No. 44/1/P.K. 2, village-Tubm, Tal.: Umbergaon, Dist-Valsad, Gujrat-396150
Importer	M/s. Shri. Aakash Universal Ltd. Village-Naroli, Silvassa, Dadra & Nagar Haveli
IGM/ITM No.	ICD-Tumb/I-119/23-24 dtd. 26.08.2023
B.E.No.	8704561 dated 04.09.2020
DD No.	-
Received Sample no.	**Rough Dolomite block (I-119, BE No. 8704561)**
1.Lab test	**Description**
j) Study of Physical properties (Megascopic study)	In hand specimen, sample shows white color, fine grained, and saccharoidal nature. The stain sample exhibited by presence of dominate dolomite (unstained) within calcite (pink to red color) **(Fig. 1)**.
k) Petrographic study (Microscopic study)	Under the plane polarized light: Rock is fine grained, non-pleochroic, mainly composed of carbonate minerals **(Fig. 2)**. Under the XPL: Rock is very fine grained, granular and showing fourth order interference color. It dominantly consists of dolomite with minor amount of calcite restricted to the fracture planes **(Fig. 3)**. Dolomite is dominating carbonate phase over the calcite. Dolomite and calcite grains are subhedral in shape, shows mutual boundary texture and triple junction grain contact **(Fig. 4 and Fig. 5).**
l) Chemical study by i) Staining test ii) Acid Test	Sample also verified with staining technique for carbonates (Method after Dickson, 1965). The rock sample mostly unstained due to presence of dolomite but at places show pink to red color due to presence of calcite. Low effervescence with hydrochloric acid (HCl)
2. Composition of goods	The sample dominantly composed of dolomite with subordinate calcite.
3. Density of goods	2.83 g/cm^3
3. Hardness of goods	3-3.5 (Moho hardness scale)
4. Whether it has the characteristics of dolomite	Yes
Name of the rock	Based on above physical, optical and limited chemical properties of rock sample interpreted as **Dolomitic Marble.**

This report is subject to following conditions:

7. This report is valid only for the sample submitted for identification.
8. This office is not responsible for any type of liability or litigation in case any controversy arises

अन्वेषक / Investigator
27/9/23
(Dr. Tushar Meshram)
अधीक्षण भूवैज्ञानिक / Superintending Geologist

प्रभारी अधिकारी /Officer in Charge
27/9/23
(Dr. Rajkumar Meshram)
निदेशक / Director

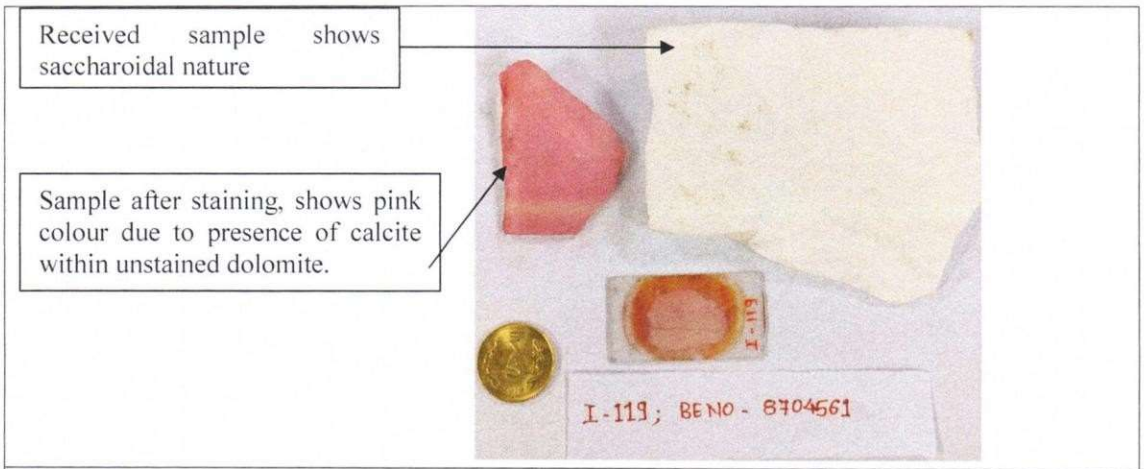

Fig.1. Hand specimen/rock piece is white color, fine grained, massive and compact in nature.

Fig. 2. Photomicrograph shows very fined grained nature of granular carbonates in dolomite under Plane Polarized light (PPL-2.5X).

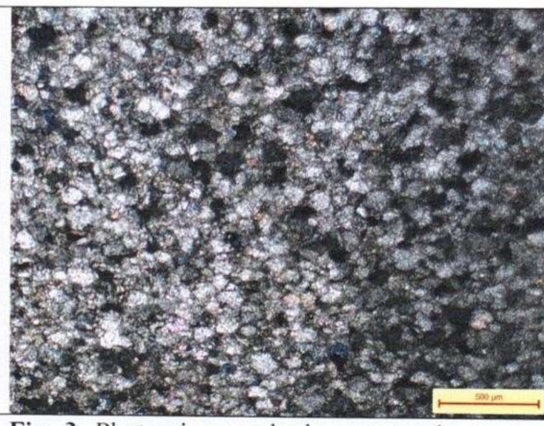

Fig. 3. Photomicrograph shows granular texture of carbonates in dolomite under cross Nicol position (XPL-5X).

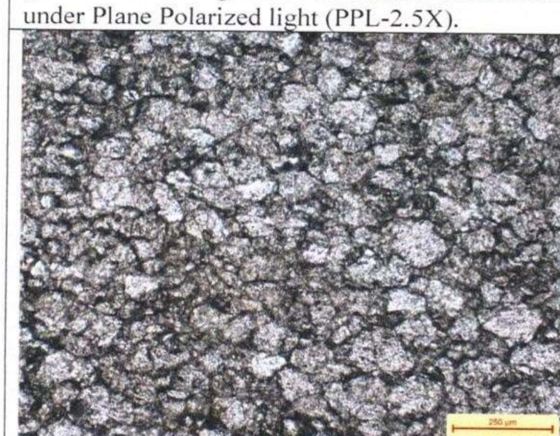

Fig. 4. Photomicrograph showing subhedral carbonate grains with triple junction grain boundaries in Dolomite under Plane Polarized light (XPL-10X).

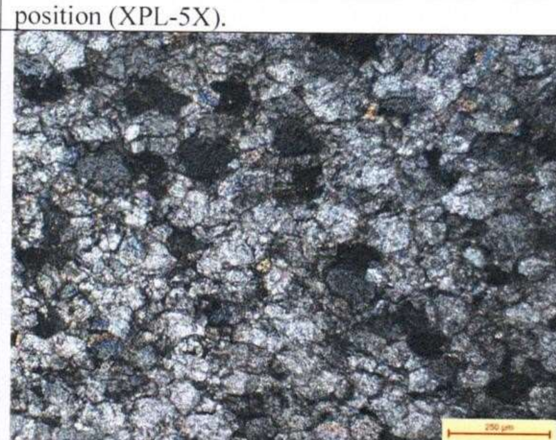

Fig. 5. Photomicrograph of granular texture and triple junction grain boundary in carbonates within dolomite under crossed Nicol position (XPL-10X).

अन्वेषक / Investigator
27/9/23
(Dr.Tushar Meshram)
अधीक्षण भूवैज्ञानिक / Superintending Geologist

प्रभारी अधिकारी /Officer in Charge
27/9/23
(Dr. Rajkumar Meshram)
निदेशक / Director

4.4 The Geological Survey of India, Central Region, Nagpur in the above test reports has interpreted the sample in respect of the above Bills of Entry as 'Dolomitic Marble', however, the density and hardness were recorded same as has been recorded by them in cases of samples which have been interpreted as 'Dolomite'. Therefore, vide letter F. No. VIII/24/ICD-Tumb/2023-24 dated 29.05.2024, addressed to the Director, TCS, Geological Survey of India, Nagpur, the Geological Survey of India, Central Region, Nagpur was requested to specifically confirm whether the samples of rocks are Dolomite or Marble and in response, the Geological Survey of India, Central Region, Nagpur vide e-mail correspondence dated 31.07.2024, has re-iterated their reports in respect of the respective Bills of Entry and remarked that "Dolomite and Marble are compositionally (mineralogical & chemical) similar rocks. Both are having chemical composition of (CaOMg) CO3 with minor impurities. Dolomite is carbonate rock of sedimentary origin. On the other hand, Marble is a carbonate rock of metamorphic origin".

4.5 Vide letter e-mail dated 16.08.2024 followed by letter dated 21.08.2024 specific questioners in connection with the test reports of the samples were sent to the Geological Survey of India, Central Region, Nagpur seeking response thereon:

1. Whether the rock is sedimentary or metamorphic in 'nature?
2. Specific gravity of the rock?
3. Chemical composition of the rock?
4. Whether the stone is formed from the re-crystallization of limestone and/or dolomitic limestone?
5. Whether the rock is sufficiently hard and capable of taking polish and can be used as marble slabs?
6. Petrographic analysis of the rock?
7. Whether it meets the specifications of marble? If yes, which type of marble it is?

4.6 The Geological Survey of India, Central Region, Nagpur vide e-mail correspondence dated 30.08.2024 sent the desired response on samples tested by them including the samples in respect of goods pertain to the above Bill of Entry as under:

1. For four samples (**BE 6496896 to 8704561**) received from Office of the Deputy Commissioner of Customs, Inland Container Depot (ICD)-Tumb (Survey No. 44/1/P.K. 2, village-Tumb, Tal.: Umbergaon, Dist-Valsad, Gujrat-396150.

   The rock has been identified as **Dolomitic Marble** (recrystallised sedimentary rock with density 2.63 to 2.83 g/cc and chemical composition Calcium carbonate with magnesium). **Dolomitic Marble is metamorphic rock** and can be polished and used as slabs. It meets the specifications of marble and can be categorised as **Dolomitic Marble.**

4.7 The Geological Survey of India, Central Region, Nagpur vide e-mail correspondence dated 26.09.2024, has further sent the response of queries dated 25.09.2024 as under:

Query	Reply (BE No. 8704561 dated 04.09.2020)
Whether the rock is sedimentary or metamorphic in nature	Recrystallized sedimentary rock.
Specific gravity of the rock	2.83 g/cm^3
Chemical composition of the rock	Calcium carbonate with magnesium
Whether the stone is formed from the re-crystallization of limestone and/or dolomitic limestone	Dolomitic marble is a metamorphic rock is formed from recrystallisation of dolomitic limestone
Whether the rock is sufficiently hard and capable of taking polish and can be used as marble slabs	Yes
Petrographic analysis of the rock	Petrological test report submitted earlier is attached as pdf
Whether it meets the specifications of marble? It yes, which type of marble it is	Yes

Note: Marble is the metamorphic equivalent of non-clastic sedimentary rocks i.e. limestone / dolomite. Marble can be polished as used as building material/slabs. Compositionally marble can be calcite marble (mainly Ca CO3) or dolomite marble (mainly Ca Mg CO3). The specific gravity (density) varies from 2.6 to 2.8 g/cc.

भारत सरकार /GOVERNMENT OF INDIA
भारतीय भूवैज्ञानिक सर्वेक्षण /GEOLOGICAL SURVEY OF INDIA
शैलीकी प्रभाग /PETROLOGY DIVISION
मध्य क्षेत्र /CENTRAL REGION
नागपुर /NAGPUR

IGM/ITM No.	ICD-Tumb/I-119/23-24 dtd. 26.08.2023
B.E.No.	8704561 dated 04.09.2020
DD No.	-
Received Sample no.	**Rough Dolomite block (I-119, BE No. 8704561)**
Query	**Reply**
1. Whether the rock is sedimentary or metamorphic in nature	Recrystallised sedimentary rock
2. Specific gravity of the rock	2.83 g/cm^3
3. Chemical composition of the rock	Calcium carbonate with magnesium
4. Whether the rock is formed from the recrystalization of limestone and/or dolomitic limestone	Dolomitic marble is a metamorphic rock is formed from the recrystalization of dolomitic limestone
5. Whether the rock is sufficiently hard and capable of taking polish and capable of used as marble slabs	Yes
6. Petrographic analyses of the rock	Petrological test report submitted earlier on the sample submitted is attached as pdf
7. Whether it meets the specification of marble? If yes, which type of marble it is	Yes

Note: *Marble is the metamorphic equivalent of non-clastic sedimentary rocks i.e. limestone / dolomite. Marble can be polished and used as building material / slabs. Compositionally marble can be calcite marble (mainly Ca CO_3) or dolomitic marble (mainly Ca Mg CO_3). The specific gravity (density) varies from 2.6 to 2.8. g/cc.*

This report submitted earlier is subject to following conditions:
1. This report is valid only for the sample submitted for identification.
2. This office is not responsible for any type of liability or litigation in case any controversy arises

अन्वेषक / Investigator	प्रभारी अधिकारी /Officer in Charge
Nilasree Raychowdhury 25/9/24 (Nilasree Raychowdhury) व. भूवैज्ञानिक/ Sr. Geologist	N.V. Sesha Sai 25/9/2024 (Dr. V.V Sesha Sai) निदेशक / Director

4.8 As per the above Test/Analysis Report, specific comments and response on the specific queries, it appears that the material declared as 'Rough Dolomite Blocks' and imported vide Bill of Entry No. 8704561 dated 04.09.2020 by the importer is actually 'Rough Marble Blocks (Dolomitic Marble)' with specific gravity of more than 2.83g/cm^3 and composed of Calcium carbonate with magnesium and meets the specification of marble. Thus, it appears that actual goods imported by the importer were 'Rough Marble Block'.

4.9 Summons dated 10.06.2025 under Section 108 of the Customs Act,1962 was issued to M/s. Akash Universal Limited requiring them to furnish certain details and documents as mentioned in the annexure to the summons and to give statement of responsible and authorised person in connection with the imports under the above Bill of Entry. In response to the summons, Shri Aniket Khetan, Manager and Authorized Signatory, M/s. Akash Universal Limited, appeared.

5.1 Statement dated 18.06.2025 of Shri Aniket Khetan, Manager and Authorized Signatory, M/s. Akash Universal Limited, recorded under the provisions of Section 108 of the Customs Act,1962, wherein he inter-alia stated that:

"I have been duly authorized by the board resolution passed in the meeting of Board of Directors of M/s. Akash Universal Limited, held on 16.06.2025/ 18.06.2025, to attend the case and give statement in response to the summons for submission of

documents and statement in case of Bill of Entry No. 8704561 dated 04.09.2020. I herewith produce the copy of said resolution.

Before recording my statement, I have been given to understand that this statement of mine is being recorded in connection with inquiry being conducted in connection with the import of goods by our company M/s. Akash Universal Limited under Bill of Entry No. 8704561 dated 04.09.2020, for which Out of Charge was allowed on 11.09.2020.

My name, age, address and other details are true and correct. I have done my CA, Inter. I can read, write and understand English and Hindi language. My mobile No is 9624662000. As an identity proof I am producing herewith a photocopy of my Aadhar card No. 989182014353 issued by the UIDAI, Government of India.

Question 1: *Please state about your authorization and job/work being looked after by you in your company M/s. Akash Universal Limited.*
Answer:

On being asked I state that being Authorized signatory of M/s. Akash Universal Limited and I am responsible for all the Custom work related to the company. All the work related to filing of documents before the Customs Authorities, Sometime I also contact with overseas suppliers as and when require, forwarders and Custom Broker, etc. are looked after by various persons under my guidance and supervision.

Question 2: *Please state about your company M/s. Akash Universal Limited, it's business activities, purchase and sell process of items.*
Answer:

On being asked I state that M/s. Akash Universal Limited was established in the year 1994 as M/s. Akash Stone and lateron renamed as M/s. Akash Universal Limited. The Directors in the company are Shri Ankit Jajodia, Shri Akash Jajodia, Ms. Aditi Jajodia.

On being asked about the business activity of M/s. Akash Universal Limited, I state that M/s. Akash Universal Limited is engaged in processing of "Marble Blocks" into "Marble Slabs" and further selling of said Marble Slabs in local market in different parts of India since its inception, for which our inputs are Marble Blocks, Epoxy Resin, General Resin, Fibre Net, etc. The company have Marble processing Plant situated in Silvasa at same address. On being asked I state that the inputs mainly Marble Blocks required for processing are procured by way of import from Italy, Turkey and various other countries. We also procure the stone locally from India. On being asked about the imports of Rough Marble Blocks undertaken by M/s. Akash Universal Limited, I state that we had regularly imported "Rough Marble Block" declaring under HSN code/CTH 2515 from various suppliers paying applicable Customs duty.

On being asked about selling of processed marble slabs I state that our retail customers which are in building construction line visit our factory and godown to select the processed and polished marble as per their requirement. After selection of material by the buyers deal finalized and we sell the goods. I further state that as such we do not execute any written agreement with any of buyers and sell the material under sales invoice only as marble slabs. I further state the processed marble slabs are sold to for use in building floor by the persons engaged in this field.

Question 3: *Please state about imports under Bill of Entry No. 8704561 dated 04.09.2020 by your company M/s. Akash Universal Limited.*
Answer:

On being specifically asked about the Bill of Entry No. 8704561 dated 04.09.2020, I state that the above Bill of Entry filed by M/s. Akash Universal Limited and the *goods imported was declared as Rough Dolomite Blocks classifying under HSN code/CTH 25181000 paying the applicable duty as per the classification. I further state that the goods imported under the above Bill of Entry were processed in the plant of our company located at silvasa in the same manner as we do for Marble blocks into Marble Slabs and were cleared/sold as 'Dolomite Marble', to different Indian buyers. On being asked about mechanism to link the goods sold with the goods imported under the above Bill of Entry, I state that no such mechanism is being maintained by the company and there is a continuing invoicing practice.*

Question 4: *Please state about purchase procedure, mine test report, mineral and chemical analysis certificate from the supplier and manufacturer in respect of goods imported under the above Bills of Entry by your company M/s. Akash Universal Limited.*

Answer:

On being asked about purchase procedure of M/s. Akash Universal Limited I state that our company representatives visit quarry sites for selection of marble blocks through traders and after selection and marking the block we purchase it for which neither we execute any agreement nor made any correspondence with the suppliers. I further state that we did not obtain mine test report, mineral and chemical analysis certificate from the supplier and manufacturer in respect of goods imported under the above Bill of Entry No. 8704561 dated 04.09.2020.

Question 5: *Please peruse the following documents:*

(i) *Panchnama dated 21.08.2023 drawn at the premises of ICD Tumb, Vill – Tumb, Distt. Valsad, Gujarat;*

(ii) *ICD, Tumb Letter F. No. VIII/24/ICD-Tumb/2023-24 dated 26.08.2023 alongwith test memos No. ICD-Tumb/I-119/23-24 dated 26.08.2023;*

(iii) *letter reference No. 71/Customs/TCS/GSI/CR/2023 dated 28.09.2023 issued by the Director, Geological Survey of India alongwith Petrological Test Report dated 27.09.2023, issued by the Geological Survey of India, Nagpur;*

(iv) *ICD Tumb letter F. No. VIII/24/ICD-Tumb/2023-24 dated 29.05.2024, addressed to the Director, TCS, Geological Survey of India, Nagpur;*

(v) *e-mail correspondence dated 31.07.2024 from the Director, TCS Division, GSI, Nagpur (e-mail id: tcs.cr@gsi.gov.in) to ICD Tumb (e- mail id: cusicd-tumb@gov.in);*

(vi) *ICD Tumb letter F. No. VIII/24/ICD-Tumb/2023-24 dated 21.08.2024, addressed to the Director, TCS, Geological Survey of India, Nagpur* alongwith e-mail dated 16.08.2024 from ICD Tumb (e-mail id: cusicd-tumb@gov.in) sent to the GSI, Nagpur (e-mail id: tcs.cr@gsi.gov.in);

(vii) *e-mail correspondence dated 30.08.2024 from the Director, TCS Division, GSI, Nagpur (e-mail id: tcs.cr@gsi.gov.in) to ICD Tumb (e- mail id: cusicd-tumb@gov.in);*

(viii) *e-mail correspondence dated 26.09.2024 from the Director, TCS Division, GSI, Nagpur (e-mail id: tcs.cr@gsi.gov.in) to ICD Tumb (e- mail id: cusicd-tumb@gov.in) alongwith reply dated 25.09.2024;*

Answer:

Now, I am being shown the panchnama dated 21.08.2023 drawn at the premises of ICD Tumb, Vill – Tumb, Distt. Valsad, Gujarat. I read and understand the contents of the said panachnama and put my dated signature. As per the panchnama, samples of dolomite blocks were collected from godown and sealed for re-testing and detail thereof is tabulated in the panchnama. I read and understand the table of the panchnama and find the Bill of Entry No. 8704561 dated 04.09.2020 in the table. Now, I am being shown ICD, Tumb Letter F. No. VIII/24/ICD-Tumb/2023-24 dated 26.08.2023 alongwith test memos No. ICD-Tumb/I-119/23-24 dated 26.08.2023 sent to the Geological Survey of India, Nagpur, I read the same and understand that the above sealed samples of the imported cargo i.e. 'Rough Dolomite Block' imported by M/s. Akash Universal Limited vide Bill of Entry No. 8704561 dated 04.09.2020 at ICD, Tumb was sent *to the Geological Survey of India, Nagpur for testing and put my dated signature on the same.*

In continuation to the above document I am being shown the letter reference No.71/Customs/TCS/GSI/CR/2023 dated 28.09.2023 issued by the Director, Geological Survey of India alongwith Petrological Test Report dated 27.09.2023 issued by the Geological Survey of India, Nagpur for the above said sample and after reading and understanding the said document I put my dated signature on the same as a token of having perused the same. On being asked I explain that after Chemical Analysis/Testing of the samples of ''Rough Dolomite Block" imported by M/s. Akash Universal Limited vide Bill of Entry No. 8704561 dated 04.09.2020, the Geological Survey of India, Nagpur has provided the 'Petrological Test Report' in respect of the said sample. The Geological Survey of India, Nagpur vide said 'Petrological Test Report' has opined and concluded stating the nature or rock that "based on physical, optical and limited chemical properties of rock, sample interpreted as ***Dolomitic Marble****".*

Further, I am being shown ICD Tumb letter F. No. VIII/24/ICD-Tumb/2023-24 dated 29.05.2024, addressed to the Director, TCS, Geological Survey of India, Nagpur. I read and understand the letter and put my dated signature. From the letter dated 29.05.2024 I understand that it was requested to the GSI, Nagpur to specifically confirm whether the samples of rock covered in the Bills of Entry mentioned in the above letter are 'Dolomite' or 'Marble'.

I am being shown e-mail correspondence dated 31.07.2024 from the Director, TCS Division, GSI, Nagpur (e-mail id: tcs.cr@gsi.gov.in) to ICD Tumb (e-mail id: cusicd-tumb@gov.in) and the document pertaining to reply of query raised as per letter No. VIII/24/ICD-Tumb/2023-24 dated 29.05.2024 is forwarded. I read and understand the e-mail correspondence and the document and put my dated signature. In the reply column of the document, the query is answered. Further, it is remarked in the document that "Dolomite and marble are compositionally (mineralogical and chemical) similar rocks. Both are having chemical composition of (Ca-Mg) CO3 with minor impurities. Dolomite is a carbonate rock of sedimentary origin. On the other hand Marble is a carbonate rock of metamorphic origin". From the above, I understand that Dolomite and Marble are having chemical composition of (Ca-Mg)CO3 with minor impurities. Dolomite is carbonate rock of sedimentary origin and on the other hand Marble is a carbonate rock of metamorphic origin.

Further, I am being shown ICD Tumb letter F. No. VIII/24/ICD-Tumb/2023-24 dated 21.08.2024, addressed to the Director, TCS, Geological Survey of India, Nagpur wherein a reference of e-mail dated 16.08.2024 from ICD Tumb (e- mail id: cusicd-tumb@gov.in) sent to the GSI, Nagpur (e-mail id: tcs.cr@gsi.gov.in) is there under which specific queries in connection with the test reports of various samples were sent to the GSI, Nagpur seeking response thereon:

1. *Whether the rock is sedimentary or metamorphic in 'nature?*
2. *Specific gravity of the rock?*
3. *Chemical composition of the rock?*
4. *Whether the stone is formed from the re-crystallization of limestone and/or dolomitic limestone?*
5. *Whether the rock is sufficiently hard and capable of taking polish and can be used as marble slabs?*
6. *Petrographic analysis of the rock?*
7. *Whether it meets the specifications of marble? It yes, which type of marble it is?*

I am being shown e-mail correspondence dated 30.08.2024 from the Director, TCS Division, GSI, Nagpur (e-mail id: tcs.cr@gsi.gov.in) to ICD Tumb (e-mail id: cusicd-tumb@gov.in) under which response of specific queries in connection with test report were forwarded. The document attached with this e-mail also being shown to me. I read and understand the e-mail correspondence and the attached document *and put my dated signature. I find that in the attached document Sr. No.1 replied for four samples (BE 6496896 to 8704561) sent by ICD, Tumb vide letter F. No.VIII/24/ICD-Tumb/2023-24 dated 26.08.2023 which forwarded samples of four Bills of Entry No. 6496896 dated 16.01.2020 (M/s.Classic Marble); 6696841 dated 31.01.2020 (M/s. Subh Stone); 7038144 dated 27.02.2020 (Shri Parasnath Exports) and 8704561 dated 04.09.2020 (M/s. Aakash Universal Ltd.) and thus, Bill of Entry No. 8704561 dated 04.09.2020 pertains to M/s. Akash Universal Limited is there. In this query answer it has been reported that the rock has been identified as* ***Dolomitic Marble*** *(recrystallised sedimentary rock with density 2.63 to 2.83 g/cc and chemical composition Calcium carbonate with magnesium).* ***Dolomitic Marble*** *is metamorphic rock and can be polished and used as slabs. It meets the specifications of marble and can be categorised as* ***Dolomitic Marble****. I also understand from the footnote on the response document that Marble is the metamorphic equivalent of non-clastic sedimentary rocks i.e. limestone/dolomite. Marble can be polished and used as building material/slabs. Compositionally marble can be calcite marble (mainly Ca Co3) or dolomitic marble (mainly Ca Mg CO3). The specific gravity (density) varies from 2.6 to 2.8 g/cc.*

I am further being shown e-mail correspondence dated 26.09.2024 from the Director, TCS Division, GSI, Nagpur (e-mail id: tcs.cr@gsi.gov.in) to ICD Tumb (e-mail id: cusicd-tumb@gov.in) under which reply dated 25.09.2024 of the queries pertaining to the above Bills of Entry is attached. The document attached with this e-mail also being shown to me. I read and understand the e-mail correspondence and the attached document and put my dated signature. I find that queries are replied by the Geological Survey of India as under:

Query	*Reply (BE No. 8704561 dated 04.09.2020)*
Whether the rock is sedimentary or metamorphic in nature	*Recrystallized sedimentary rock.*
Specific gravity of the rock	*2.83 g/cm^3*
Chemical composition of the rock	*Calcium carbonate with magnesium*
Whether the stone is formed from the re-crystallization of limestone and/or dolomitic limestone	*Dolomitic marble is a metamorphic rock is formed from recrystallisation of dolomitic limestone*
Whether the rock is sufficiently hard and capable of taking polish and can be used as marble slabs	*Yes*
Petrographic analysis of the rock	*Petrological test report submitted earlier is attached as pdf*
Whether it meets the specifications of marble? It yes, which type of marble it is	*Yes*

Note: Marble is the metamorphic equivalent of non-clastic sedimentary rocks i.e. limestone / dolomite. Marble can be polished as used as building material/slabs. Compositionally marble can be calcite marble (mainly Ca CO3) or dolomite marble (mainly Ca Mg CO3). The specific gravity (density) varies from 2.6 to 2.8 g/cc.

Question 6: *What would you like to state on reading and understanding of the above documents?*
Answer:

On being asked I state that as per the above Test/Analysis Report, specific comments and response of the specific queries, the material declared as 'Rough Dolomite Blocks' and imported vide Bill of Entry No. 8704561 dated 09.04.2020 by M/s. Akash Universal Limited are actually 'Rough Marble Block of Dolomitic nature with specific gravity of more than 2.83 g/cm^3 and composed of Calcium carbonate with magnesium. On being asked I state and agree with the contents of the analysis report shown to me today. As per the analysis report the sample of the goods imported under the above Bill of Entry No. 8704561 dated 04.09.2020 meets *the specification of marbles. However, I would like to state that the sample of the goods imported under the above Bill of Entry was sent for testing at Central Excise and Customs Laboratory, Vadodara and their report confirming the material imported was 'Dolomite'. We have not mis-classified the goods intentionally, this may be a technical issue.*

Question 7: *Please peruse the following documents:*

(i) *IS 1130-1969 (Indian Standard: Specification for Marble;*

(ii) *Indian Bureau of Mines vide the Indian Minerals Yearbook 2013 (Part- III : Mineral Reviews);*

(iii) *HSN Explanatory General Notes of Chapter 2515*

Now, I am being shown the IS 1130-1969 (Indian Standard: Specification for Marble, which is as under: ---

"Marbles are metamorphic rocks capable of taking polish, formed from the re- crystallization of Limestones or dolomitic limestaones and are distinguished from limestone by even visibly crystallined nature and non-flaggy stratification."

Further, I am being shown printout of Indian Bureau of Mines vide the Indian Minerals Yearbook 2013 (Part- III : Mineral Reviews). As per the classification provided by the Government of India, Ministry of Mines, Indian Bureau of Mines vide the Indian Minerals Yearbook 2013 (Part- III : Mineral Reviews) the marbles are first classified on the basis of colour, shade and pattern and second on the basis of their genesis and chemical composition. The Indian Bureau of Mines classified marbles by their genesis and chemical composition and Dolomitic Marble has been classified as:

"Dolomitic Marble: *It is a crystalline variety of limestone containing not less than 5% or more than 20% magnesium carbonate as dolomite molecules" and thus,* ***Dolomite Marble*** *is also a form of marble.*

Further, I am being shown the HSN Explanatory General Notes of Chapter 2515 which is as under:-

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

- Marble and travertine:
2515 .11 - - Crude or roughly trimmed
2515.12 -- Merely cut, by sawing or otherwise, into blocks or slabs of a rectangular (including square) shape
2515 .20 - Ecaussine and other calcareous monumental or building stone; alabaster

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

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

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

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

Question 8: *What would you like to state on reading and understanding of the above documents?*
Answer:

On being specifically asked, I state that after going through the above literature and Test Analysis Report of the Geological Survey of India, Nagpur, I understand that Marble is a metamorphic rock that forms when limestone is subjected to the heat and pressure of metamorphism. Marble is composed primarily of the mineral calcite (CaCO3) and usually contains other minerals, such as clay minerals, micas, quartz, pyrite, iron oxides, and graphite. Under the conditions of metamorphism, the calcite in the limestone re-crystallizes to form a rock that is a mass of interlocking calcite crystals. I also accept and state that name of Marble Blocks/slabs are classified as per their genesis and chemical composition, colour, texture, origin of country, etc. and Dolomitic Marbles are also a form of marbles, which is a crystalline variety of dolomite containing magnesium carbonate as dolomite molecules in certain proportion.

On perusal the test reports, IS 1130-1969 (Indian Standard: Specification for Marble), and the HSN notes It seems that the goods imported by our company under the above Bill of Entry No.8704561 dated 09.04.2020 declaring as 'Rough Dolomite Blocks' meets the specifications of 'Marble' and the said goods should have been classified under the CTH 2515 instead of 2518. Further, as per the test reports, appropriate duty applicable on the imported goods under the above Bill of Entry, could not be paid at the time of import as the imported goods was declared and classified as "Rough Dolomite Block" under CTH 2518 instead of "Rough Marble Block" under CTH 2515. However, I would like to state that we have not mis-classified the goods intentionally, this may be a technical issue as the goods imported under the above Bill of Entry was tested as Dolomite by CRCL Vadodara and thereafter only the goods was cleared with payment of duty applicable as per classification as Dolomite.

Question 9: *Please state about the supplier of the goods under the above Bill of Entry and also state about other imports from the same supplier.*
Answer:

On being asked about supplier, I state the goods under the above Bill of Entry was supplied by M/s. Prodem Urun Gelistirme San. Ve. TIC. LT, Besiktas- Istanbul, Turkey (e-mail id: info@prodemltd.com) which is trader, to whom we placed order for Marble blocks orally during visit of our company representative. On being asked about the manufacturer/miner of the imported goods I state the said Marble Block was quarried by other quarry owner who was the actual manufacturer of the goods, we do not have any details thereof. On being asked I state that we have imported other consignments of same goods from the above supplier and were cleared under the following Bills of Entry:
BE No. 9238474 dated 19.10.2020 - declaring as Rough Dolomite Block classified under CTH 25181000. I would like to state that the goods cleared under this Bill of Entry has been put under seizure by Customs, ICD Tumb, which was lateron provisionally released against execution of Bond with 100% Bank Guarantee for the differential amount of customs duty. The BE is assessed provisionally by the customs authority. I hereby produce copies of letters, bond and BG pertaining to this Bill of Entry.

BE No. 9552862 dated 12.11.2020 - declaring as Rough Marble Blocks (Rough Dolomite Blocks) classified under CTH 25151210.
BE No. 9288384 dated 23.10.2020 - declaring as Rough Marble Blocks classified under CTH 25151210.
BE No. 9568725 dated 13.11.2020 - declaring as Rough Marble Blocks classified under CTH 25151210.

BE No. 8705380 dated 04.09.2020 - declaring as Rough Marble Blocks classified under CTH 25151210
BE No. 7229640 dated 13.03.2020 - declaring as Rough Marble Blocks classified under CTH 25151210.
BE No. 7285809 dated 29.01.2022 - declaring as Rough Marble Blocks classified under CTH 25151210
BE No. 9609832 dated 08.05.2017 - declaring as Rough Marble Blocks classified under CTH 25151210

BE No. 6045661 dated 10.10.2024 - declaring as Rough Marble Blocks classified under CTH 25151210
BE No. 8877555 dated 19.09.2020 - declaring as Rough Marble Blocks classified under CTH 25151210

I produce copies of import documents relating to some of these Bills of Entry also alongwith my this statement.

Question 10: *Please state about nature & description of the goods for which purchase order was placed by your company in respect of the goods imported under the above Bills of Entry. Also state about classification of the goods in different CTH.*

Answer:
We had not placed any order in writing. After selection of goods in the quarry, the nature and description of goods ordered and confirmed over telephone, which was either Marble or Dolomite. I further state that the goods was classified as per the nature and actual description of goods and in respect of BE No.8704561 dated 04.09.2020 and BE No. 9238474 dated 19.10.2020 the goods was classified under CTH 25181000 which seems to be misclassification as per the test reports of GSI, Nagpur and CSIR-NGRI, Hyderabad. On being asked I further state that the goods cleared under the Bills of Entry viz. BE No. 8704561 dated 04.09.2020; BE No. 9238474 dated 19.10.2020 and BE No.
9552862 dated 12.11.2020 was of same kind and nature i.e. Marble Blocks of Dolomite nature but the goods under the Bill of Entry No. 9552862 dated 12.11.2020 was classified under CTH 25151210 just to avoid detention and demurrage charges as the goods classified under CTH 25181000 under other two Bills of Entry was delayed in clearance by the department due to classification issue, we had submitted letter dated 12.11.2020 to the department in this matter.

Question 11: *Please state about imports of Rough Marble Blocks undertaken by your company M/s. Akash Universal Limited.*
Answer:

On being asked about the imports of Rough Marble Blocks undertaken by M/s. Akash Universal Limited, I state that we had regularly imported only "Rough Marble Block" earlier under HSN code/CTH 25151210 from various suppliers. On being specifically asked that when our company was aware about the product details, nature of Marbles and its classification then why we were indulged in classification under HSN code/CTH 2518, in this regard I state that the decision regarding classification is taken by our company management as per the general practice. On being asked about subsequent imports of Rough Marble Blocks undertaken by M/s. Akash Universal Limited, I state that except these two Bill of Entry, we had not classified the goods under CTH 25181000, the subsequent imports of the same goods undertaken by our company were declared as "Rough Marble Blocks", classifying under CTH 25151210 and paid the customs duty applicable as per classification under CTH 2515, though the goods were same and imported from either same supplier or may be from others also. I would also like to state the in past also we had imported the goods declaring as "Rough Marble Blocks", classifying under CTH 25151210.

Question 12: *Please state about classification of goods imported under above Bill of Entry under CTH 2518 by your company M/s. Akash Universal Limited.*

Answer: *On being asked I state that the said classification was decided by our company as the same was classified and imported by other importers on other ports of India. Further, it seems that as per the above test report, the goods imported under the above Bills of Entry is declared by us as 'Rough Dolomite Blocks' instead of 'Rough Marble Blocks' and classified the same under CTH 2518 instead of 2515, and also paid Customs Duty accordingly. In acceptance of such declaration and classification and in token of cooperation in the ongoing inquiry, I assure that we will make the payment of differential duty at the earliest after arranging the funds, if we found liable to pay."*

5.2 Statement of Shri Rupesh Jivanbhai Katariya, G-card holder of M/s. International Cargo Corporation (Customs Broker) was recorded under Section 108 of the Customs Act, 1962 on 24.06.2025 - **(RUD-12)**, wherein he inter-alia stated that:

"On being asked I state that I am responsible for the overall work related to custom clearance of imported goods, Operation of the company related to Import and exports and look after all technical matters including classification of imported goods before filing Bills of Entry for Customs Clearance of imported goods. I am directly in touch with all the clients for the purpose of details to be submitted and filed before Customs for clearance of imported goods. I am fully aware of Hindi and English languages.

On being asked I state that M/s. International Cargo Corporation, is working as a Custom Broker at different ports/ ICDs including ICD Tumb. Apart from other items, we are also in the clearance of imported Marbles /slabs. We have several clients for clearance of different import export commodities including M/s. Akash Universal Limited. M/s. Akash Universal Limited have used services of our firm M/s. International Cargo Corporation for filing of Bills of Entry at ICD Tumb for clearance of their imported goods, mainly 'Rough Marble Blocks'. I further state that one consignment of 'Rough Dolomite Blocks' was also cleared by them using services of our firm M/s. International Cargo Corporation. I further state the Bills of Entry for clearance of imported goods were filed by us on behalf of the importer.

On being asked regarding the imports of Marbles, I state that we deal in the clearance of Rough Marbles Blocks / Marble Slabs on behalf of our clients. On being further asked I state that the importers import Marble blocks as well as Marble Slabs. For the purpose of classification Marble blocks are covered in CTH 2515 and Marble slabs in CTH 6802.

On being asked, about the Bill of Entry No. 8704561 dated 04.09.2020, I state that we have filled the above Bill of Entry before the Customs for the goods declared as 'Rough Dolomite Blocks', classifying the goods under CTH 25181000, as per the documents and details of product given to us by respective importer on behalf of our clients M/s. Akash Universal Limited. I further state that based on the import documents i.e. Bill of Lading, Invoice, packing list etc., discussion with the respective importer, previous import documents, we prepared checklist for classification, duty calculation etc. and after getting approval of the checklist from importer, we uploaded the documents at e-sanchit and filled the above Bill of Entry on behalf of the importers as per their instructions and approved checklist. I further state that on receipt of documents from the importer, we check the classification of the goods in respective chapter of the Customs Tariff (Import Tariff) as per description of goods mentioned in the import documents.

I am being shown Bill of Entry No. 8704561 dated 04.09.2020 alongwith commercial invoice, packing list, etc. which were filed by us on behalf of the importer M/s. Akash Universal Limited for clearance of the goods declared as 'Rough Dolomite Blocks' under CTH 25181000. I have perused the said Bill of Entry alongwith supporting documents. On being asked I state that we had filed various Bills of Entry on behalf of the above importer based on the documents and product details given by them. Earlier they had given documents wherein the description of goods was mentioned as 'Rough Marble Blocks', however, in case of the above Bill *of Entry, the documents given to us by the respective importer were showing description as 'Rough Dolomite Blocks', therefore, we inquired with the importer about change in description and came to know from the respective importer that Rough Dolomite Block is also a separate product and the same has been classified separately in Customs Tariff. I have gone through the Customs Tariff and found that Dolomite have been mentioned in Chapter heading 2518. I further state that we filed the above Bill of Entry as per description of goods mentioned in documents and as per importer's instructions and approval of checklist, however, in order to verify the nature of imported goods, we have filed Bill of Entry seeking first check examination order and accordingly, live samples from the goods under the above Bill of Entry were drawn by the Customs officers and the said samples were tested at CRCL Laboratory, Vadodara. I further state that under the test report, the CRCL, Vadodara has confirmed that the goods under the above Bill of Entry is composed of carbonates of calcium & Magnesium (Dolomite).*

On being asked to define the goods Dolomite Blocks and its uses I state that technically I am not aware about the goods i.e. Dolomite Blocks. On being further asked as to whether there is any difference between Marble Blocks and Dolomite Blocks which were imported by M/s. Akash Universal Limited, I state that both the materials are same in appearance and the goods were cleared as dolomite on the basis of the test reports of live samples drawn under first check examination.

On being further asked I state that M/s. Akash Universal Limited is in the business of Marbles and they are regularly importing the Marble Blocks.

Now, I am being shown the panchnama dated 21.08.2023 drawn at the premises of ICD Tumb, Vill – Tumb, Distt. Valsad, Gujarat. I read and understand the contents of the said panachnama and put my dated signature. As per the panchnama, samples of dolomite blocks were collected from godown and sealed for re-testing and detail thereof is tabulated in the panchnama. I read and understand the table of the panchnama and find the Bill of Entry No. 8704561 dated 04.09.2020 in the table. Now, I am being shown ICD, Tumb Letter F. No. VIII/24/ICD-Tumb/2023-24 dated 26.08.2023 alongwith test memos No. ICD-Tumb/I-119/23-24 dated 26.08.2023, sent to the Geological Survey of India, Nagpur, I read the same and understand that the above sealed samples of the imported cargo i.e. 'Rough Dolomite Block' imported by the above stated respective importer vide above Bill of Entry at ICD, Tumb were sent to the Geological Survey of India, Nagpur for testing and put my dated signature on the same.

In continuation to the above document I am being shown the letter reference No. 71/Customs/TCS/GSI/CR/2023 dated 28.09.2023 issued by the Director, Geological Survey of India alongwith Petrological Test Report dated 27.09.2023 i.r.o. Bill of Entry No. 8704561 dated 04.09.2020 issued by the Director, Geological Survey of India for the above said samples. After reading and understanding the said document I put my dated signature on the same as a token of having perused the same. On being asked I state that after Chemical Analysis/Testing of the samples of "Rough Dolomite Blocks" declared and imported by the above stated importer vide above Bill of Entry, the Geological Survey of India, Nagpur has provided the 'Petrological Test Report' in respect of the said samples. The Geological Survey of India, Nagpur vide said 'Petrological Test Report' has opined and concluded stating the nature or rock that "based on the above physical, optical and limited chemical properties of rock samples interpreted as Dolomitic Marble".

Further, I am being shown ICD Tumb letter F. No. VIII/24/ICD-Tumb/2023-24 dated 29.05.2024, addressed to the Director, TCS, Geological Survey of India, Nagpur. I read and understand the letter and put my dated signature. From the letter dated 29.05.2024 I understand that in two petrological test reports
i.r.o. samples of Bill of Entry No.3456493 dated 30.05.2019 and Bill of Entry No. 6595700 dated 23.01.2020, having almost similar/identical Petrographic study, the samples were interpreted as 'Dolomte' and 'Marble' respectively, therefore, it was requested to the GSI, Nagpur to specifically confirm whether the samples of

rock covered in the above Bill of Entry are 'Dolomite' or 'Marble'.

I am being shown e-mail correspondence dated 31.07.2024 from the Director, TCS Division, GSI, Nagpur (e-mail id: tcs.cr@gsi.gov.in) to ICD Tumb (e-mail id: cusicd-tumb@gov.in) and the document pertaining to reply of query raised as per letter No. VIII/24/ICD-Tumb/2023-24 dated 29.05.2024 is forwarded. I read and understand the e-mail correspondence and the document and put my dated signature. In the reply column of the document, the query is answered. Further, it is remarked in the document that "Dolomite and marble are compositionally (mineralogical and chemical) similar rocks. Both are having chemical composition of (Ca-Mg) CO3 with minor impurities. Dolomite is a carbonate rock of sedimentary origin. On the other hand Marble is a carbonate rock of metamorphic origin". From the above, I understand that Dolomite and Marble are having chemical composition of (Ca-Mg)CO3 with minor impurities. Dolomite is carbonate rock of sedimentary origin and on the other hand Marble is a carbonate rock of metamorphic origin.

Further, I am being shown ICD Tumb letter F. No. VIII/24/ICD-Tumb/2023-24 dated 21.08.2024, addressed to the Director, TCS, Geological Survey of India, Nagpur wherein a reference of e-mail dated 16.08.2024 from ICD Tumb (e- mail id: cusicd-tumb@gov.in) sent to the GSI, Nagpur (e-mail id: tcs.cr@gsi.gov.in) is there under which specific queries in connection with the test reports of various samples were sent to the GSI, Nagpur seeking response thereon:

1. *Whether the rock is sedimentary or metamorphic in 'nature?*
2. *Specific gravity of the rock?*
3. *Chemical composition of the rock?*
4. *Whether the stone is formed from the re-crystallization of limestone and/or dolomitic limestone?*
5. *Whether the rock is sufficiently hard and capable of taking polish and can be used as marble slabs?*
6. *Petrographic analysis of the rock?*
7. *Whether it meets the specifications of marble? It yes, which type of marble it is?*

*I am being shown e-mail correspondence dated 30.08.2024 from the Director, TCS Division, GSI, Nagpur (e-mail id: tcs.cr@gsi.gov.in) to ICD Tumb (e-mail id: cusicd-tumb@gov.in) under which response of specific queries in connection with test report were forwarded. The document attached with this e-mail also being shown to me. I read and understand the e-mail correspondence and the attached document and put my dated signature. I find that in the attached document Sr. No.1 replied for four samples (BE 6496896 to 8704561) sent by ICD, Tumb vide letter F. No.VIII/24/ICD-Tumb/2023-24 dated 26.08.2023 which forwarded samples of four Bills of Entry No. 6496896 dated 16.01.2020 (M/s.Classic Marble); 6696841 dated 31.01.2020 (M/s. Subh Stone); 7038144 dated 27.02.2020 (Shri Parasnath Exports) and 8704561 dated 04.09.2020 (M/s. Aakash Universal Ltd.) and thus, Bill of Entry No. 8704561 dated 04.09.2020 pertains to M/s. Akash Universal Limited is there. In this query answer it has been reported that the rock has been identified as **Dolomitic Marble** (recrystallised sedimentary rock with density 2.63 to 2.83 g/cc and chemical composition Calcium carbonate with magnesium). **Dolomitic Marble** is metamorphic rock and can be polished and used as slabs. It meets the specifications of marble and can be categorised as **Dolomitic Marble**. I also understand from the footnote on the response document that Marble is the metamorphic equivalent of non-clastic sedimentary rocks i.e. limestone/dolomite. Marble can be polished and used as building material/slabs. Compositionally marble can be calcite marble (mainly Ca Co3) or dolomitic marble (mainly Ca Mg CO3). The specific gravity (density) varies from 2.6 to 2.8 g/cc.*

I am further being shown e-mail correspondence dated 26.09.2024 from the Director, TCS Division, GSI, Nagpur (e-mail id: tcs.cr@gsi.gov.in) to ICD Tumb (e-mail id: cusicd-tumb@gov.in) under which reply dated 25.09.2024 of the queries pertaining to the above Bill of Entry is attached. The document attached with this e-mail also being shown to me. I read and understand the e-mail correspondence and the attached document and put my dated signature. I find that queries are replied by the Geological Survey of India as under:

Query	*Reply (BE No. 8704561 dated 04.09.2020)*
Whether the rock is sedimentary or metamorphic in nature	*Recrystallized sedimentary rock.*
Specific gravity of the rock	*2.83 g/cm^3*
Chemical composition of the rock	*Calcium carbonate with magnesium*
Whether the stone is formed from the re-crystallization of limestone and/or dolomitic limestone	*Dolomitic marble is a metamorphic rock is formed from recrystallisation of dolomitic limestone*
Whether the rock is sufficiently hard and capable of taking polish and can be used as marble slabs	*Yes*
Petrographic analysis of the rock	*Petrological test report submitted earlier is attached as pdf*
Whether it meets the specifications of marble? It yes, which type of marble it is	*Yes*

Note: Marble is the metamorphic equivalent of non-clastic sedimentary rocks i.e. limestone / dolomite. Marble can be polished as used as building material/slabs. Compositionally marble can be calcite marble (mainly Ca CO3) or dolomite marble (mainly Ca Mg CO3). The specific gravity (density) varies from 2.6 to 2.8 g/cc.

On being asked I state that as per the above Test/Analysis Reports, specific comments and response of the specific queries, load port test reports, the material declared as 'Rough Dolomite Blocks' imported vide above Bill of Entry by M/s. Akash Universal Limited appears to be 'Rough Marble Block with specific gravity of more than 2.83 g/cm^3 and composed of Calcium carbonate with magnesium. On being asked I state and agree that as per the above contents of the analysis report shown to me today the samples meet the specification of Dolomitic Marbles. However, I would like to state that the sample of the goods imported under the Bill of Entry No. 8704561 dated 04.09.2020 was sent for testing at Central Excise and Customs Laboratory, Vadodara vide test memo dated 07.08.2020 and their report dated 09.09.2020 confirming the material imported was 'Dolomite'.

On being asked about payment of custos duty against the imports under the above Bill of Entry I state that in case of imports under above Bill of Entry customs duty was paid as applicable as per classification under CTH 25181000 instead of customs duty payable as per classification of the subject goods under CTH 2515, as per the test report issued of GSI, Nagpur.

Now, I am being shown the IS 1130-1969 (Indian Standard: Specification for Marble, which is as under: ---
"Marbles are metamorphic rocks capable of taking polish, formed from the re- crystallization of Limestones or dolomitic limestaones and are distinguished from limestone by even visibly crystallined nature and non-flaggy stratification."

Further, I have been shown the HSN Explanatory General Notes of Chapter 2515 which is as under:-

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

- Marble and travertine:

2515 .11 - - Crude or roughly trimmed
2515.12 -- Merely cut, by sawing or otherwise, into blocks or slabs of a rectangular (including square) shape
2515 .20 - Ecaussine and other calcareous monumental or building stone; alabaster

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

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

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

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

On being specifically asked, I state that after going through the above literature, load port test report and Test Analysis Report of the Geological Survey of India, Nagpur, I understand and accept that Marble is a metamorphic rock that forms when limestone is subjected to the heat and pressure of metamorphism. Marble is composed primarily of the mineral calcite (CaCO3) and usually contains other minerals, such as clay minerals, micas, quartz, pyrite, iron oxides, and graphite. Under the conditions of metamorphism, the calcite in the limestone re-crystallizes to form a rock that is a mass of interlocking calcite crystals. I also accept that name of Marble Blocks are classified as per their genesis and chemical composition, colour, texture, origin of country, etc. Dolomite Marble and Dolomitic Marbles are also a form of marbles, which is a crystalline variety of dolomite containing magnesium carbonate as dolomite molecules in certain proportion.

On perusal the test reports, IS 1130-1969 (Indian Standard: Specification for Marble), and the HSN notes it seems that the goods imported by M/s. Akash Universal Limited declaring as 'Rough Dolomite Blocks' under the above Bill of Entry meet the specifications of Dolomitic marble and should have been classified under CTH 2515. Further, appropriate duty applicable on the imported goods under the above Bill of Entry, could not be paid at the time of import as the goods were declared as "Rough Dolomite Block" and classified the same under CTH 2518 instead of 2515.

On being asked about the imports of Rough Marble Blocks undertaken by M/s. Akash Universal Limited, I state that they had regularly imported only "Rough Marble Block" under HSN code/CTH 2515 from various suppliers. On being specifically asked that when M/s. Akash Universal Limited, had earlier imported and classified the goods under CTH 2515 then why we were indulged in mis-classification under HSN code/CTH 2518, in this regard I state that the importer informed us that the goods imported under the above Bill of Entry is different from the imports of Marble and therefore, classified accordingly. I further state that upon verification of Customs Tariff, we found that the declared description of goods in the import documents was covered under CTH 25181000.

On being asked about subsequent imports of Rough Marble Blocks undertaken by M/s. Akash Universal Limited, I state in addition to the above Bill of Entry No.8704561 dated 04.09.2020, M/s. Akash Universal Limited has also imported the goods declaring as 'Rough Dolomite Block' vide Bill of Entry No. 9238474 dated 19.10.2020, which was also classified under CTH 25181000 as per instruction *and approved check list by the importer. I further state that the samples of the goods imported under the Bill of Entry No. 9238474 dated 19.10.2020 were sent for testing to CSIR National Geophysical Research Institute, Hyderabad for petrographic test and other chemical analysis of the goods. The CSIR National Geophysical Research Institute, Hyderabad informed in their test report that the sample meet the specification of Marble, more specifically Dolomitic Marble and therefore, the goods imported under the Bill of Entry No. 9238474 dated 19.10.2020 was seized under Customs Act, 1962 by the department, which was later on provisionally released against execution of Bond with 100% Bank Guarantee for the differential amount of customs duty. The Bill of Entry No. 9238474 dated 19.10.2020 is assessed provisionally by the customs authority.*

I further state the importer has also given set of documents for same kind of goods and in the invoice issued by the overseas supplier the goods was described as 'Rough Dolomite Block', however, the importer has declared the goods as 'Rough Marble Blocks (Rough Dolomite Blocks)' classified under CTH 25151210 vide Bill of Entry No. 9552862 dated 12.11.2020 and paid appropriate Customs Duty because the goods classified under CTH 25181000 in other two Bills of Entry was delayed in clearance by the department due to classification issue.

On being asked further I state that being a company in the business of import and export in the capacity of a Customs Broker Agent, I am fully aware of the provisions of Customs Broker Licensing Regulations, 2018 and Customs Act, 1962. On being asked further regarding role and responsibility of a CHA under CBLR, 2018, I state that being a Custom House Agent/ Broker, as per the provisions of CBLR, 2018, we are abide by Regulation 10 of CBLR, 2018. I would like to state that in the present case the classification was done as per the description of goods mentioned in the import documents produced to us by the importer and the description was confirmed in live test report of the samples taken in the process of first check examination. I would further like to state in the classification of the goods imported under the above Bill of Entry our role as Customs Broker Agent was played by us with due precautions complying with the obligations under the CBLR,2018."

MODUS OPERANDI ADOPTED FOR EVASION OF CUSTOMS DUTY:

6.1 In view of the test reports, it appears that the importer has imported the goods namely 'Rough Marble Blocks' by mis-declaring as 'Rough Dolomite Blocks' vide Bills of Entry No. 8704561 dated 04.09.2020. The importer was regularly importing Rough Marble Blocks, classifying under CTH 25151210 and paying applicable duty. The importer was engaged in this field of purchase-sell of Marble, and thus it appears that the importer was aware about different kinds of stone which can be substituted in the guise of marble blocks. Dolomite Block is one of such natural stone which attracts low rate of customs duty on import and therefore, it appears that the importer declared goods as Dolomite Blocks. Dolomite is nothing but a sub- category of marble. It appears that the importer cleared the above consignment declaring as Rough Dolomite Blocks and classifying the goods under CTH 25181000 though, the same appears meeting the characteristics of Marble. Therefore, it appears that as per the intelligence received, the said importer has imported rough marble blocks in guise of the rough dolomite block and it appears that the earlier test report of the subject goods has not examined the critical parameters of specific gravity and not examined the samples property to accept polish or not and therefore, it appears that the earlier test report disregarded the terminology and characteristics properties of marble stone as per ASTM 503/C503M-15 and it appears that the earlier test report without examining these properties which are vital to determine the nature of goods appears liable to be dismissed in pursuance to the detailed test report submitted by Geological Survey of India, Central Region, Nagpur, which appears has examined the critical parameters and characteristics to determine the identity of the subject goods.

6.2 It appears that by applying an inconclusive test report which does not bring out the true characteristics / physical/ chemical properties of the subject goods, the importer appears to have mis-classified the 'Rough Marble Block' as Rough Dolomite Block declaring under CTH 25181000 with intention to evade payment of customs duty. It appears that the goods declared as 'Rough Dolomite Block' appears to be 'Rough Marble Block' and appears to be classified under CTH 25151210 with applicable customs duty, and it appears that the importer declared classification of the product under CTH 25181000 which attracted a lower rate of duty, and it appears that this was with the intention to evade payment of applicable Customs duties including IGST under CTH 25151210 which was higher in comparison to the declared CTH 25181000 applicable rate of duties.

6.3 It appears that the importer had evaded the applicable Customs duty liable to be paid to the Government Exchequer by way of mis-declaring the imported goods as 'Rough Dolomite Block' and thereby mis-classifying the same under CTH 25181000 in respect of the Bills of Entry No. 8704561 dated 04.09.2020 for which samples were tested by GSI, Central Region Nagpur and the test reports confirm that the sample meets the specification of Marbles.

7. The mis-declaration and mis-classification of goods:

7.1 The intelligence received by Customs indicating that the critical parameter i.e. specific gravity was intentionally not tested to draw right conclusion on the sample; it was ignored as to whether the sample has property to accept polish or not and also that deliberately avoided terminology and characteristic properties of Marble dimension stone as per ASTM 503 /C503M, wherein it is very clearly mentioned that dolomite having specific gravity above 2.5 is considered as marble. Therefore, the representative sample drawn from the consignments declared as 'Rough Dolomite Blocks' imported by the importer was packed and sealed under panchnama dated 23.08.2023 were subjected to Testing/analysis of product. The Geological Survey of India, Central Region, Nagpur submitted testing reports in different parameters /analysis along with response of queries, raised by Customs, Test Report, Chemical Analysis of the samples and response of queries conveyed by the Geological Survey of India, Central Region, Nagpur. The test report, states the techniques and chemical analysis, Petrographic analysis carried out showing composition, density, hardness and confirmed that the sample forwarded under test memo No. ICD-Tumb/I-119/23-24 dated 26.08.2023 i.r.o. of the above Bill of Entry meets the specifications of "Dolomitic Marble". Further, the report clearly mentioned that the specific gravity of the rock is 2.83g/cm^3. The test report also confirmed that the rock identified and interpreted as Marble by them can be polished and can be used as building material/slabs. Thus, it appears that goods imported by the importer vide the above Bill of Entry were Blocks of Marble but appears to be mis-declared as 'Rough Dolomite Blocks' with intent to evade payment of duty.

7.2 During the course of inquiry it emerged that the mine test report, mineral and chemical analysis certificate were not produced at the time of import, as Shri Aniket Khetan, Manager and Authorized Signatory, M/s. Akash Universal Limited, in his statement categorically stated that they have not obtained any mine test report, mineral and chemical analysis certificate from the supplier and manufacturer in respect of goods imported under the above Bill of Entry.

7.3 With reference to the import of goods under Bill of Entry No. 9238474 dated 19.10.2020, it appears that the goods was declared Rough Dolomite Block and classified under CTH 25181000. The import of Rough Dolomite Blocks was being investigated by DRI, Ahmedabad and accordingly as per DRI instructions, the samples of imported goods under the above Bill of Entry No. 9238474 dated 19.10.2020 were sent for testing to National Geophysical Research Institute, Hyderabad for carrying out petrographic test and to provide complete chemical analysis of the goods. The National Geophysical Research Institute, Hyderabad, has forwarded the test report vide letter dated 29.01.2021, received vide e-mail dated 29.01.2021 (from rammohan@ngri.res.in to icdtumb@gmail.com). Based on the petrography, chemical composition and specific gravity data, National Geophysical Research Institute, Hyderabad has informed that the sample meet the specification of Marble (more precisely, it is Dolomitic Marble).

7.3.1 In order to get more clarification on the test report, letter dated 02.03.2021 was sent to the National Geophysical Research Institute, Hyderabad, requesting to confirm whether the sample is to be considered as 'Marble' or 'Dolomite', sent vide e-mail dated 02.03.2021 (from icdtumb@gmail.com to rammohan@ngri.res.in). In response to the said letter dated 02.03.2021, the National Geophysical Research Institute, Hyderabad has informed vide e-mail dated 03.03.2021 (from rammohan@ngri.res.in to icdtumb@gmail.com) confirmed that the sample come under the category of marble

7.3.2 The importer M/s. Akash Universal Limited vide letter dated 05.01.2021 has requested the customs department to assess the Bill of Entry No. 9238474 dated 19.10.2020 provisionally on full duty. Further, vide letter dated 26.02.2021 the importer has requested for the Test Report for the said consignment to process at their end. Considering the request of the importer, the test report received from the National Geophysical Research Institute, Hyderabad, in respect of the above consignment was forwarded to the importer vide letter dated 09.03.2021

7.3.3 Accordingly, the goods imported under the above Bill of Entry No. 9238474 dated 19.10.2020 by the noticee, was seized vide seizure memo dated 11.03.2021 issued from F.No.VIII/06/ICD-Tumb/Dolomite/2020-21. The importer vide letter dated 18.03.2021 has requested for provisional release of the seized goods. Vide letter dated 26.03.2021, the importer was informed to that the goods imported vide Bill of Entry No. 9238474 dated 19.10.2020 will be released provisionally on payment of declared duty as per Bill of Entry, execution of Bond for full value of Rs.9,87,645/- and on furnishing a Bank Guarantee of Rs.6,46,957/-. In response to the letter dated 26.03.2021, the importer has executed PD/Test Bond No.2001856772 for Rs.10,00,000/- and furnished Bank Guarantee No. OGT0018210054329 dated 27.04.2021,for Rs.6,50,000/-. issued by Indusind Bank Limited, Acme Plaza Branch, Andheri (E), Mumbai **–(RUD-16)**.

7.3.4 An e-mail dated 22.06.2025 was sent to M/s. Prodem Urun Gelistirme San. Ve. TIC. LT, Besiktas-Istanbul, Turkey at their e-mail id: info@prodemltd.com, the supplier of goods cleared under the above Bill of Entry of the importer, seeking their submission/clarification regarding supply of goods by them declaring 'Rough Dolomite Blocks' in the respective invoice and other documents. No reply was received therefore, reminder e-mail dated 01.07.2025 and 04.07.2025 were sent -**(RUD-17)**. However, they have not responded.

7.4 As per the classification provided by the Government of India, Ministry of Mines, Indian Bureau of Mines vide the Indian Minerals Yearbook 2013 (Part- III : Mineral Reviews) **-(RUD-18)** the marbles are first classified on the basis of colour, shade and pattern and second on the basis of their genesis and chemical composition.

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

i. **Calcite Marble:** It is a crystalline variety of limestone containing not more than 5% magnesium carbonate. Colour and design wise, it may vary from grey to white to any colour, and even figurative light- brown to pink.
ii. **Dolomitic Marble:** It is a crystalline variety of limestone containing not less than 5% or more than 20% magnesium carbonate as dolomite molecules.
iii. **Dolomite Marble:** It is a crystalline variety of dolomite containing in excess of 20% magnesium carbonate as dolomite molecules. It has variegated colours and textures. As the whiteness increases, the lustre and translucency increases to an extent that it starts resembling with onyx. The main advantage of this marble is availability of exotic colours and patterns and its low maintenance cost. Marbles of Banswara in Rajasthan and Chhota Udaipur in Gujarat belong to this category.
iv. **Siliceous Limestone**: It is a limestone containing high silica with smooth appearance due to fine-grained texture. It is difficult to cut and polish this type of marble but once polished, it gives a pleasant look. It is available in several colours and designs. The pink marble of Babarmal and Indo-Italian variety from Alwar belongs to this category.
v. **Limestone:** Several varieties of limestone are being exploited and used as marble. The Oolitic limestone of UK, Black Marble of Bhainslana, Katra & Sirohi and Golden-yellow Marble of Jaisalmer belong to this category. This type requires frequent maintenance in the form of polishing as they are non- metamorphosed

and hence are softer in nature.

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

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

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

Marble is a metamorphic rock that forms when limestone is subjected to the heat and pressure of metamorphism. Marble is composed primarily of the mineral calcite ($CaCO_3$) and usually contains other minerals, such as clay minerals, micas, quartz, pyrite, iron oxides, and graphite. Under the conditions of metamorphism, the calcite in the limestone recrystallizes to form a rock that is a mass of interlocking calcite crystals. From the above classification of Marble by the Indian Bureau of Mines it appears that **Dolomitic Marble** is also a form of marble, which is a crystalline variety of limestone containing not less than 5% or more than 20% magnesium carbonate as dolomite molecules. Further, **Dolomite Marble** is also a form of marble, which is a crystalline variety of dolomite containing in excess of 20% magnesium carbonate as dolomite molecules.

7.5 Shri Aniket Khetan, Manager and Authorized Signatory, M/s. Akash Universal Limited has stated in his statement that they are engaged in processing of “Marble Blocks” into “Marble Slabs” and further selling of said Marble Slabs in local market in different parts of India. Marble Blocks required for processing are procured by way of import from Italy, Turkey, Greece. They had regularly imported only “Rough Marble Block” under HSN code/CTH 25151210 from various suppliers earlier to the import under the above Bill of Entry No. 8704561 dated 04.09.2020. The goods imported under the above Bill of Entry were processed in the plant of their company located at silvasa in the same manner as they did for Marble blocks into Marble Slabs and were cleared/sold as ‘Dolomite Marble’, to different Indian buyers.

7.6 Further, the subsequent imports undertaken by the importer were declared as “Rough Marble Blocks” and classified under CTH 25151210, and paid the customs duty applicable as per classification under CTH 2515, as appeared from the import data of the importer. Sample Bills of Entry are mentioned here as - BE No. 9552862 dated 12.11.2020 - declaring as Rough Marble Blocks (Rough Dolomite Blocks) classified under CTH 25151210; BE No. 9288384 dated 23.10.2020 - declaring as Rough Marble Blocks classified under CTH 25151210; BE No. 9568725 dated 13.11.2020 - declaring as Rough Marble Blocks classified under CTH 25151210; BE No. 8705380 dated 04.09.2020 - declaring as Rough Marble Blocks classified under CTH 25151210; BE No. 7285809 dated 29.01.2022 - declaring as Rough Marble Blocks classified under CTH 25151210; BE No. 6045661 dated 10.10.2024 - declaring as Rough Marble Blocks classified under CTH 25151210; BE No. 8877555 dated 19.09.2020 - declaring as Rough Marble Blocks classified under CTH 25151210. The goods cleared under the Bills of Entry viz. BE No. 8704561 dated 04.09.2020; BE No. 9238474 dated 19.10.2020 and BE No. 9552862 dated 12.11.2020 was of same kind and nature i.e. Marble Blocks of Dolomite nature but the goods under the Bill of Entry No. 9552862 dated 12.11.2020 was classified under CTH 25151210. It is categorically stated in the statement of Shri Aniket Khetan that the goods was classified as per the nature and actual description of goods and in respect of BE No.8704561 dated 04.09.2020 and BE No. 9238474 dated 19.10.2020 the goods was classified under CTH 25181000 which seems to be misclassification as per the test reports of GSI, Nagpur and CSIR-NGRI, Hyderabad. The same appears to indicate that the goods imported by the importer under the above Bills of appears liable for classification under CTH 2515210 however, it appears that the importer have wrongly classified the same under CTH 25181000 and appears to have evaded the customs duty.

7.7 In Indian Standard Specification for **Marble, IS:1130-1969**, **(RUD-19)** Entry No. 0.2 marbles have been described as *metamorphic rocks capable of taking polish, formed from the re-crystallization of limestones or* ***dolomitic limestones*** *and are distinguished from limestone by even visibly crystallined nature and non-flaggy stratification.* (**Note**-Sometimes rocks, such as serpentine are also polished and used in trade as marble.)

7.8 The HSN Explanatory General Notes of Chapter 2515 which is as under:

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

- Marble and travertine:

2515 .11 -- Crude or roughly trimmed

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

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

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

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

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

7.9 The HSN Explanatory General Notes of Chapter 2515 **[RUD–20]** covers Marble, travertine, ecaussine and other calcareous monumental or building stone of an apparent specific gravity of 2.5 or more, and alabaster, whether or not roughly trimmed or merely cut, by sawing or otherwise, into blocks or slabs of a rectangular (including square) shape(+). Further as per the HSN Explanatory General Notes *Marble is a hard calcareous stone, homogeneous and fine-grained, often crystalline and either opaque or translucent. Marble is usually variously tinted by the presence of mineral oxides (coloured veined marble, onyx marble, etc.), but there are pure white varieties.* Travertines are varieties of calcareous stone containing layers of open cells. Ecaussine is extracted from various quarries in Belgium and particularly at Ecaussines. It is a bluish-grey stone with an irregular crystalline structure and contains many fossilised shells. On fracture Ecaussine shows a granular surface similar to granite and is therefore sometimes known as "Belgian granite", "Flanders granite" or "petit granit". *The heading covers other similar hard calcareous monumental or building stones, provided their apparent specific gravity is 2.5 or more (i.e. effective weight in kg/I,000 cm').*

7.10 As per the Test/Analysis Report along with response of queries received from the Geological Survey of India, Central Region, Nagpur, literature of the Marble, IS 1130-1969 (Indian Standard: Specification for Marble) editions released by Government of India, and HSN Explanatory General Notes of Chapter 2515 and Chapter 2518 and Tariff, it appears that the goods imported by the importer vide above Bills of Entry appears classifiable under chapter heading 25151210 of Indian Customs Tariff, however, it appears that the importer have wrongly classified the same under CTH 25181000 and appears to have evaded the customs duty.

7.11 Shri Aniket Khetan, Manager and Authorized Signatory, M/s. Akash Universal Limited and Shri Rupesh Jivanbhai Katariya the G-card holder of Customs House broker have stated in their respective statements that as per the above Test/Analysis Report, specific comments and response of the specific queries, the material declared as 'Rough Dolomite Blocks' and imported vide Bill of Entry No. 8704561 dated 04.09.2020 and Bill of Entry No. 9238474 dated 19.10.2020 by M/s. Akash Universal Limited are actually 'Rough Marble Block with specific gravity of more than 2.83 g/cm^3 /2.84 and composed of Calcium carbonate with magnesium. They agreed with the contents of the analysis report shown to them according to which the sample meets the specification of marbles. They have also stated that the goods imported by the importer declaring as 'Dolomite Block' meets the specifications of 'Marble' and categorically stated that on perusal the test reports, IS 1130-1969 (Indian Standard: Specification for Marble), and the HSN notes It seems that the goods imported by their company under the above Bill of Entry declaring as 'Rough Dolomite Blocks' meets the specifications of 'Marble' and the said goods should have been classified under the CTH 2515 instead of 2518.

8 In view of the above, it appears that goods declared as 'Rough Dolomite Block' imported by the importer was 'Rough Marble Block'. As per the Test/Analysis Report along with response of queries received from the Geological Survey of India, Central Region, Nagpur, the consignments imported by the importer appears to meet the specification of marble and the subject goods appear to be classifiable under Customs Tariff Heading 25151210. Further, as the HSN Explanatory General Notes of Chapter 2515 covers Marble, travertine, ecaussine and other calcareous monumental or building stone of an apparent specific gravity of 2.5 or more, and alabaster, whether or not roughly trimmed or merely cut, by sawing or otherwise, into blocks or slabs of a rectangular (including square) shape. Further, as per the HSN Explanatory General Notes Marble is a hard calcareous stone, homogeneous and fine-grained, often crystalline and either opaque or translucent. Marble is usually variously tinted by the presence of mineral oxides (coloured veined marble, onyx marble, etc.), but there are pure white varieties.

REJECTION OF CLASSIFICATION OF PRODUCT DECLARED AS 'DOLOMITE BLOCKS' UNDER CUSTOMS TARIFF HEADING 25181000 AND RE-CLASSIFICATION UNDER CTH 25151210 AS 'ROUGH MARBLE BLOCKS'.

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

9.2 The importer appears to have imported 'Rough Marble Block' by mis- declaring the same as 'Rough Dolomite Block' and thereby appears to have mis- classified under Customs Tariff Heading 25181000 vide the Bill of Entry No. 8704561 dated 04.09.2020 and Bill of Entry No. 9238474 dated 19.10.2020. Further, the Geological Survey of India, Central Region, Nagpur after testing/chemical analysis of the sample along with response of queries confirmed that the sample meets the specifications of marble and can categorized as **Marble.** Therefore, it appears that the goods are 'Rough Marble Block' imported by the importer and appears to merit classification under heading 25151210 of the CTH in terms of the above HSN Explanatory General Notes of Chapter 25 of Customs Tariff and in pursuance to the Test Report/Chemical Analysis Reports as against the declared classification of CTH 25181000.

10. Thereby, it appears that the importer was aware of the duty structure under CTH

25151210 in comparison to CTH 25181000. However, they appear to have mis-classified under CTH 25181000 with a mala-fide intention of evading Customs duty. It appears that the importer with the intent to evade payment of Custom Duty had intentionally mis-declared the goods under CTH 25181000 in the import documents by suppressing the fact that declared 'Rough Dolomite Blocks' are infact appears to be 'Rough Marble Blocks'. The above willful suppression and willful mis-statement appeared to be done by the importer with the intention to evade payment of Customs Duty leviable and payable on the import of 'Rough Marble Blocks' as specified in the first schedule under Section 2 of Customs Tariff Act, 1975. Hence, it appears that the importer had knowingly involved themselves in the suppression of the material facts and also appears to have indulged in mis-statement of facts.

11. During the recording of the statement, Shri Aniket Khetan, Manager and Authorized Signatory, M/s. Akash Universal Limited, stated that the goods imported under the above Bill of Entry was cleared/sold as 'Dolomite Marble'. It appears that the noticee have sold the goods as marble only, which is also in conformity with findings of above test report and therefore, the goods appears to have been appropriately classified under CTH 25151210 and accordingly appears to have been assessed to rate of Customs duty as applicable for CTH 25151210 during relevant period.

VIOLATION OF LEGAL PROVISIONS OF CUSTOMS ACT, 1962

12. Vide Finance Act, 2011 w.e.f. 08.04.2011 "Self Assessment" has been introduced under the Customs Act, 1962. Section 17 of the said Act provides for self- assessment of duty on import and export goods by the importer or exporter himself by filing a Bill of Entry or shipping bill as the case may be, in the electronic form, as per Section 46 or 50 respectively. Thus, under self-assessment, it is the importer or exporter who will ensure that he declares the correct classification, applicable rate of duty, value, benefit or exemption notification claimed, compliance with restriction if any in respect of the imported/ goods to be exported while presenting Bill of Entry or Shipping Bill. In the present case, it appears that the facts were only known to the importer about the product and aforesaid facts came to light only subsequent to the in-depth investigation and after chemical analysis of the product which had been conducted. Therefore, it appears that the importer have deliberately contravened the above said provisions with an intention to evade payment of Customs Duty leviable and payable on the import of 'Rough Marble Blocks' as specified in the first schedule of the Customs Tariff Act, 1975. It appears that the importer had contravened the provisions of Section 46(4A) of the Customs Act, 1962 in as much as the importer while filing Bills of Entry had to ensure the accuracy and completeness of the information given therein for assessment of Customs duty, whereas in the instant case, the importer appears to have failed to fulfill this legal obligation in respect of imports of 'Rough Marble Blocks' for its correct and accurate classification. With the introduction of self-assessment & RMS under the Customs Act, faith is bestowed on the importer and the importer have been assigned with the responsibility of self- assessing goods under Section 17 of the Customs Act, 1962. It was incumbent upon the importer to self assess the duty leviable on imported goods correctly, however, it appears that the importer failed to do so by selecting wrong CTH for payment of BCD, SWS & IGST by willful mis-statement and it appears with an intent to evade correct payment of BCD, SWS & IGST and therefore, appears that they have violated the provisions laid down under Section 17(1) of the Customs Act, 1962 inasmuch it appears that they have failed to correctly self-assess the impugned goods and also appears to have willfully violated the provision of Sub Section (4) and 4(A) of Section 46 of the Custom Act, 1962.

13. From the aforesaid, it appears that the importer had knowingly and deliberately indulged in suppression of facts and had willfully misrepresented /mis-stated the material facts regarding the goods imported by them, in the declarations made in the import documents presented for filing of Bills of Entry presented before the Customs at the time of import for assessment and clearance,

with an intent to evade payment of applicable Customs Duty. Therefore, the duty not paid/short paid appears liable to be recovered from the importer by invoking the extended period of five years as per Section 28 (4) of the Customs Act, 1962, in as much as the duty appears short paid on account of wilful mis-statement as narrated above. Accordingly, the differential Customs duty amounting to **Rs.9,98,104/-** in respect of the imports at ICD Tumb (INSAJ6) as detailed in **Annexure-A to this SCN**, appears liable to be recovered from the importer, under Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28 AA ibid.

Relevant Legal provisions, in so far as they relate to the facts of the case are as follows:

Section 17. Assessment of duty. -

a. An importer entering any imported goods under section 46 or an exporter entering any export goods under section 50 shall, save as otherwise provided in section 85, self-assess the duty, if any, leviable on such goods.

b. The proper officer may verify the [the entries made under section 46 or section 50 and the self-assessment of goods referred to in sub-section (1)] and for this purpose, examine or test any imported goods or export goods or such part thereof as may be necessary.

3 [Provided that the selection of cases for verification shall primarily be on the basis of risk evaluation through appropriate selection criteria.]

4 [(3) For 5 [the purposes of verification] under sub-section (2), the proper officer may require the importer, exporter or any other person to produce any document or information, whereby the duty leviable on the imported goods or export goods, as the case may be, can be ascertained and thereupon, the importer, exporter or such other person shall produce such document or furnish such information.]

(4) Where it is found on verification, examination or testing of the goods or otherwise that the self- assessment is not done correctly, the proper officer may, without prejudice to any other action which may be taken under this Act, re-assess the duty leviable on such goods.

(5) Where any re-assessment done under sub-section (4) is contrary to the self-assessment done by the importer or exporter 6 [***] and in cases other than those where the importer or exporter, as the case may be, confirms his acceptance of the said re- assessment in writing, the proper officer shall pass a speaking order on the re- assessment, within fifteen days from the date of re-assessment of the bill of entry or the shipping bill, as the case may be.

7 [***]

Explanation. *- For the removal of doubts, it is hereby declared that in cases where an importer has entered any imported goods under section 46 or an exporter has entered any export goods under section 50 before the date on which the Finance Bill, 2011 receives the assent of the President, such imported goods or export goods shall continue to be governed by the provisions of section 17 as it stood immediately before the date on which such assent is received.]*

Section 46 Entry of goods on importation. —

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…………..

[(4A) The importer who presents a bill of entry shall ensure the following, namely:-

(a) the accuracy and completeness of the information given therein;

(b) the authenticity and validity of any document supporting it; and

(c) compliance with the restriction or prohibition, if any, relating to the goods under this Act or under any other law for the time being in force.]

(5) If the proper officer is satisfied that the interests of revenue are not prejudicially affected and that there was no fraudulent intention, he may permit substitution of a bill of entry for home consumption for a bill of entry for warehousing or vice versa.

Section 28 (Recovery of (duties not levied or not paid or short levied or short paid) or erroneously refunded-

(1) ………

\- - - -

(4) Where any duty has not been 3 [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 willful 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 4 [so levied or not paid] or which has been so short-levied or short-paid or to whom the the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice.

Section 28AA. Interest on delayed payment of duty—

(1) Notwithstanding anything contained in any judgment, decree, order or direction of any court, Appellate Tribunal or any authority or in any other provision of this Act or the rules made thereunder, the person, who is liable to pay duty in accordance with the provisions of section 28, shall, in addition to such duty, be liable to pay interest, if any, at the rate fixed under sub-section (2), whether such payment is made voluntarily or after determination of the duty under that section.

(2) Interest at such rate not below ten per cent. and not exceeding thirty-six per cent. per annum, as the Central Government may, by notification in the Official Gazette, fix, shall be paid by the person liable to pay duty in terms of section 28 and such interest shall be calculated from the first day of the month succeeding the month in which the duty ought to have been paid or from the date of such erroneous refund, as the case may be, up to the date of payment of such duty.

(3) Notwithstanding anything contained in sub-section (1), no interest shall be payable where,—
(a) the duty becomes payable consequent to the issue of an order, instruction or direction by the Board under section 151A; and
(b) such amount of duty is voluntarily paid in full, within forty-five days from the date of issue of such order, instruction or direction, without reserving any right to appeal against the said payment at any subsequent stage of such payment.]

14. The importer appears to have imported 'Rough Marble Blocks' valued at **Rs.19,76,245/-** and as it appears by deliberately resorting to mis-statement & suppression of the material fact; that the goods as per the Geological Survey of India, Central Region, Nagpur test report appear to be 'Rough Marble Blocks' and appear to be classifiable under CTH 25151210, thereby, appear to contravened the provisions of Sub Section (4) and 4(A) of Section 46 of the Custom Act, 1962. In terms of Sub Section (4) and 4(A) of Section 46 of the Custom Act, 1962, the importer was required to made a declaration as to truth of the contents of the Bills of Entry submitted for assessment of Customs duty, which in the instant case, the importer appears to have failed to fulfil in respect of the imports of 'subject goods' vide above Bill of Entry. For these contraventions and violations, the goods appear to fall under the ambit of 'smuggled goods' within the meaning of Section 2(39) of the Customs Act, 1962 and are liable for confiscation under the provisions of Section 111(m) of the Customs Act, 1962. The relevant provisions are reproduced as under:

Section 111 of the Customs Act, 1962 *deals with the Confiscation of improperly imported goods, etc. The relevant provision is reproduced below:-*

The following goods brought from a place outside India shall be liable to confiscation: -

Section 111(m)- 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 [in respect thereof, or in the case of goods under transshipment, with the declaration for transshipment referred to in the proviso to sub-Section (1) of Section 54;

15. The aforesaid acts which appear to be of suppression of facts and willful mis- statement by the importer appears to result in evasion of Customs duty of **Rs.9,98,104/-,** thereby appears to have rendered the importer liable for penalty under Section 114A of the Customs Act, 1962, in as much as the Customs duty amounting to **Rs.9,98,104/-** appeared evaded by reason of willful mis-statement

and suppression of facts with a malafide intention. Further, it appears that the aforesaid acts of omission and commission on the part of the importer, appears to have rendered the subject imported goods totally valued at **Rs.19,76,245/-** as detailed in Annexure-A, to this SCN liable for confiscation under Section 111(m) of the Customs Act, 1962. The importer therefore, appears liable to penalty under Section 112(a) and 112(b) of the Customs Act, 1962. In the present case, it appears that the actual facts were known to the importer about the product and its actual classification. However, it appears that the importer had knowingly and intentionally made, signed or used the declaration, statements and/or documents and presented the same to the Customs authorities, which were incorrect in as much as they were not representing the true, correct and actual classification of the imported goods, and have therefore, appears to have rendered themselves liable for penalty under section 114AA of the Customs Act, 1962 also.

Relevant provisions are reproduced as under:

*"**Section 112: Penalty for improper importation of goods, etc:-** 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, or abets the doing or omission of such act, or

(b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harboring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or had reason to believe are liable to confiscation under Section 111.
shall be liable, -
(i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty [1] [not exceeding the value of the goods or five thousand rupees], whichever is the greater;
(ii) in the case of dutiable goods, other than prohibited goods, subject to the provisions of section 114A, to a penalty not exceeding ten per cent. of the duty sought to be evaded or five thousand rupees, whichever is higher:

***Provided** that where such duty as determined under sub-section (8) of section 28 and the interest payable thereon under section 28AA is paid within thirty days from the date of communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent. of the penalty so determined;]*
(iii) in the case of goods in respect of which the value stated in the entry made under this Act or in the case of baggage, in the declaration made under section 77 (in either case hereafter in this section referred to as the declared value) is higher than the value thereof, to a penalty [not exceeding the difference between the declared value and the value thereof or five thousand rupees], whichever is the greater;]p
(iv) in the case of goods falling both under clauses (i) and (iii), to a penalty [not exceeding the value of the goods or the difference between the declared value and the value thereof or five thousand rupees], whichever is the highest;
(v) in the case of goods falling both under clauses (ii) and (iii), to a penalty [not exceeding the duty sought to be evaded on such goods or the difference between the declared value and the value thereof or five thousand rupees], whichever is the highest.]

***"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 3 [sub-section (8) of section 28] shall also be liable to pay a penalty equal to the duty or interest so determined: Provided that where such duty or interest, as the case may be, as determined under sub-section (8) of section 28, and the interest payable thereon under section 28AA, is paid

within thirty days from the date of the communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent of the duty or interest, as the case may be, so determined:

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.]

16. The goods imported under the above Bill of Entry No. 9238474 dated 19.10.2020 by the noticee, was seized vide seizure memo dated 11.03.2021 which was subsequently released provisionally on request of the importer and on execution of Test/PD bond No.2001856772 for Rs.10,00,000/- alongwith Bank Guarantee No. OGT0018210054329 dated 27.04.2021, for Rs.6,50,000/- in favour of the exchequer for provisional release of the goods, as discussed in the forgoing paras. Therefore, the conditions of the above Test/PD bond are required to be enforced and the above Bank Guarantee is required to be encashed/ appropriated towards liability of the customs duty, interest, fine and penalty in the matter.

17. It further appears that mis-declaration of description and mis-classification of goods in the import documents viz. Bill of Entry presented by the importer before the Customs authorities, was done on the directions and under the guidance of Shri Aniket Khetan, Manager and Authorized Signatory, M/s. Akash Universal Limited to willfully suppress the correct description and classification of goods with an intent to evade payment of applicable Customs Duty. Shri Aniket Khetan appears to have knowledge about the mis-classification of the said imported goods in as much as he has decided the classification of the subject goods under CTH 25181000 for all imports and finalization of classification of imported goods. All the aforesaid acts of omissions and commissions on the part of Shri Aniket Khetan appears to have rendered the imported goods liable for confiscation under Section 111 (m) of the Customs Act, 1962, and consequently rendered him liable for penalty under Section 112(a) and (b) of the Customs Act, 1962. Further, it also appears that Shri Aniket Khetan had knowingly and intentionally made, signed or used the declaration, statements and/or documents and presented the same to the Customs authorities, which were incorrect in as much as they were not representing the true, correct and actual classification of the imported goods, and has therefore, appears to have rendered himself liable for penalty under section 114AA of the Customs Act, 1962.

18. It also appears that M/s. International Cargo Corporation, Customs Broker firm (CHA No. AABFI8489GCH001) acted on behalf of the importer for clearance of consignments of the subject goods from customs. The importer handed over the documents to the Customs Broker for filing of the above Bill of Entry and to arrange clearance of the goods. M/s. International Cargo Corporation, the Customs Broker firm who handled clearance activities in the capacity as the Custom Broker appears to have been aware that the consignments imported by the importer under the above Bill of Entry declaring the description as 'Rough Dolomite Blocks' was different from the description mentioned in earlier consignment thereby, the description of goods in documents received to them from the importer appears not correct and the goods appear to be 'Rough Marble Blocks' falling under CTH 25151210, as certified from the documents available in the form of chemical analysis/test report by Geological Survey of India of the samples taken from import consignments of the importer. The commissions and omissions on the part of M/s. International Cargo Corporation who is Licensed Customs Broker Firm was in violation of the obligations cast on them and that the Custom Broker has not advised his client to comply with the provisions of the Customs Act,1962 and it appears that the Customs Broker has not brought

this matter to the notice of Dy. Commissioner/Asstt. Commissioner; therefore, it appears that the Customs Broker has not exercised due diligence to ascertain the correctness of information with reference to the subject clearance. M/s. International Cargo Corporation, failed to advise his client to ascertain the correctness of the proper classification of the said goods and, accordingly, appears to have abetted the importer in the clearance of the said goods without payment of the proper customs duty which appears to have resulted into the short payment of BCD, SWS & IGST. Whereas, by this act on the part of the Custom Broker, it appears that the CHA failed to perform its duties/obligation and therefore, appears to be rendered themselves liable for penalty in terms of provisions of Section 112(a) of Customs Act, 1962 and they appear to have abetted in rendering the subject goods liable to confiscation under Section 111(m) of the Customs Act,1962. It appears that the Custom Broker involved itself in the preparation of documents presented before the Customs which it had, as it appears, reasons to believe were false and thereby appears to have rendered itself liable for penalty under Section 114AA of Customs Act, 1962.

19. In view of above, a Show Cause Notice No. CUS/APR/INV/79/2025-26-ICD-UMGN-CUS-COMMRTE-AHMEDABAD dated 07.08.2025, bearing DIN:- No. 20250871MN0000888CD2 was issued to M/s. Akash Universal Limited, (IEC Code No. 0395041881), 5, Survey No.910/6/1/1, Amli, Dokmardi, Opp. Lohia Machinery, Silvassa, Dadra and Nagar Haveli-396230, and others as to why:-

(i) The declared classification of the subject goods under CTH 25181000 in the Bills of Entry as detailed in Annexure-A attached to this show cause notice, should not be rejected and goods be re-classified under Customs Tariff Heading No.25151210 of the First Schedule to the Customs Tariff Act, 1975 and why the subject Bills of Entry should not be re-assessed and the BE No. 9238474 dated 19.10.2020, should not be finalized accordingly;

(ii) The goods valued at **Rs.19,76,245/- (Rupees Nineteen Lakhs, Seventy Six Thousand, Two Hundred and Forty Five only)** as per as detailed in Annexure A attached to this show cause notice should not be confiscated under Section 111 (m) of the Customs Act, 1962. However, as the goods imported vide Bill of Entry No. 8704561 dated 04.09.2020 are not available for confiscation, why fine in lieu of confiscation should not be imposed in respect of the goods imported vide Bill of Entry No. 8704561 dated 04.09.2020;

(iii) Differential/Short paid Customs duty amounting to **Rs.9,98,104/- (Rupees Nine Lakhs, Ninety Eight Thousand, One Hundred and Four Only)** as detailed in Annexure-A attached to this show cause notice should not be demanded and recovered from them under Section 28(4) of the Customs Act, 1962 alongwith applicable interest under Section 28AAibid;

(iv) Penalty should not be imposed upon them under the provisions of Section 112(a) and 112(b) of the Customs Act,1962;

(v) Penalty should not be imposed upon them under the provisions of Section 114A of the Customs Act, 1962 for goods mentioned above;

(vi) Penalty should not be imposed upon them under the provisions of Section 114AA of the Customs Act, 1962.

(vii) Conditions of Test/PD bond No.2001856772 executed for provisional release of goods imported under Bill of Entry No. 9238474 dated 19.10.2020 should not be enforced and the Bank Guarantee No. OGT0018210054329 dated 27.04.2021 for Rs.6,50,000/- furnished in favour of the exchequer for provisional release of the seized goods, as discussed in the SCN should not be encashed against the above demand of customs duty, interest, fine and penalty.

Further, a Show Cause Notice No. CUS/APR/INV/79/2025-26-ICD-UMGN-CUS-COMMRTE-AHMEDABAD dated 07.08.2025, bearing DIN:- No. 20250871MN0000888CD2 was issued to Shri Aniket Khetan, Manager and Authorized Signatory of M/s.Akash Universal Limited, (IEC Code No. 0395041881), 5, Survey No.910/6/1/1, Amli, Dokmardi, Opp. Lohia Machinery, Silvassa, Dadra and Nagar Haveli-396230, as to why:-

(viii) Penalty should not be imposed upon him under Section 112(a) and 112(b) of the Customs Act, 1962;

(ix) Penalty should not be imposed upon him under the provisions of Section 114AA of the Customs Act, 1962.

Also, a Show Cause Notice No. CUS/APR/INV/79/2025-26-ICD-UMGN-CUS-COMMRTE-AHMEDABAD dated 07.08.2025, bearing DIN:- No. 20250871MN0000888CD2 was issued to M/s. International Cargo Corporation (Customs Broker) 221, Ecstasy, 1st Floor, Business Park, City of Joy, Mulund (W),Mumbai - 400080 as to why:-

(x) Penalty should not be imposed upon them under Section 112(a) of the Customs Act, 1962;

(xi) Penalty should not be imposed upon them under the provisions of Section 114AA of the Customs Act, 1962.

22.1 M/s. Akash Universal Limited vide their letter dated 12.01.2026 filed common rely to the Show Cause Notice issued to the importer (Noticee No.1) and Shri Aniket Khetan, Manager and Authorized Signatory of M/s. Akash Universal Limited (Noticee No.2) wherein they interalia stated as under:

22.2 That Noticee No.1 and 2 denied all the allegations and charges as levelled against their clients by the subject Show Cause Notice. The charges as levelled against their clients are erroneous, misconceived & appear to have been alleged by misinterpreting the provisions of the Customs Act, 1962 & twisting evidence on recorded. The notice has been issued by selectively relying on the certain portions of test reports received in respect of some other importers. The investigation conducted appears to be biased and misdirected towards our Clients.

22.3 The contention of the Department is that the Noticees have imported Rough Dolomite Blocks attracting a Total Duty @ 61.28% by misdeclaring the goods to be Rough Dolomite Blocks which attract duty @10.78%.

22.4 The Show Cause Notice raises demand in respect of 2 consignments imported by their clients as detailed in the subject Show Cause Notice. Since the classification as declared by their clients is sought to be disrupted on the basis of separate evidence for each of the consignments, the submissions in respect of theme are being made separately as enumerated herein below:

22.5 For <u>Bill of Entry No.8704561 dated 04.09.2020</u>

a) At the outset it is submitted that at the time of import the samples were drawn from the consignments and the same were tested by the concerned officers. The test report makes it very clear that the imported goods were in fact Dolomite. The Show Cause Notice at para 3.1 seeks to dispute and discredit the test report citing non-efficacious reasons such as the report being issued in a short period, specific gravity not being tested, capacity of the sample to accept polish or not, avoided mentioning marble etc. In this regard it is submitted that the reasons cited for discarding the test are not logical and are unscientific. The report issued by a technically qualified person cannot be discarded by an unqualified part for arbitrary reasons which sans logic. It is evident that the said reasons have been recorded in order to discard the Test report solely for the reason that the Test Report obstructs the case of the department and hinders the illegal demand of duty on a presumption that the imported goods are marble.

b) It is submitted that while in search of evidence to classify the imported goods as marble the investigators recovered the remnant sample dawn at the time of import and was sent to the Petrology Division of the Geological Survey of India. By a report dated 27.09.2023 it was stated that the sample was of Dolomitic Marble. The said report has been reproduced at page No.3 of the subject Notice Perusal of the said report demonstrates that how the sample can be called Marble is not coming forth. To the contrary the Report repeatedly makes it amply clear that Dolomite was the dominant component and fails to make a mention of Marble.

c) Being dissatisfied with the report a further query was put to the Geological Survey vide email dated 29.05.2024 since the density and hardness of the tested consignment was the same in case of results of Dolomite but the test report for the impugned consignment stated Dolomitic Marble as mentioned at para 10 of the SCN. In response to the said Query the GSI, vide email dated 31.07.2024 stated that the Dolomite and marble are mineralogically and chemically similar rocks, both have the same chemical composition with minor impurities. The said email further stated that Dolomite is a carbonate rock with sedimentary origin whereas marble is a carbonate rock of Metamorphic origin. Thereafter on queries by the investigating officers it was categorically stated vide email dated 26.09.2024 that the imported goods were sedimentary in nature however contrary to the earlier communication it was stated that Dolomitic Marble is a metamorphic rock. Pertinent to point out here that the query dated 25.09.2024 shied away from asking if the sample was marble and asked *if the sample meets the specification of marble*. It is our submission that the said question was drafted in a manner to mislead the interpretation and classification of the imported goods. The said submission is made on account of the previous assertion of the GSI that Dolomite and Marble were minerally and chemically very similar rocks and therefore their specifications would also be similar. Likewise, in order to justify the portrayal that the sample could be classified as Marble the communication dated 25.09.2024 while finding that the sample was sedimentary, stated that Dolomitic Marble is a Metamorphic rock which was in contradiction to the earlier assertion that Dolomite was sedimentary.

d) At paragraph 14 a conclusion is sought to be drawn from the aforesaid correspondences with the GSI, that the goods imported vide B/E No.8704561 dated 04.09.2020 is “Rough Marble Block (Dolomite Marble)”. Pertinent to point out that none of the Test reports suggests that the imported goods or tested sample were in fact marble. As pointed out hereinabove the query put to the testing authority was whether the sample meets the specification of Marble, which in our respectful submission was an attempt to mislead and cause misinterpretation owing to the similarities in Marble and Dolomite.

e) The test report made part of RUD 8 which provides responses to the Queries ion respect of 22 B/E’s it is submitted that the response pertaining to the present consignment is recorded at Sr. No.1 therein which itself is self-contradictory, the same is reproduced for ready reference “*The rock has been identified as* ***Dolomitic Marble*** *(Recrystalized sedimentary rock with density 2.36 to 2.83 g/cc and chemical composition calcium carbonate with magnesium).* ***Dolomitic Marble*** *is metamorphic rock and can be polished and used as slabs. It meets the specifications of marble and can be categorized as Dolomitic Marble.*” The said para itself identifies the presented sample to be Dolomitic Marble and states that it is a sedimentary rock, whereas in the very next sentence changes the stance and contradicts the stance and states that Dolomitic Marble is a metamorphic rock. It is submitted that a convenient interpretation is sought to be drawn by the SCN while attempting to sustain the demand of duty by classifying it to be Marble.

f) While on the response to the queries, attention is drawn to Sr. No.19 of the list of Query answers, for the sake of convenience the same is being reproduced, “*The rock has been identified as* ***Dolomite*** *(sedimentary rock with density 2.81 g/cc and chemical composition calcium carbonate with magnesium).* ***Dolomite*** *is sedimentary rock and can be polished and used as slabs. It meets the specifications of marble and can be categorized as Dolomite.*” The findings in respect of the said goods are also identical to the findings in respect of the goods imported by our clients however based on arbitrary considerations the goods are separately categorized as Dolomitic Marble and Dolomite. Such findings categorically demonstrate the lack of uniformity in findings of the report and call to question its authenticity, thus the same cannot be relied on to arrive at a conclusion on the classification of the goods in question.

g) Hon’ble Adjudicating Authority may kindly appreciate that the subject Show Cause Notices miserably fail to appreciate that these consignments were imported by adopting the first check procedure at the time of import and samples were drawn and tested from each and every consignment of Dolomite and the goods were finally assessed / released only after receipt of the test report. At the time of import of the impugned consignments, samples were drawn and tested by the Customs Department and only after receipt of test report from the laboratory that the goods are "Dolomite", the goods were allowed clearance. The said Reports were accepted by the customs department. In absence of any allegation / averment as to how the said test reports of the actual imported consignments were not correct, the present allegations cannot sustain. It is also pertinent to point out here that unless and until it is demonstrated that the tests conducted at the time of import and / or reports therefrom were erroneous, the allegations being levelled cannot sustain. For any reason, if the Hon'ble Adjudicating Authority is not inclined to accept the above submissions, we hereby request that the Hon'ble Adjudicating Authority may kindly call for the remnant samples, which have been returned after testing to the customs department be tested and report thereof may please be made available to the Noticees before proceeding with Adjudication of the case. We therefore once again urge the Hon'ble Adjudicating Authority to kindly direct the concerned officials to get the remnant samples tested before proceeding with the Adjudication in the matter and conclusively decide the matter.

23 For Bill of Entry No. 9238474 dated 19.10.2020

a) The captioned Notice seeks to rely upon a test report by the Geophysical Research Institute, Hyderabad which states that the sample is of Metamorphic Nature, however categorizes the goods to be Dolomitic Marble. This is again in contradiction to the averment that Dolomitic Marble is of sedimentary nature. This demonstrates that the Show Cause Notice and the evidences paraded therein are riddled with inconsistencies and contradictions.

b) The Test Report which is sought to be relied on in respect of the goods covered by SCN dated 19.10.2020 is made part of the Relied upon Documents and is placed among a bunch of documents at RUD-13. Perusal of the report reveals that the report is not dated neither is there a reference to any Test Memo or Test Query. The document does not make any reference to the Bill of Entry from which the sample being tested pertains to. This purported test report is unlike the test report which has been relied on in respect of the B/E dated 04.09.2020. The only detail available for co-relation is the sample name i.e. Aakash, however, there too the full name of the importer is not mentioned and being a common name, it cannot be ascertained that the report pertains to the very same importer or more importantly the very same consignment. In this context it is necessary to note that the Show Cause Notice itself acknowledges the fact that our clients have imported marble also. Hence the sanctity of the said test report is questionable and the classification cannot be changed solely on the basis of the so-called Test report. The suspicions regarding the said test report is further strengthened on account of the fact that the report is not issued on any letterhead of any recognized institute.

c) Despite the above position, without affording any clarity or reasoning the Senior Principal Scientist, Geochemestry Division, Dr. Ram Mohan vide an email dated 03.03.2021 clarifies that the samples come under the category of marble. In these circumstances it is utmost necessary that the cross examination of the Expert witness Dr. Ram Mohan is granted. While making the said request we seek to rely on the Judgments in the case of:

- 2010 (256) ELT 260 Tri affirmed in 2012 (278) ELT A143 SC
- 2003 (157) ELT 627 Mad HC
- 2002 (147) ELT 1089 Tri
- 2001 (130) ELT 262 Tri
- 2001 (127) ELT 464 Tri
- 2000 (120) ELT 166 Tri
- 1993 (68) ELT 696 Tri
- 1991 (53) ELT 450 Tri
- 1988 (38) ELT 362 Tri
- 1987 (28) ELT 28 Tri

d) It is submitted that the Show Cause Notice relies on several email print outs in order to buttress the charges regarding the misclassification of the Dolomite Blocks imported by the Notiocee. In this regard it is submitted that the said electronic records in printed form are not accompanied by a certificate in terms of Section 138C (4). Since the documents are not produced under the said certificate, the documents cannot be read into the evidence of the present case. Accordingly it is submitted that all email correspondence purported to have been made with the expert witnesses ought to be discarded in toto, amongst others.

24. They would also like to draw kind attention of the Hon'ble Adjudicating Authority to the Chapter 25 of the Customs Tariff, which is for mineral products, which are naturally occurring and specifically to the heading 2515 and 2518 incorporating Marbles and Dolomite respectively. It is our submission that this classification is based on chemical / physical properties, which are scientifically discernible and thus not based on any other

parameter. It is our respectful submission that the Notice is attempting to capitalize the nomenclature of the Report which mentions the goods to be *Dolomitic Marble*, merely on account of the nomenclature employed in the report containing the word *Marble*, the fact that the goods are dolomites does not change. The reports categorically mention the dominating component to be Dolomite. The presence of MgO in the chemical composition, which is itself the factor that distinguishes Dolomite from Marble is also mentioned. The department has conveniently ignored these technical factors whilst relying upon the Composition Report and has proceeded to rely upon the term Dolomitic Marble employed in the reports.

25. The SCN further relies on the classification by the Bureau of Mines in order to classify the imported goods as Marble. However, the said approach is illogical and unscientific, inasmuch as the system of classification adopted by the Bureau of Mines is at loggerheads with the system of classification adopted in the Customs Tariff. The Customs Tariff has adopted a system where it recognizes a clear distinction between Dolomites and Marbles hence the different CTH numbers are afforded to them. Whereas the Bureau of Mines harbors a view that the class of items namely Dolomitic Marble are a class of goods which are a subset of Marbles and states that Dolomitic marble is a kind of Marble. It is our humble submission that the Customs Authorities are bound by the Customs Tariff. They are not at liberty to adopt a system that is in variance with the Customs Tariff in order to suit their interpretation. According to the Customs Tariff there is no Classification as Dolomitic Marble, the Customs Tariff at CTH 25181000 recognizes Dolomite and at CTH 25151210 recognizes Marble. In order to assess the goods the Customs Authorities ought to adopt logical and scientific inquiries to arrive at a conclusion as to which CTH the goods fall under.

26. The Show Cause Notices at para 15.1 seeks to place reliance on the statement of Shri Aniket Khetan. It is our humble submission that the statements cannot be relied on in an adjudication process until and unless the deponents are examined under the provisions of Section 138B of the Customs Act, 1962. The said submission has been fortified by various judicial pronouncement which are listed as under:

- Him Logistics Pvt. Ltd. Vs. Pr. Commissioner of Customs 2016 (336) ELT 15 (Delhi)
- M/s Ambika International Vs. Union of India and others in CWP No.12615 of 2016
- J&K Cigarettes Ltd. v. Collector of Central Excise reported in 2009 (242) E.L.T. 189 (Del.)
- G-Tech Industries Vs. Union of India 2016 (339) ELT 209 (P & H)
- Jindal Drugs Pvt. Ltd. Vs. Union of India 2016 (340) ELT 67 (P&H)
- Gopalji Heavy Lifters v. CCE (Import) - 2017 (357) E.L.T. 537 (Tri.-Mum.)
- Hi-Tech Abrasives Ltd. v. CCE : Raipur - 2018 (362) E.L.T. 961 (Chhatisgarh)
- Mridul Agarwal v. CCE - 2018 (362) E.L.T. 847 (Tri.-All.)

In the light of the said submissions, they request that the Hon'ble Adjudicating Authority kindly call upon the said deponent to be present himself before Honour and check the veracity of the said statement before the same is pressed into service as evidence in the matter. The aforesaid submission Is without prejudice to our submission that the classification of goods cannot be determined on the basis of oral depositions.

27. They further hereby request the Hon'ble Adjudicating Authority that before adjudication of the case the outcome of requests being made for following the provisions of Section 138B of the Customs Act, 1962 and retesting of remnant samples from the samples drawn at the time of import may kindly be communicated so as to enable us to make appropriate submissions in the matter.

28. Further in continuation to the earlier submissions dated 12.01.2026, the following additional submissions was made by the noticee on 25.03.2026 for the kind consideration of the Hon'ble Adjudicating Authority. The Noticee vide Bill of Entries No. 8704561 dated 04.09.2020 & 9238474 dated 19.10.2020 imported Rough Dolomite Bocks classifying them under CTH 25181000, however the department vide the captioned Show Cause Notice has proposed the reclassification of the said consignments to CTH 25151210 as marble. The Two Consignments are proposed to be reclassified on the basis of certain flawed test reports which cannot be relied upon and the reasons for which the test reports were rendered untenable were already detailed in our earlier submissions dated 12.01.2026. In the light of those submissions, it was requested that the expert, Mr. Ram Mohan, whose reports were sought to be relied on, be made available for cross examination and further in accordance of Section 138B of the Act, a separate request for examination and cross-examination of witnesses whose statement has been relied upon was also made. However, the request for the cross examination of the said expert witness has been rejected by the Hon'ble Adjudicating Authority vide letter dated 07.03.2026 by citing that the same is rejected in accordance with the provisions of Section 138B of the Customs Act. The said

observation of the Hon'ble Adjudicating Authority is misplaced and erroneous and the detailed submissions thereon has been made hereinafter.

29. At this juncture it is necessary to point out that the investigations that carried out into the imports of the present Noticees, investigated the consignments imported by NITCO limited. The experts who's certificates were relied on in the present proceedings had provided identical certificates in the case of imports by NITCO limited. The Adjudicating Authority dropped the proceedings partially in the adjudication of that case. When the matter travelled upto the Hon'ble Tribunal, the entire proceedings were dropped after examining all the records including the Test Reports identical to the reports in the present proceedings issued by the very same experts for which the CESTAT Final Order No.12000-12009/2024 dated 11.09.2024 reported in 2025 (392) E.L.T. 85 (Tri. - Ahmd.) may be referred.

30. The evidence in the present case is in the form of test reports, the same are dealt with consignment wise as under:

i) Bill of Entry No. 8704561 Dated 04.09.2020

a) At the outset it is submitted that at the time of import the samples were drawn from the consignments and the same were tested by the concerned officers. The Live test report dated 09.09.2020 annexed to the SCN as RUD-2 makes it very clear that the imported goods were infact Dolomite. The Show Cause Notice at para 3.1 seeks to dispute and discredit this test report citing reasons such as the report being issued in a short period, specific gravity not being tested, capacity of the sample to accept polish or not, avoided mentioning marble etc. All of the said reasons are not sufficient to discard the Test Reports obtained in the normal course of imports by the department themselves.

b) A closer reading of the circumstances and reasons cited indicate that the attempt to discard the Live Test Report are manufactured in order to make out a case against the Noticees and demand duty for which the Live Test Report was a hinderance. It is necessary to point out that in the case of NITCO Limited the Ld. Adjudicating Authority has dropped the proceedings on the basis of the original test Reports vide Order-in-Original No. AHM – CUSTM – 000 – COM – 029 – 30 – 22 – 23 dated 25.01.2023

c) It is submitted that while in search of evidence to classify the imported goods as marble the investigators recovered the remnant sample drawn at the time of import and was sent to the Petrology Division of the Geological Survey of India. By a report dated 27.09.2023, it was stated that the sample was of Dolomitic Marble. The said report has been reproduced at page No.3 of the subject Notice and has also been annexed as RUD-5. The said report also affirms the declaration by the Noticee that the goods imported were infact Dolomite. The said report repeatedly states that the sample is dominantly Dolomite.

d) Being dissatisfied with the report a further query was put to the Geological Survey vide email dated 16.08.2024 (Part of RUD 8). In response to the said Query the GSI, vide email dated 30.08.2024 which is made available at RUD 9 of the SCN provides a self-contradictory report and concludes that the sample of the present consignment is Dolomitic Marble which is a sedimentary rock, however in the very next sentence it states that Dolomitic Marble is a metamorphic rock. This is done to support the assertion that the classification is that of Marble. The Letter dated 21.08.2024 issued by the Customs to the GSI demonstrates how the report is sought in order *to protect Government Revenue*.

e) Reference is also ought to be made to Sr. No.19 of the list of Query Answers, which states that, "*The rock has been identified as* ***Dolomite*** *(sedimentary rock with density 2.81 g/cc and chemical composition calcium carbonate with magnesium).* ***Dolomite*** *is sedimentary rock and can be polished and used as slabs. It meets the specifications of marble and can be categorized as Dolomite.*" The findings in respect of the said goods are also identical to the findings in respect of the goods imported by our clients however based on arbitrary considerations, the goods are separately categorized as Dolomitic Marble and Dolomite. Such findings categorically demonstrate the lack of uniformity in findings of the report and call to question its authenticity, thus the same cannot be relied on to arrive at a conclusion on the classification of the goods in question.

f) Another Test Report pertaining to the present consignment was sought from the Geological Survey of India and a report dated 25.09.2024 was issued. This report also specifies that the goods are Sedimentary rock, in answer to query no.1. Query No. 4 was "Whether the rock is formed from the recrystallization?" in response to this question it was illogically stated that "Dolomitic Marble is a metamorphic rock is formed from the recrystallization of dolomitic limestone". It is submitted that this is not the answer to the question which pertained to the sample. This answer is a generic statement about dolomitic marble. It is also necessary to examine query no.7 which shied away from asking if the sample was marble and asked *if the sample meets the specification of marble.* It is our submission that the said question was drafted in a manner to mislead the interpretation and classification of the imported goods. In order to justify the portrayal that the sample could be classified as Marble the communication dated 25.09.2024 while finding that the sample was sedimentary, stated that Dolomitic Marble is a Metamorphic rock which was in contradiction to the earlier assertion that Dolomite was sedimentary.

g) At paragraph 14 of the SCN a conclusion is sought to be drawn from the aforesaid correspondences with the GSI, that the goods imported vide B/E No.8704561 dated 04.09.2020 is "Rough Marble Block (Dolomite Marble)". Pertinent to point out that none of the Test reports suggests that the imported goods or tested sample were infact marble. As pointed out hereinabove the query put to the testing authority was whether the sample meets the specification of Marble, which in our respectful submission was an attempt to mislead and cause misinterpretation owing to the similarities in Marble and Dolomite.

h) Hon'ble Adjudicating Authority may kindly appreciate that the subject Show Cause Notices miserably fail to appreciate that these consignments were imported by adopting the first check procedure at the time of import and samples were drawn and tested from each and every consignment of Dolomite and the goods were finally assessed / released only after receipt of the test report. At the time of import of the impugned consignments, samples were drawn and tested by the Customs Department and only after receipt of test report from the laboratory that the goods are "Dolomite", the goods were allowed clearance. The said Reports were accepted by the customs department. In absence of any allegation / averment as to how the said test reports of the actual imported consignments were not correct, the present allegations cannot sustain. It is also pertinent to point out here that unless and until it is demonstrated that the tests conducted at the time of import and / or reports therefrom were erroneous, the allegations being levelled cannot sustain. For any reason, if the Hon'ble Adjudicating Authority is not inclined to accept the above submissions, we hereby request that the Hon'ble Adjudicating Authority may kindly call for the remnant samples, which have been returned after testing to the customs department be tested by a neutral authority and report thereof may please be made available to the Noticees before proceeding with Adjudication of the case. We therefore once again urge the Hon'ble Adjudicating Authority to kindly direct the concerned officials to get the remnant samples tested before proceeding with the Adjudication in the matter and conclusively decide the matter. Further we request the cross examination of the experts who have issued the aforementioned reports before conclusion of the adjudication in the case.

ii) For Bill of Entry No. 9238474 dated 19.10.2020

a) The captioned Notice seeks to rely upon a test report by the Geophysical Research Institute, Hyderabad which states that the sample is of Metamorphic Nature, however categorizes the goods to be Dolomitic Marble. This again in contradiction to the averment that Dolomitic Marble is of sedimentary nature, as per the reports of the Pertology division, Geological Survey Of India, Nagpur, which is relied on in the captioned SCN. This demonstrates that the Show Cause Notice and the evidences paraded therein are riddled with inconsistencies and contradictions.

b) The Test Report which is sought to be relied on in respect of the goods covered by B/E dated 19.10.2020 is made part of the Relied upon Documents and is placed among a bunch of documents at RUD-13. Perusal of the report reveals that the report is not dated neither is there a reference to any Test Memo or Test Query. The document does not make any reference to the Bill of Entry from which the sample being tested pertains to. This purported test report is unlike the test report which has been relied on in respect of the B/E dated 04.09.2020. The only detail available for co-relation is the sample name i.e. Aakash, however, there too the full name of the importer is not mentioned and being a common name, it cannot be ascertained that the report pertains to the very same importer or more importantly the very same consignment. In this context it is necessary to note that the Show Cause Notice itself acknowledges the fact that our clients have imported marble also. Hence the sanctity of the said test report is questionable and the classification cannot be changed solely on the basis of the so-called Test report. The suspicions regarding the said test report is further strengthened on account of the fact that the report is not issued on any letterhead of any recognized institute.

c) Despite the above position, without affording any clarity or reasoning the Senior Principal Scientist, Geochemestry Division, Dr. Ram Mohan vide an email dated 03.03.2021 clarifies that the samples come under the category of marble. In these circumstances we had requested for the cross examination of Expert witness Dr. Ram Mohan vide our reply dated 12.01.2026, citing various judgments underlining the necessity of cross examination of expert witnesses.

d) In respect of the issue of request for cross-examination of the expert witness, Mr. Ram Mohan, kind attention of the Hon'ble Adjudicating Authority is invited to the letter dated 07.01.2026 whereby personal hearing was fixed on 12.01.2026 in the captioned matter. By the said letter it was communicated that their request for cross examination of the Expert witness namely Dr. Ram Mohan was not allowed in terms of Section 138B. Pertinent to point out that the Hon'ble Adjudicating Authority has misconstrued the submissions in their earlier letter dated 12.01.2026, the Cross-examination of Dr. Ram Mohan has nothing to do with the provisions of Section 138B. Section 138B only applies to examination of witnesses by the Adjudicating Authority, if the statements referred to in the Notice are going to be relied in the Adjudication of a Notice. If such a deponent is examined only then a right to cross examination consequently arises. If the statements are not being relied then there is no requirement of examination and consequent cross examination. The Cross examination of Dr. Ram Mohan is not in his capacity as a deponent whose statements are being relied, rather his Cross examination is being requested on account of his report being relied on and therefore in his capacity as an expert witness. While making the request for his cross examination we had sought to rely upon the judgments:

(i) Amkap Marketing Pvt. Ltd. Versus Commissioner Of C. Ex., Lucknow Reported In 2010 (256) E.L.T. 260 (Tri. - Del.) And Further Affirmed By The Hon'ble Supreme Court In 2012 (278) E.L.T. A143 (S.C.)

(ii) Commissioner V. Mattel Toys (India) Pvt. Ltd. Reported In 2015 (325) E.L.T. A157 (S.C.)]

(iii) Ultra Fine Fillers (P) Ltd. Versus Commissioner Of Central Excise, Jaipur-II 2004 (167) E.L.T. 331(Tri. - Del.)

(iv) Ocean Marketing Versus Commissioner Of C. Ex. & S.T., Jaipur 2017 (348) E.L.T. 269 (Tri. - Del.)

(v) Golden Enterprises Versus Commissioner Of C. Ex. & S.T., Ludhiana 2016 (341) E.L.T. 293 (Tri. -Chan.)

(vi) Manek Chemicals Pvt. Ltd. Versus Union Of India Reported In 2016 (334) E.L.T.302(Guj.)

(vii) Chander Gauba Versus Commissioner Of Customs, New Delhi 2015 (327) E.L.T.506(Tri.-Del.)

(viii) Agrawal Round Rolling Mills Ltd. Versus Commr. Of C. Ex. & S.T., Raipur Reported In 2015 (317) E.L.T. 145 (Tri. - Del.)

(ix) Tulsyan Nec Ltd. Vs. Union Of India Reported In 2003 (157) E.L.T 627 (Mad.)

(x) Chayagraphics Versus Commissioner Of C. Ex., Bangalore Reported In 2002 (147) E.L.T. 1089 (Tri.-Bang.)

(xi) Triumph Leather (I) Pvt. Ltd. Versus Commissioner Of Customs, Chennai 2001 (130) E.L.T. 262 (Tri. - Chennai)

(xii) Antiquity Versus Commissioner Of Customs, Hyderabad Reported In 2001 (127) E.L.T. 464 (Tri. - Chennai)

(xiii) Shalimar Agencies Versus Commissioner Of Customs, Kandla Reported In 2000 (120) E.L.T. 166 (Tribunal)

(xiv) Vijayalakshmi Industries Versus Collector Of Central Excise 1993 (68) E.L.T. 696 (Tribunal)

(xv) Ras Extrusions Ltd. Versus Collector Of Customs 1991 (53) E.L.T. 450 (Tribunal)

(xvi) Kiran Overseas. Versus Collector Of Customs Reported In 1988 (38) E.L.T. 362(Tribunal)

Perusal of these judgments would clarify that the cross examination of expert witnesses are not based on section 138B but rather on Principles of Natural Justice. Further the discrepancies in the purported report of Dr. Ram Mohan as pointed out above, make all the more necessary that he is made available for cross examination. We therefore request that the expert may please be made available for cross examination.

e) It is submitted that the Show Cause Notice relies on several email print outs in order to buttress the charges regarding the misclassification of the Dolomite Blocks imported by the Noticee. In this regard, it is submitted that the said electronic records in printed form are not accompanied by a certificate in terms of Section 138C (4). Since the documents are not produced under the said certificate, the documents cannot be read into the evidence of the present case. Accordingly, it is submitted that all email correspondence purported to have been made with the expert witnesses ought to be discarded in toto, amongst others.

31. They further like to draw kind attention of the Hon'ble Adjudicating Authority to the Chapter 25 of the Customs Tariff, which is for mineral products, which are naturally occurring and specifically to the heading 2515 and 2518 incorporating Marbles and Dolomite respectively. It is our submission that this classification is based on chemical / physical properties, which are scientifically discernible and thus not based on any other parameter. It is our respectful submission that the Notice is attempting to capitalize the nomenclature of the Report which mentions the goods to be *Dolomitic Marble*, merely on account of the nomenclature employed in the report containing the word *Marble*, the fact that the goods are dolomites does not change. The reports categorically mention the dominating component to be Dolomite. The presence of MgO in the chemical composition, which is itself the factor that distinguishes Dolomite from Marble is also mentioned. The department has conveniently ignored these technical factors whilst relying upon the Composition Report and has proceeded to rely upon the term Dolomitic Marble employed in the reports.

32. The SCN further relies on the classification by the Bureau of Mines in order to classify the imported goods as Marble. However, the said approach is illogical and unscientific, inasmuch as the system of classification adopted by the Bureau of Mines is at loggerheads with the system of classification adopted in the Customs Tariff. The Customs Tariff has adopted a system where it recognizes a clear distinction between Dolomites and Marbles hence the different CTH numbers are afforded to them. Whereas the Bureau of Mines takes harbours a view that the class of items namely Dolomitic Marble are a class of goods which are a subset of Marbles and states that Dolomitic marble is a kind of Marble. The letter dated 02.03.2021 issued by the Deputy Commissioner of Customs to the Senior Principal Scientist of The National Geophysical Research Institute categorically admits the aforesaid position, the said letter is listed at RUD-14. It is their humble submission that the Customs Authorities are bound by the Customs Tariff. They are not at liberty to adopt a system that is in variance with the Customs Tariff in order to suit their interpretation. According to the Customs Tariff there is no Classification as Dolomitic Marble, the Customs Tariff at CTH 25181000 recognizes Dolomite and at CTH 25151210 recognizes Marble. In order to assess the goods the Customs Authorities ought to adopt logical and scientific inquiries to arrive at a conclusion as to which CTH the goods fall under.

33. The Show Cause Notices at para 15.1 seeks to place reliance on the statement of Shri Aniket Khetan. It is our humble submission that the statements cannot be relied on in an adjudication process until and unless the deponents are examined under the provisions of Section 138B of the Customs Act, 1962. In the light of the said submission, we request that the Hon'ble Adjudicating Authority kindly call upon the said deponent to be present himself before Your Honour and check the veracity of the said statement before the same is pressed into service as evidence in the matter. The aforesaid submission is without prejudice to our submission that the classification of goods cannot be determined on the basis of oral depositions.

34. In view of the submissions made hereinabove, the settled legal position and in light of the evident contradictions in the test reports, they once again reiterate their request for cross examination of the expert witness, Dr. Ram Mohan before proceeding with the adjudication in the matter and the decision of the Hon'ble Adjudicating Authority on the said request may please be communicated to their clients.

35. They also request for the Hon'ble Adjudicating Authority that before adjudication of the case the outcome of requests being made for following the provisions of Section 138B of the Customs Act, 1962 and retesting of remnant samples from the samples drawn at the time of import may kindly be communicated so as to enable us to make appropriate submissions in the matter.

36. They pray that the present proceedings are dropped against our clients following the Judgment in the case of NITCO Limited as referred to above.

37. Personal Hearing: Personal Hearing held on virtual mode on 13.01.2026 attended by their Advocate Shri Ajay Singh on behalf of M/s. Aakash Universal Ltd., and submitted that the initial test report was in favor of m/s. Aakash Universal Ltd., He re-iterated their written submission. Further he stated that there is contradiction in two test reports. He also referred to Panchnama (RUD-3). He also referred to the judgement of Hon'ble CESTAT in similar matter. He further requested Cross-examination of the expert in this regard. Further Shri Girish Nadkani, Advocate on behalf of M/s. ICC (CHA) wherein he reiterated that there is no mistake in part of CHA. He denied the charges levied in SCN against CHA. Both Bill of Entries were on 1st check and assessment were finalized. Further he stated that there was no manipulation of documents on the part of CHA. He further re-iterated their written submission. Further as per the noticee's request, the Personal Hearing was again held on 12.03.2026 and Ms. Dishya Pandey, Advocate on behalf of M/s. Aakash Universal Ltd., appeared for Personal Hearing and requested for Cross examination and also requested two weeks' time for detailed written submission. Further She requested to decide the matter on merits.

38. Findings: I have carefully gone through the Show Cause Notices dated 07.08.2025 and common written submission dated 12.01.2026 filed by importer M/s. Aakash Universal Ltd., and Shri Aniket Khetan, Manager and Authorized Signatory. Also gone through the submission made during the Personal Hearing held on virtual mode on 13.01.2026 attended by their Advocate Shri Ajay Singh and again Personal Hearing was given on request of M/s. Aakash Universal Ltd., on 12.03.2026 which was attended by Ms. Dishya Pandey, Advocate, on which they have requested for two-week time to submit the additional written submissions. I have also gone through the written submission dated 02.09.2025 from Customs Broker M/s. International Cargo Corporation and submissions made by the Noticee during the course of Personal Hearing held on 13.01.2026 and also additional submission made on 25.03.2026.

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

(a) Whether the declared classification of the subject goods under CTH 25181000 in the Bill of Entry as detailed in Annexure-A attached to the show cause notice, should be rejected and goods be re-classified under Customs Tariff Heading No.25151210 of the First Schedule to the Customs Tariff Act, 1975 and whether the subject Bills of Entry should not be re-assessed?

(b) Whether the goods valued at **Rs. 19,76,245/- (Rs. Nineteen Lakhs, Seventy Six Thousand, Two Hundred and Forty Five only)** as per as detailed in Annexure A attached to the show cause notice should be confiscated under Section 111 (m) of the Customs Act, 1962?

(c) Whether the differential/Short paid Customs duty amounting to **Rs.9,98,104/- (Rs. Nine Lakhs, Ninety Eight Thousand, One Hundred and Four Only)** as detailed in Annexure-A attached to the show cause notice should be demanded and recovered under Section 28(4) of the Customs Act, 1962 alongwith applicable interest under Section 28AA ibid?

(d) Whether penalty should be imposed under the provisions of Section 112(a) and 112(b)?

(e) Whether penalty should be imposed under the provisions of Section 114A and Section 114AA of the Customs Act, 1962 for goods mentioned above?

(f) Conditions of Test /PD Bond No. 2001856772 executed for provisional release of goods imported under Bill of Entry No. 9238474 dated 19.10.2020 should not be enforced and the Bank Guarantee No. OGT0018210054329 dated 27.04.2021 for Rs. 6,50,000/- furnished in favour of the exchequer for provisional release of the seized goods, as discussed in the SCN should not be encashed against the above demand of Customs Duty, interest, fine and penalty.

(g) Whether penalty should be imposed under the provisions of Section 112(a), 112 (b) and Section 114AA of the Customs Act, 1962 on Shri Aniket Khetan, Manager and Authorized Signatory of M/s. Aaksah Universal Limited ?

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

40. The most vital question that comes up for consideration in case on hand is 39 (a) whether the goods in question are 'Rough Marble Blocks', classifiable under Customs Tariff Item No.25151210, as per Annexure-A, to the Show Cause Notice, or 'Rough Dolomite Blocks' classifiable under Customs Tariff Item No.25181000', as per the Importer;

I find that Para 39(b) to 39(h) would be relevant only if the goods in question are found as Rough Marble Blocks, classifiable under Tariff Item 25151210. For the purpose of ascertaining the same, it would be appropriate firstly to make a reference to the Customs Tariff Headings 2515 and 2518 as appearing in the Customs Tariff Act, 1975 as well as the HSN Explanatory Notes for the said Tariff Headings.

41.1 Customs Tariff Heading No.2515 reads as under:

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

- *Marble and travertine :*

2515 11 00 -- Crude or roughly trimmed
2515 12-- *Merely cut, by sawing or otherwise, into blocks or slabs of a rectangular (includingsquare) shape :*
2515 12 10--- Blocks
2515 12 20--- Slabs
2515 12 90 --- Other
2515 20 --- *Ecaussine and other calcareous monumental or building stone; alabaster :*
2515 20 10 --- Alabaster.
2515 20 90 --- Other

41.2 Customs Tariff Heading No.2518 reads as under:

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

2518 10 00 - Dolomite not calcined or sintered.
2518 20 00 - Calcined or sintered dolomite.
2518 30 00 - Dolomite ramming mix

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

41.3HSN Explanatory Notes to Customs Tariff Heading No.2515 reads as under:

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

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

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

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

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

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

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

The heading also excludes:

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

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

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

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

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

41.5 I find from the perusal of the said report of CRCL, that CRCL have merely reported that it is composed of carbonates of Calcium & Magnesium (Dolomite) whereas CRCL has not given Test Reports regarding important parameter such as nature of the rock, specific gravity and petrographic test. Therefore, the said CRCL report cannot be considered as conclusive Test Report. Therefore, to ascertain the nature of the rock, specific gravity and petrographic test, sample was sent to Geological Survey of India, Central Region, Nagpur vide Test Memo No. VIII/I-119/ICD-Tumb/2023-24 dated 26.08.2023. I find that it would be worth to refer the CBEC Circular No. 40/2002-Cus., dated 11-7-2002 , though it is related to 'Finalisation of Provisional Assessment of Marble Import'. However, it is aptly relevant to the present case. Relevant para is re-produced as under:

"(a) Classification of marble - marble versus calcareous stone - whether the imported goods are to be treated as marble on the basis of commercial parlance or on the basis of petrological composition;
(b) …;
(c) …;
(d) …;
(e) ….

2. Accordingly the full Board examined the above-mentioned issues. Board's decisions are as follows :
(a) Marble versus calcareous stone :
In the case of M/s Akbar Badruddin Jiwani v. Collector of Customs - 1990 (47) E.L.T. 161 (S.C.), the Honourable Supreme Court had consciously made an exception to the general rule of giving precedence to popular/commercial meaning over the technical meaning and held that heading 25.15 of the First Schedule to the Customs Tariff Act, 1975 must be construed by its

technical sense and not by applying a commercial nomenclature test. The matter was discussed in the Conference of Commissioners on Tariffs and Allied Matters held at Goa in November, 2000 and taking due note of the said judgment, ***it was decided that the provisional assessment cases should be finalised on the basis of test reports of the samples received from Geological Survey of India (GSI), Nagpur. The Tariff Conference had given clear directions to the field formations to decide the cases on the basis of test reports from GSI, Nagpur. The decision of the Tariff Conference was reiterated by the Board vide its letter F. No. 438/38/2000-Cus.-IV, dated 9-10-2001. It has been decided that the cases should be finalised on the basis of test reports from GSI, Nagpur. It has also been decided that in the event of conflicting reports from Central Revenue Control Laboratory (CRCL) and GSI, Nagpur, reliance should be placed on the report of GSI, Nagpur.***

It has been reported that in a number of cases, samples were not sent to GSI, Nagpur and that these were sent to CRCL for testing. **In such cases, the CRCL has not given its report on the basis of petrological composition and has stated that "goods are commercially known as marble".** *It has been decided that in cases where remnant samples are available, these are to be re-tested at GSI, Nagpur. In cases where remnant sample is not available after proper search which should be certified by Commissioner himself, the report of CRCL may be accepted if nothing contrary to the report of CRCL is there on record."*

Thus, I find that since the report of CRCL was not conclusive, sample were aptly sent to Geological Survey of India, Central Region, Nagpur.

41.6 I find it is needless to re-produce the Test Report forwarded to the Geological Survey of India, Central Region, Nagpur as it is already stated at Para No. 7 to 10 in the Show Cause Notice. As per the Test/Analysis Report, specific comments and response on the specific queries, I find that the material declared as 'Rough Dolomite Blocks' and imported vide Bill of Entry No. 8704561 dated 04.09.2020 by the importer is actually 'Rough Marble Blocks' with specific gravity of 2.83g/cm3 and composed of Calcium carbonate with magnesium and meets the specification of marble. Thus, it appears that actual goods imported by the importer as per Test Report were "Rough Marble Blocks'

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

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

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

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

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

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

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

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

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

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

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

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

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

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

41.11 On harmonious reading of the Customs Tariff Headings 2515 and 2518, the HSN Explanatory Notes of the said Tariff Headings, Classification provided by the Government of India, Ministry of Mines, Indian Bureau of Mines vide the Indian Minerals Yearbook 2013,Indian Standard Specification for Marble, IS:1130-1969, Para 30.6 and 30.15 of Indian Minerals Year Book 2020 (59th Edition) and Test Reports given by Geological Survey of India, Central Region, Nagpur in respect of 'Rough Dolomite Blocks' imported vide Bill of Entry No. 8704561 dated 04.09.2020 by the importer, I find that imported goods is 'Rough Dolomitic Marble' and its merit classification is Customs Tariff Item No. 25151210 and not Customs Tariff Item No. 25181000 as claimed by the importer.

41.12 Thus, from the above discussion and findings, I find that goods covered under Bill of Entry as mentioned in Annexure-A , to the Show Cause Notice is 'Rough Marble Blocks', classifiable under Customs Tariff Item No.25151210, and accordingly Bills of Entry is required to be reassessed.

41.13 I find that Shri Aniket Khetan, Manager and Authorized Signatory, M/s. Akash Universal Limited in his written submission dated 12.01.2026 and 12.03.2026 has alleged statement dated 18.06.2025 has not been typed as per his saying and SCN does not contain the facts which were stated by him. I gone through the statement dated 18.06.2025 of Shri Aniket Khetan and I find that relevant contents of the statements are re-produced in the Show Cause Notice. Therefore, said argument is far from the truth. Further, Shri Aniket Khetan has not produced any evidence that his statement dated 18.06.2025 was recorded under , threat / duress and it was tendered voluntarily and therefore, such allegation is nothing but an after thought.

41.14 I find that the importer has sought cross examination of the Chemical Examiner of CRCL, Vadodara. I find that said request is not acceptable as the Chemical Examiner has given their limited opinion based on the contents of sample sent. In this regard, I rely on the decision of Hon'ble Madras High Court rendered in the case of Visal Lubetech Corporation v. Additional Commissioner reported in 2016 (342) E.L.T. 201 (Mad.) wherein it has been held as under:

> ***"14.*** *The sheet anchor of the submission of the learned Senior counsel for the petitioner is based on the denial of opportunity to cross examine. The further grievance being that though they relied upon an order of this Court in that regard, the authority did not even take note of the same. The person, whom they seek to cross examine is an officer/Government servant, working as a Chemical Examiner in the Central Revenue's Control Laboratory under the control of the Department of Revenue, Ministry of Finance, Government of India. The said officer is not a witness to the proceedings. No statement has been recorded by the Department from such an officer either prior to the issuance of show cause notice or thereafter. Thus, the duty exercised by the Chemical Examiner of the Central Laboratory is in effect discharging a statutory duty and therefore, he is not a witness to the proceedings. The petitioner seek to take advantage of certain observations made by the test report to state that it is inconsistent with the other averments made therein. It is not in dispute that no statement was recorded from the Officer, who submitted the report. In other words, there is no "examination in chief", for permitting cross-examination. At best, the report can be taken as it is and the petitioner has to contest his case based on the findings recorded in the report. The petitioner requested an opportunity to cross examine the Officer, who submitted a report. This was considered by the respondent and an order was passed on 29-1-2016, rejecting such a request. This order was not put to challenge."*

Further, I rely on the decision of Hon'ble Tribunal, Delhi rendered in case of Hindustan Alloys Mfg. Co. Ltd. v. Collector reported in 1998 (99) E.L.T. 559 (Tribunal) wherein interalia held as under :

> ***"9.*** *The Chemical Examiner is only for giving the physical or chemical analysis of the goods in dispute and it is for the quasi-judicial authority to decide about the classification. As the dispute was only whether the goods were dross which had a well defined connotation in trade and commerce, or the scrap which has also been defined in the Tariff, we consider that the cross-examination of the Chief Chemist will have no effect on the proper classification of the goods by the adjudicating authority. The copies of the reports by the Chemical Examiner had been made available to the appellants."*

I find that in present case, Test Reports received from GSI, Nagpur were given to the importer along with Show Cause Notice and further Test Reports from GSI were perused to Shri Aniket Khetan at the time of recording of his statement on 18.06.2025.

Further, I rely on the decision of Hon'ble Tribunal, Mumba rendered in in case of Spenta Multimedia Pvt. Ltd. Vs. Commr. Of Customs, Nhava Sheva-II reported in 2020 (271) ELT 814 (Tri. Mumbai) wherein interalia held as under:

> *"2. With regard to cross-examination of the officers of the DGFT and Customs department, I decline to accord permission for the same since the officers have discharged their statutory duties only and their statements are not relied upon in the case. In this connection, the following judicial and quasi judicial rulings may be referred, Visal Lubtech Corpn v. Additional Commissioner of Customs, Coimbatore [2016 (342) E.L.T. 201 (Mad)]; N S Mahesh v. Commissioner of Customs Cochin [2016 (331) E.L.T. 402 (Ker)] and Jagdish Shankar Trivedi v. Commissioner of Customs Kanpur [2006 (194) E.L.T. 290 (T-Del)]."*

In view of the aforesaid decision, I do not find it worth to allow the cross examination of investigation officers, Panchas and Chemical Examiners as sought by the importer.

42. Whether the goods valued at Rs.19,76,245/- (Rupees Nineteen Lakhs, Seventy Six Thousand, Two Hundred and Forty Five only) as detailed in Annexure A, to Show Cause Notice should be held liable for confiscation under the provisions of Section 111(m) of the Customs Act, 1962?

42.1 Show Cause Notice proposes confiscation of the impugned imported goods under Section 111(m) of the Customs Act, 1962. If the goods have been described wrongly or the value of the goods has been incorrectly declared, such goods would come under the purview of Section 111(m) of Customs Act, 1962. It is to reiterate that in the present case it is an admitted fact that the classification of the product are mis-declared in the concerned import documents as "Rough Dolomite Blocks" under Customs Tariff Item No. 25181000 with an intention to avoid higher rate of Customs Duty applicable to the correct declaration of the goods as **'Rough Marble block'** having merit classification under Customs Tariff Item No. 25151210. The Importer has mis-classified the said goods imported by them thereby contravening the provisions of Section 47 of the Customs Act, 1962 since the Bill of Entry has not been filed in compliance to Section 46 of the Customs Act, 1962. Thus, the said goods imported by them are liable for confiscation under Section 111(m) of the Customs Act, 1962.

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

42.3 I find that the importer had imported 125.77 MTS totally valued at Rs. 19,76,245/- by mis-declaring as "Rough Dolomite Block' and mis-classifying the same under Customs Tariff Item No.25181000. By way of this mis-classification, they wrongly availed the exemption from payment of BCD under Sr.No.120 of Notification No.050/2017-Cus dated 30.06.2017 and also availed the exemption from payment of GST under Notification No.01/2017-Integrated Tax (Rate) dated 28.06.2017 in importation of Marble Block. The said goods had been imported in contravention of the provisions of Section 46(4) of the Customs Act, 1962. For these contraventions and violations, the aforementioned goods fall under the ambit of smuggled goods within meaning of Section 2(39) of the Customs Act, 1962 and hence I hold them liable for confiscation under the provisions of Section 111(m) of the Customs Act, 1962

42.4 I find that Importer had mis-declared imported goods as "Rough Dolomite Block' and mis-classified the same under Customs Tariff Item No.25181000 in respect of Bill of Entry No. 8704561 dated 04.09.2020 and wrongly availed the exemption from payment of BCD under Sr.No.120 of Notification No.050/2017-Cus dated 30.06.2017 and also availed the exemption from payment of GST under Notification No.01/2017-Integrated Tax (Rate) dated 28.06.2017, therefore, the goods covered under aforesaid Bills of Entry No. 8704561 dated 04.09.2020 is liable for confiscation under Section 111(m) of Customs Act, 1962.

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

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

42.6 I find that the importer has wrongly availed the exemption from payment of BCD under Sr.No.120 of Notification No.050/2017-Cus dated 30.06.2017 and also availed the exemption from payment of GST under Notification No.01/2017-Integrated Tax (Rate) dated 28.06.2017 by resorting to the mis classification of the imported goods. I find that in the case where goods are not physically available for confiscation, redemption fine is imposable in light of the judgment in the case of **M/s. Visteon Automotive Systems India Ltd. reported at 2018 (009) GSTL 0142 (Mad)** wherein the Hon'ble High Court of Madras has observed as under:

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

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

".
.
.

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

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

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

In view of the above, I find that 125.77 MTS totally valued at Rs. 19,76,245 by mis-declaring as "Rough Dolomite Block" and mis-classifying the same under Customs Tariff Heading No.25181000 though not available are liable for confiscation under Section 111(m) of the Customs Act, 1962.

42.8 In view of the above, I find that redemption fine under Section 125 (1) is liable to be imposed in lieu of confiscation of subject goods having total assessable value of at Rs. 19,76,245/- as detailed in Annexure A to Show Cause Notice.

43. Whether differential/short paid Customs Duty amounting to Rs.9,98,104/- (Rupees Nine Lakhs, Ninety Eight Thousand, One Hundred and Four Only) as detailed in Annexure-A, to Show Cause Notice should be demanded and recovered under Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28AA ibid?

43.1 Keeping the aforesaid discussions in mind, I proceed to examine the duty liability. The importer has filed Bill of Entry covering the period as detailed in Annexure A to the Show Cause Notices for clearance of goods by declaring the description as "Rough Dolomite Block' classifying the same under Customs Tariff Item No.25181000. As discussed at paras supra, the goods imported are found as mis-classified under Customs Tariff Item No.25181000 instead of correct classification of the product which is Customs Tariff Item No. 25151210 which has resulted in evasion of Customs duty amounting to **Rs. 9,98,104/-** by the said importer. I find that in terms of Section 46 (4) of the Customs Act, 1962, the importer was required to make declaration as regards the truth of contents of the Bill of Entry submitted for assessment of Customs Duty but they have contravened the provisions of Section 46(4) of the Customs Act, 1962 in as much as they have mis-classified the goods imported and thereby short paid the duty with clear intent to evade payment of Customs Duty.

43.2 Thus, from the above discussion, I find that the Importer had knowingly and deliberately indulged in suppression of facts and had wilfully misrepresented/mis-stated the material facts regarding the goods imported by them, in the declarations made in the import documents including Check lists presented for filing of Bills of Entry presented before the Customs at the time of import for assessment and clearance, with an intent to evade payment of applicable Customs Duty. Therefore, the Duty not paid/short paid is liable to be recovered from the Importer by invoking the extended period of five years as per Section 28 (4) of the Customs Act, 1962, in as much as the Duty is short paid on account of wilful mis-statement as narrated above. Accordingly, the total differential Customs Duty amounting to **Rs.9,98,104/-** in respect of impugned good cleared under the Bill of Entry as detailed in Annexure-A to the Show Cause Notice is required to be demanded and recovered from the Importer invoking the provision of extended period under Section 28(4) of the Customs Act, 1962.

43.3 It has also been proposed in the Show Cause Notice to demand and recover interest on the aforesaid differential Customs Duty under Section 28AA of the Customs Act, 1962. Section 28AA ibid provides that when a person is liable to pay Duty in accordance with the provisions of Section 28 ibid, in addition to such Duty, such person is also liable to pay interest at applicable rate as well. Thus the said Section provides for payment of interest automatically along with the Duty confirmed/determined under Section 28 ibid. I have already held that Customs Duty is liable to be recovered under Section 28(4) of the Customs Act, 1962. Therefore, I hold that interest on the said Customs Duty determined/confirmed under Section 28(4) ibid is to be recovered under Section 28AA of the Customs Act, 1962.
collusion; or
(b) any wilful mis-statement; or
(c) suppression of facts

44. Whether, Penalty under Section 112(a), (b), and Section 114A, and Section 114AA of the Customs Act, 1962 should be imposed on importer M/s. Akash Universal Limited?

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

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

I find that Importer was in complete knowledge of the correct nature of the goods nevertheless, the Importer claimed undue benefit of the aforesaid Notifications for the said goods in order to clear the goods by wrongly availing Customs Duty exemption from payment of BCD under Sr.No.120 of Notification No.050/2017-Cus dated 30.06.2017 and also availed the exemption from payment of GST under Notification No.01/2017-Integrated Tax (Rate) dated 28.06.2017 by resorting to misclassification of "'Rough Dolomite Block' under Customs Tariff Item No. 25181000 instead of merit Customs Tariff Item No. 25151210. Thus, with the introduction of self-assessment under Section 17, more faith is bestowed on the importers, as the practices of routine assessment, concurrent audit etc. have been dispensed with. As a part of self-assessment by the Importer, the Importer has been entrusted with the responsibility to correctly self-assess the Duty. However, in the instant case, the Importer intentionally abused this faith placed upon him by the law of the land. Therefore, it appears that the Importer has wilfully violated the provisions of Section 17(1) of the Act inasmuch as they have failed to correctly classify the impugned goods and has also wilfully violated the provisions of Sub-section (4) and (4A) of Section 46 of the Customs Act, 1962, hence, I find that this is a fit case for imposition of quantum of penalty equal to the amount of Duty in terms of Section 114A of the Customs Act, 1962.

Further, I find that demand of differential Customs Duty amounting to **Rs.9,98,104/-** has been made under Section 28(4) of the Customs Act, 1962, which provides for demand of Duty not levied or short levied by reason of collusion or wilful mis-statement or suppression of facts. Hence as a naturally corollary, penalty is imposable on the Importer under Section 114A of the Customs Act, which provides for penalty equal to Duty plus interest in cases where the Duty has not been levied or has been short levied or the interest has not been charged or paid or has been part paid or the Duty or interest has been erroneously refunded by reason of collusion or any wilful mis statement or suppression of facts. In the instant case, the ingredient of suppression of facts and wilful mis-statement by the importer has been clearly established as discussed in foregoing paras and hence, I find that this is a fit case for imposition of quantum of penalty equal to the amount of Duty plus interest in terms of Section 114A ibid.

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

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

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

44.2.2 I find that importer was well aware that goods viz. "Rough Dolomite Block' imported was actually 'Rough Marble Block" mis-classifying under Customs Tariff Item No. 25181000 instead of merit classification under Customs Tariff Item No. 25151210 intentionally availed the benefit of Customs Duty exemption from payment of BCD under Sr.No.120 of Notification No.050/2017-Cus dated 30.06.2017 and also availed the exemption from payment of GST under Notification No.01/2017-Integrated Tax (Rate) dated 28.06.2017 by declaring in Bill of Entry with clear intent to evade the payment of duty and contravened the provision of Section 46 (4) of the Custom Act, 1962 by making *false declarations in the Bill of Entry,*. Hence, I find that the importer has knowingly and intentionally mis declared the false/incorrect description of goods and its Tariff Item No. and Notification No. in respect of imported goods. Hence, for the said act of contravention on their part, the Importer is liable for penalty under Section 114AA of the Customs Act, 1962. Thus, it clearly sustains that Importer with clear intent to evade the payment of appropriate Customs Duties have resorted to mis-classification of the imported goods in Bill of Entry and therefore, I find that Importer is liable for penalty under Section 114AA of the Customs Act, 1962.

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

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

44.3.1 The Show Cause Notice also proposes imposition of penalty under Section 112(a) and 112 (b) of the Customs Act, 1962 on the Importer. In this regard, it is to mention that the fifth proviso to section 114A of the Customs Act, 1962 provides that penalty under Section 112 shal1 not be levied if penalty under Section 114A of the Customs Act, 1962 has been imposed and the same reads as under:

> "*Provided also that where any penalty has been levied under this Section, no penalty shall be levied under Section 1I2 or Section 114."*

In the instant case, I have already found that Importer M/s. Akash Universal Limited., is liable to penalty under Section 114A of the Customs Act, 1962 and therefore, penalty under Section 112 is not imposable in terms of the 5th proviso to Section 114A of the Customs Act, 1962.

44. Whether, Penalty under Section 112 and Section 114AA of the Customs Act, 1962 should be imposed on Shri Aniket Khetan, Manager and Authorized Signatory, M/s. Akash Universal Limited?

I find that mis-declaration of description and mis-classification of goods in the import documents viz. Bills of Entry presented by Importer before the Customs authorities, was done on the directions and under the guidance of Shri Aniket Khetan, Manager and Authorized Signatory, M/s. Akash Universal Limited, to wilfully suppress the correct description and classification of goods with an intent to evade payment of applicable Customs Duty. Shri Aniket Khetan had full knowledge about the mis-classification of the said imported goods in as much as Shri Aniket Khetan was responsible for all imports and finalization of classification of imported goods. He managed documents for mis-classification of goods from the overseas supplier and instructed the Customs Broker to produce the same before Customs for clearance, to file the Bills of entry. Test/Analysis Report along with response of queries received from the Geological Survey of India, Central Region, Nagpur confirmed that the sample drawn from the import consignment of Importer meets the specifications of “Marble”. I find that Shri Aniket Khetan, Manager and Authorized Signatory, M/s. Akash Universal Limited has admitted in his statement dated 18.06.2025 that their firm is engaged in processing of ‘Marble Blocks’ into ‘Marble Slabs’ and further selling of said Marble slabs in local market in different parts of India since long for which their inputs are Mable Blocks, Epoxy Resin, General Resin, Fibre etc., and company have fully automated state of the art Marble Processing Plant. Further, Shri Aniket Khetan, Manager and Authorized Signatory, M/s. Akash Universal Limited, on being asked categorically for the goods imported vide Bill of Entry No. 8704561 dated 04.09.2020, he stated that the goods imported under aforesaid Bill of Entry was declared as ‘Dolomite Block classifying under CTH 2518 and said imported goods were processed in the plant of their company and were cleared as ‘Dolomite Slab’. Thus, Shri Aniket Khetan, Manager and Authorized Signatory, M/s. Akash Universal Limited was aware that the consignment imported by them was actually Rough Marble Block falling under Customs Tariff Item No.25151210. All the aforesaid acts of commissions and omissions on the part of Shri Aniket Khetan have rendered the imported goods liable for confiscation under Section 111 (m) of the Customs Act, 1962, and consequently rendered himself liable for penalty under Section 112(a)(ii) of the Customs Act, 1962.

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

45. While deciding each issue as above, I have examined the judgments cited by the Advocate of Importer and Shri Aniket Khetan, Manager and Authorized Signatory, M/s. Akash Universal Limited. It needs to be appreciated that each case is based on its own facts and circumstances and my findings as above are based on the nature of offence committed by the said Importer and its General Manager Shri Aniket Khetan and therefore unless the facts of the relied upon case laws are shown to be similar to this case, any reliance on the same would not be in true spirit of judicial discipline. I find that none of the cases relied upon by them are applicable to the present case.

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

46.1 I find that M/s. International Cargo Corporation, Mumbai has been implicated in the subject case for violation of the obligations cast on them and that the Custom Broker has not advised his client to comply with the provisions of the Customs Act,1962 and it appears that the Customs Broker has not brought this matter to the notice of Dy. Commissioner/Asstt. Commissioner; therefore, it appears that the Customs Broker has not exercise due diligence to ascertain the correctness of information with reference to the subject clearance and therefore rendered themselves liable for penalty in terms of provisions of Section 112(a) of Customs Act, 1962 and appears to have abetted in rendering the subject goods liable to confiscation under Section 111(m) of the Customs Act,1962.I have also gone through the submission and case laws cited by the Custom Broker in their defence reply.

46.2 I find that the Custom Broker has filed Bills of Entry on behalf of importer on the basis of documents submitted by the importer. The invoices submitted by the importer to customs brokers clearly mentioned “Rough Dolomite Block”. The item under dispute being technical in nature, Custom Broker having limited technical knowledge appears to have acted as per the content of documents as supplied by the importer. There is nothing on record in the SCNs that Customs Brokers were in knowledge of wrong declaration by importer in documents furnished by importer and they connived with importer in mis-classification of impugned goods under CTI 25181000 and thereby abetted importer in evasion of customs duty.

46.3 I find that in the present case said Customs Broker had sought First Check of the Bill of Entry No. 8704561 dated 04.09.2020. Further representative sample were also drawn to CRCL Vadodara vide Test Memo No. ICD- Tumb/I-055/20-21 dated 07.09.2020 and accordingly, CRCL Vadodara had given their Test Result vide Test Result No. RCC/SU/IMP/788/09.09.2020 wherein they reported that “The sample is in the form of white broken piece of block. It is composed of carbonates of Calcium and Magnesium (Dolomite), sealed remnant returned. Based on this Test Report of CRCL, Vadodara, Out of Charge was given.

46.3.1 I find that in the present case said Customs Broker has filed Bill of Entry No. 9238474 dated 19.10.2020. Further representative sample were also drawn to National Geophysical Research Institute, Hyderabad (NAGRI) for test as per the instructions of the Directorate of Revenue Intelligence, Ahmedabad (DRI) wherein they reported that the goods identified as Dolomite Marble. Further clarification as to the nature of goods, the NAGRI confirmed that the sample comes under the category of Marble.

Thus, I find that Custom Broker having limited technical knowledge appears to have acted as per the content of documents as supplied by the importer. There is nothing on record in the SCNs that Customs Brokers were in knowledge of mis-classification by importer in documents furnished by importer and they connived with importer. Further, I find that during investigation, no connivance of Custom Broker with importer in evasion of duty by mis-classification came out, therefore, the Customs Brokers cannot be penalized.

46.4 Further, I rely on the M.F. (D.R.) Instruction No. 20/2024-Cus., dated 3-9-2024 wherein it has been instructed at Para 4 that *“Accordingly, implicating Customs Brokers as co-noticee in a routine manner, in matters involving interpretation of statute, must be avoided unless the element of abetment of the Customs Brokers in the investigation is established by the investigating authority. Further, the element of abetment should be clearly elaborated in the Show Cause Notice issued for the offence case under the provisions of the Customs Act, 1962. Further, as regard the suspension of licenses of Customs Brokers, Instruction No. 24/2023, dated 18-7-2023 [2023 (385) E.L.T. (T22)] shall continue to be followed.”.* As I discussed above that the elements of abetment of the Customs Broker are absent in the present case and therefore, I do not find it proper to penalize the Customs Broker M/s. International Cargo Corporation, Mumbai.

46.5 Further, in this regard, I rely on the following judgments along with the certain case laws relied on by the Customs Broker in their reply to the Show Cause Notice.

(a) Hon'ble Delhi Tribunal in the case of Him Logistics Pvt. Ltd. Vs. Commissioner of Customs, New Delhi reported in 2016 (338) ELT 721 (Tri.Del) in this case has held as under:

*"**6.** Apart from that, we also find that the appellant has been imposed penalty on the sole ground that he has not exercised due diligence to ascertain the correctness of the information as regards the correct classification of the product being imported by his client. Having gone through the entire order, we find that the imported goods were declared as classifiable under heading food supplements, as informed to the CHA. Further it was CHA only who applied for first check. The issue of classification is a complex issue and it cannot be said that the CHA should have opinion that the goods were not food supplements but were medicaments. Having made the declaration, it was for the Customs Department to find out the correct classification of the same. As such, even on merits, we find no justifiable reasons to impose penalty upon the appellant."*

(b) Hon'ble CESTAT, Mumbai in the case of Aakash Thakkar Vs Commissioner of Customs (import) ACC, Mumbai reported in 2024(2) TMI 209- CESTAT Mumbai has held that while dropping the penalty imposed on the appellant Customs broker under Section 112(a) of the Customs Act, 1962, the Hon'ble CESTAT, Mumbai held that "in absence of any evidence to show that there was suppression of facts from the department and in as much as the imported goods having been offered for examination by Customs authorities on "First check examination" basis, there was no basis for imposition of penalty on the importer. Thus, by extending such findings, even the Customs Broker who acts as an agent of the importer in terms of Section 147 ibid and the employee of such Customs broker also cannot be fastened with liability of imposing penalty on the same grounds." The CHA acted bonafidely and merely facilitated imports on the strength of documents. which were handed over to him by importer. Hence, no penalty imposable on the. CHA under the Customs Act, 1962.

(c) Hon'ble Bangalore Tribunal in the case of Jeena & Company Vs. Commissioner of Customs, Bangalore reported in **2021 (378) E.L.T. 528 (Tri. - Bang.) has held as under :**

*"**6.** After considering the submission of both the parties and perusal of the material on record, I find that there is no material evidence with the Revenue to come to the conclusion that the appellant had the knowledge of the wrong doing of the importer and has colluded with the importer to defraud the Revenue. I also find that the importer has also stated in his statement before the Original Authority in reply to Question No. 10 that the CHA has filed the Bill of Entry based on the description on the invoice and there is no instruction by the importer to the CHA to do any wrong act. In the absence of any material evidence of knowledge and collusion between the appellant and the importer, it is not appropriate to punish the CHA for filing the document in good faith and on the basis of documents supplied by the importer. Further, I find that all the decisions relied upon by the appellant cited supra has consistently held that in order to impose penalty on the CHA under Section 112 of the Customs Act, there has to be a knowledge on the part of the CHA and there should be a collusion between the CHA and the importer in defrauding the Revenue. Further, I find that the Tribunal in the case of Ashok Jaiswar v. Commissioner of Customs (cited supra), the Tribunal in Para 5 has held as under :*

5. I have perused the records and considered the submissions made by both the sides. The finding against the appellant is merely that he signed the shipping bill, upon the business being brought by Shri Md. Farooq. The finding is also that Shri Mohd. Farooq and other persons were the guilty parties in committing the drawback fraud. There is no mention of the appellant being aware that the fraud was being *committed. This Tribunal has held in the case of Syndicate Shipping Services Pvt. Ltd. v. CC, Chennai [2003 (154) E.L.T. 756 (Tribunal - Chennai)] that, "a customs house agent is not liable to penalty merely for signing a shipping bill in relation to contraband goods. More positive evidence of participation is necessary.*

7. *In view of the various decisions cited supra and on the basis of material on record, I am of the considered opinion that the penalty imposed is not sustainable in the absence of any specific role performed by the appellant in the wrong doing done by the importer. Hence, I set aside the penalty by allowing the appeal of the appellant."*

(d) *Hon'ble Tribunal, Mumbai in the case of* In Union Clearing Service Vs. vs. .Commr. of Cus. (Export), Nhava Sheva reported in 2018 (361) E.L.T. 381 (Tn. - Mumbai)], held that in the absence of any evidence of omission or commission of the act on the part of CHA, penalty not imposable on him merely for wrong classification of exported goods.

(e) *Hon'ble Delhi Tribunal in the case of* The Tribunal in Brijesh International vs. Commr. of Cus.. (Imports General), New Delhi reported in 2017 (352) .E.L.T. .229 (Tri. Delhi) has held that even if there is misdeclaration of classification and valuation of imported goods by the importer, there is no evidence to show that CHA knew about incorrect classification and valuation of goods. CHA declared goods in Bills of Entry.

In view of the above discussion, I find that Customs Broker M/s. International Cargo Corporation, Mumbai is neither liable to penalty under section 112 of Customs Act, 1962 nor under Section 114 AA of the Act ibid.

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

:: ORDER ::

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

(ii) I hold that the 125.77 MTS of imported goods imported vide B/E's as mentioned at Annexure-A to SCN having declared goods assessable valued at **Rs.19,76,245/- (Rupees Nineteen Lakhs, Seventy Six Thousand, Two Hundred and Forty Five only)** liable for confiscation under Section 111 (m) of the Customs Act, 1962. However, I give M/s. Akash Universal Limited 5, Survey No.910/6/1/1, Amli, Dokmardi, Opp. Lohia Machinery, Silvassa, Dadra and Nagar Haveli-396230 an option to redeem the goods imported and on payment of fine of **Rs.5,00,000/- (Rupees Five Lakhs only)** in lieu of confiscation under Section 125 of the Customs Act, 1962.

(iii) I confirm the demand of differential/Short paid Customs duty amounting to **Rs.9,98,104/- (Rupees Nine Lakhs, Ninety Eight Thousand, One Hundred and Four Only)** leviable on 'Rough Marble Block' imported by M/s. Akash Universal Limited 5, Survey No.910/6/1/1, Amli, Dokmardi, Opp. Lohia Machinery, Silvassa, Dadra and Nagar Haveli-396230 as detailed in Annexure-A attached to this show cause notice issued under Section 28(4) of the Customs Act, 1962 under the provisions of section 28(8) of the Customs Act, 1962 and order to recover the same;

(iv) Interest at the appropriate rate shall be charged and recovered from M/s. Akash Universal Limited 5, Survey No.910/6/1/1, Amli, Dokmardi, Opp. Lohia Machinery, Silvassa, Dadra and Nagar Haveli-396230 under Section 28AA of the Customs Act,1962.

(v) I impose penalty of **Rs. 9,98,104/- (Rupees Nine Lakhs, Ninety Eight Thousand, One Hundred and Four Only)** plus penalty equal to the applicable interest under Section 28AA of the Customs Act, 1962 payable on the Duty demanded and confirmed above on M/s. Akash Universal Limited 5, Survey No.910/6/1/1, Amli, Dokmardi, Opp. Lohia Machinery, Silvassa, Dadra and Nagar Haveli-396230 under Section 114A of the Customs Act, 1962 in respect of Bill of Entry detailed in Show Cause Notice. However, I give an option, under proviso to Section 114A of the Customs Act, 1962, to the Importer M/s. Akash Universal Limited., to pay 25% of the amount of total penalty imposed, subject to the payment of total duty amount and interest confirmed and the amount of 25% of penalty imposed within 30 days of receipt of this order.

(vi) I refrain from imposing penalty under section 112 of the Customs Act,1962, since as per fifth proviso of Section 114A, penalty under Section 112 and 114A are mutually exclusive.

(vii) I impose Penalty of **Rs.5,00,000/- (Rupees Five Lakhs only)** on M/s. Akash Universal Limited, 5, Survey No.910/6/1/1, Amli, Dokmardi, Opp. Lohia Machinery, Silvassa, Dadra and Nagar Haveli-396230 under the provisions of Section 114AA of the Customs Act, 1962.

(viii) I order to enforce the Conditions of Test/PD bond No.2001856772 executed for provisional release of 61.8 MTS of imported goods having assessable value Rs. 9,87,645/- (Rupees Nine Lakh Eighty Seven Thousand Six Hundred Forty Five only) which was imported vide Bill of Entry No. 9238474 dated 19.10.2020 and encashment of the Bank Guarantee No. OGT0018210054329 dated 27.04.2021 for Rs.6,50,000/- furnished in favour to the exchequer at the time of provisional release of the seized goods against the demand of customs duty as confirmed in para (iii) above.

(ix) I impose a penalty of **Rs.1,00,000/- (Rupees One Lakhs only)** on Shri Aniket Khetan, Manager and Authorized Signatory, M/s. Akash Universal Limited, 5, Survey No.910/6/1/1, Amli, Dokmardi, Opp. Lohia Machinery, Silvassa, Dadra and Nagar Haveli-396230 under Section 112(a)(ii) of the Customs Act, 1962;

(x) I impose a penalty of **Rs.5,00,000/- (Rupees Five Lakhs only)** on Shri Aniket Khetan, Manager and Authorized Signatory, M/s. Akash Universal Limited, 5, Survey No.910/6/1/1, Amli, Dokmardi, Opp. Lohia Machinery, Silvassa, Dadra and Nagar Haveli-396230 under Section 114AA of the Customs Act, 1962.

(xi) I drop penalty proposed in Show Cause Notice under Section 112(a) of the Customs Act, 1962 on Customs Broker M/s. International Cargo Corporation, 221, Ecstasy, 1st Floor, Business Park, City of Joy, Mulund(W), Mumbai-400080 under for the reason mentioned at Para 46 to 46.5 hereinabove.

(xii) I drop penalty proposed in Show Cause Notice under Section 114AA of the Customs Act, 1962 on Customs Broker M/s. International Cargo Corporation, 221, Ecstasy, 1st Floor, Business Park, City of Joy, Mulund(W), Mumbai-400080 under for the reason mentioned at Para 46 to 46.5 hereinabove.

48. This order is issued without prejudice to any other action which may be contemplated against the importer or any other person under provisions of the Customs Act, 1962 and rules/regulations framed thereunder or any other law for the time being in force in the Republic of India.

49. The Show Cause Notice No. CUS/APR/INV/79/2025-ICD-UMGN-CUS-COMMRTE-AHMEDABAD dated 07.08.2025 is disposed off in above terms.

Digitally signed by
Lokesh Damor
Date: 17-04-2026
18:08:55

(Lokesh Damor)
Additional Commissioner

F.No. CUS/APR/INV/79/2025-ICD-UMGN-CUS-COMMRTE-AHMEDABAD
DIN 20260471MN0000823564
Date: 17.04.2026

By Speed Post/E-Mail/By Hand/Notice Board

To Noticees:

(1) M/s. Akash Universal Limited, 5, Survey No.910/6/1/1, Amli, Dokmardi, Opp. Lohia Machinery, Silvassa, Dadra and Nagar Haveli-396230.

(2) Shri Aniket Khetan, Manager and Authorized Signatory, M/s. Akash Universal Limited, 5, Survey No.910/6/1/1, Amli, Dokmardi, Opp. Lohia Machinery, Silvassa, Dadra and Nagar Haveli-396230.

(3) M/s. International Cargo Corporation (Customs Broker) 221, Ecstasy, 1st Floor, Business Park, City of Joy, Mulund (W), Mumbai – 400080.

<u>Copy to:</u>

(1) The Principal Commissioner, Customs Ahmedabad Commissionerate, Ahmedabad; (kind Attn: RRA Section)

(2) The Dy. Commissioner, ICD, Tumb, Customs Ahmedabad Commissionerate;

(3) The Deputy/Assistant Commissioner, Customs, TRC, HQ, Ahmedabad.

(4) The Deputy/Assistant Commissioner, Customs, System, HQ, Ahmedabad, for uploading the same on the website of Customs Commissionerate, Ahmedabad.

(5) Guard File.