



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, गांव - तुम्ब, तालुका-उमरगांव, 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

Date: 23.09.2025

F. No.	:	CUS/APR/INV/439/2024-ICD-UMGN-CUS-COMMRTE-AHMEDABAD
Name and Address of the Importer & CHA	:	<ol style="list-style-type: none"> 1. M/s. Kailash Marble Industries Pvt. Ltd., Survey No.15/3, Near Swati Chemical, Village Kharadpada, Silvasa, UT of Dadra Nagar Haveli - 396235. 2. Shri Kamal Kailash Mour, Director and Authorized Signatory, M/s. Kailash Marble Industries Pvt. Ltd., Survey No.15/3, Near Swati Chemical, Village Kharadpada, Silvasa, UT of Dadra Nagar Haveli - 396235. 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/439/2024-ICD-UMGN-CUS-COMMRTE-AHMEDABAD DATED 07.01.2025
Order – in – Original No.	:	03/LD/ADC/TUMB/2025-26
DIN	:	20250971MN000000B5F2
Passed by	:	Lokesh Damor Additional Commissioner, Customs.
Date of Order	:	23.09.2025
Date of Issue	:	23.09.2025

(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 विरुद्ध अपील, इसकी प्राप्ति से 60 (साठ) दिन के अन्दर आयुक्त (अपील), सीमा शुल्क, चौथा तला, हुड़को भवन, स्टेडियम के पास, आश्रम रोड, नवरांगपुरा, 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 रु. 2.00 (दो रूपये) का न्यायालय शुल्क टिकट लगा होना चाहिए। उक्त अपील के साथ निम्नलिखित दस्तावेज संलग्न किए जाएं।

- उक्त अपील की प्रति।
- निर्णय की प्रतियाँ अथवा जिस आदेश के विरुद्ध अपील की गई है, उनमें से कम से कम एक प्रमाणित प्रति हो, या दूसरे आदेश की प्रति जिस पर रु. 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 विरुद्ध 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/439/2024-ICD-UMGN-CUS-COMMRTE-AHMEDABAD DATED 0701.2025 issued by the Additional Commissioner, Customs Commissionerate, Ahmedabad to M/s. Kailash Marble Industries Pvt. Ltd., Survey No.15/3, Near Swati Chemical, Village Kharadpada, Silvasa, UT of Dadra Nagar Haveli - 396235 & Others.

Brief facts of the case:

M/s. Kailash Marble Industries Pvt. Ltd., (IEC No. 0301024201), Survey No.15/3, Near Swati Chemical, Village Kharadpada, Silvasa, UT of Dadra Nagar Haveli - 396235, (hereinafter referred to as 'M/s.Kailash Marble'/'the importer' 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 and trading thereof.

2. M/s. Kailash Marble Industries Pvt. Ltd. have imported goods declared as: Rough Dolomite Blocks, classifying the goods under CTH 25181000 at ICD Tumb (INSAJ6) vide Bills of Entry No. 6107970 dated 17.12.2019 & 6204822 dated 23.12.2019 for which Customs Out of Charge was granted on 09.01.2020 and 10.01.2020 respectively. The representative samples of the subject imported goods were forwarded to the Chemical Examiner, Central Excise & Customs Laboratory, Vadodara on 20.12.2019 i.r.o. BE No. 6107970 dated 17.12.2019 and that of on 30.12.2019 i.r.o. BE No. 6204822 dated 23.12.2019. The Chemical Examiner has sent the test reports dated 26.12.2019 and 01.01.2020 respectively stating that the sample is composed of Carbonates of Calcium & Magnesium (Dolomite)

2.1 Information was received by Customs that the subject goods imported by M/s. Kailash Marble Industries Pvt. Ltd declaring as 'Rough Dolomite Block' was actually marble and the same should be have been classified under CTH 25151210, however, the importer has managed the test report as similar to description i.e. Dolomite Block and has claimed and availed classification of the product under CTH 25181000. The information further indicated that the chemical analysis of samples taken from the imported marble blocks was manipulated 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.

2.2 On the basis of the above information, the above test reports issued by the Chemical Examiner, Central Excise & Customs Laboratory, Vadodara were examined in detail, and were found that critical parameters like specific gravity were not examined; report was issued in very short period; the test report is silent as to whether the sample has property to accept polish or not; terminology and characteristic properties of Marble dimension stone as per ASTM 503 /C503M was not mentioned in the test report.

3. Such mis-declaration of description and classification appeared 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 follows:

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)		

3.1 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.

3.2 Acting on the information and looking to the difference in rate of customs duty, the available samples of the goods imported by M/s. Kailash Marble Industries Pvt. Ltd declared as 'Rough Dolomite Blocks' at ICD Tumb were packed and sealed under Panchnama dated 21.08.2023 -

TESTING OF SAMPLES:

4. The representative sample packed and sealed under Panchnama dated 21.08.2023 in respect of Bill of Entry No. 6107970 dated 17.12.2019 & 6204822 dated 23.12.2019 filed by M/s. Kailash Marble Industries Pvt. Ltd, declaring the goods as 'Rough Dolomite Blocks', claiming and availing classification under CTH 25181000 was sent to the Geological Survey of India, Central Region, Nagpur vide letter reference F. No. VIII/24/ICD-Tumb/2023-24 dated 23.11.2023 alongwith test memo No. ICD-Tumb/I-196/23-24 dated 23.11.2023 with test query: (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. The Geological Survey of India, Central Region, Nagpur has sent the Petrological Test Report dated 18.12.2023 vide letter reference No. No. 131/Customs/TCS/GSI/CR/2023 dated 26.12.2023, wherein, it has been opined and concluded stating the nature or rock that "based on physical, optical and limited chemical properties of rock, sample interpreted as Marble".

4.1 For the sake of clarity, the Petrology Laboratory Report, Chemical Analysis Report 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-Tumb, Tal.: Umbergaon, Dist-Valsad, Gujarat-396150
Importer	M/s. Kailash Marble industries pvt ltd. S. No. 15/3, village: Kharadpada Silvassa, Dadra & Nagar Haveli- 395001.
IGM/ITM No.	ICD-Tumb/I-195/23-24 dtd. 23.11.2023
B.E.No.	6204822 dated 23.12.2019
DD No.	-
Received Sample no.	Rough Dolomite block (I-195 BE No. 6204822)
1. Lab test	Description
a) Study of Physical properties (Megascopic study)	In hand specimen, sample shows white color, fine grained, saccharoidal nature (Fig. 1).
b) Petrographic study (Microscopic study)	Under the plane polarized light: Rock is medium grained, composed of idioblastic- subidioblastic grains of carbonate minerals which are non-pleochroic, showing granoblastic texture. Under the XPL: Rock is medium grained, composed of idioblastic-subidioblastic grains of dolomite, showing granoblastic texture (Fig. 2). They show mutual boundary texture and triple junction grain contact (Fig. 3). Also noticed calcite vein traversing in the rock (Fig.4).
c) Chemical study by i) Staining test ii) Acid Test	Sample also verified with staining technique for carbonates (Method after Dickson, 1965). The rock sample is unstained due to presence of dominant dolomite. Feebly stained in shades of light pink along thin stringers with 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 Marble .

This report 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 1	अन्वेषक / Investigator 2	प्रभारी अधिकारी /Officer in Charge
 Nilasree Raychowdhury 18/12/23 (Nilasree Raychowdhury) व. भूवैज्ञानिक/ Sr. Geologist	 Dr. Tushar Meshram 18/12/23 (Dr. Tushar Meshram) अधीक्षण भूवैज्ञानिक / Superintending Geologist	 Dr. Rajkumar Meshram 18/12/23 (Dr. Rajkumar Meshram) निदेशक / Director

4.2 The Geological Survey of India, Central Region, Nagpur in the above test report has interpreted the sample in respect of the Bill of Entry No. 6204822 dated 23.12.2019 as '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 reiterated their report in respect of the respective Bill 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*".

4.3 Vide letter e-mail dated 16.08.2024 followed letter dated 21.08.2024, specific questioners in connection with the test report of the sample 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?

4.4 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 sample i.r.o. goods pertain Bill of Entry No. 6204822 dated 23.12.2019:

4. For the sample BE 6204822 received from office of the Deputy Commissioner of Customs, Inland Container Depot (ICD)-Tumb – ICD-Tumb/I-195/23-24 dated 23.11.2023.

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

5. For the sample BE 6107970 received from office of the Deputy Commissioner of Customs, Inland Container Depot (ICD)-Tumb – ICD-Tumb/I-196/23-24 dated 23.11.2023.

The rock has been identified as **Marble** (recrystallized sedimentary rock with density 2.81 g/cc and chemical composition Calcium carbonate with magnesium). Marble is **metamorphic rock** and can be polished and used as slabs. It meets the specifications of marble and can categorized as **Marble**.

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



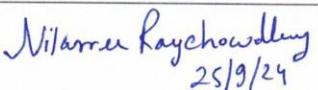
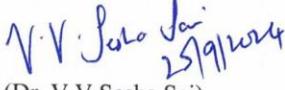
भारत सरकार /GOVERNMENT OF INDIA
भारतीय भूवैज्ञानिक सर्वेक्षण /GEOLOGICAL SURVEY OF INDIA
शैलीकी प्रभाग /PETROLOGY DIVISION
मध्य क्षेत्र /CENTRAL REGION
नागपुर /NAGPUR

IGM/ITM No.	ICD-Tumb/I-195/23-24 dtd. 23.11.2023
B.E.No.	6204822 dated 23.12.2019
DD No.	-
Received Sample no.	Rough Dolomite block (I-195 BE No. 6204822)
Query	Reply
1. Whether the rock is sedimentary or metamorphic in nature	Recrystallized carbonate sedimentary rock. Please see the note below for details.
2. Specific gravity of the rock	2.83 g/cc
3. Chemical composition of the rock	Calcium carbonate with magnesium
4. Whether the rock is formed from the recrystallization of limestone and/or dolomitic limestone	Yes, the rock is formed due to recrystallisation of carbonate sedimentary rock
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. Compositonally marble can be calcite marble (mainly $CaCO_3$) or dolomitic marble (mainly $CaMgCO_3$). 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
 25/9/24 (Nilasree Raychowdhury) व. भूवैज्ञानिक/ Sr. Geologist	 25/9/2024 (Dr. V.V Sesha Sai) निदेशक / Director

5. 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. 6107970 dated 17.12.2019 & 6204822 dated 23.12.2019 by the importer is actually 'Rough Marble Blocks' with specific gravity of more than 2.81/2.83 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'.

6. Summons was issued to M/s. Kailash Marble Industries Pvt. Ltd. requiring them to give statement of responsible and authorised person in connection with the imports under Bill of Entry No. 6107970 dated 17.12.2019 & 6204822 dated

23.12.2019. In response to the summons Shri Kamal Kailash Mour, Director of M/s. Kailash Marble Industries Pvt. Ltd., appeared.

6.1 Statement of Shri Kamal Kailash Mour, Director of M/s. Kailash Marble Industries Pvt. Ltd. was recorded under Section 108 of the Customs Act, 1962 on 23.10.2024, wherein he inter-alia stated that:

- He is Authorized signatory of M/s. Kailash Marble Industries Pvt. Ltd. and is responsible for finalizing purchases/procurements and sales and also for all the Custom work related to the company. All the work related to filing of documents before the Customs Authorities are looked after by various persons under his guidance and supervision;
- about the business activity of M/s. Kailash Marble Industries Pvt. Ltd., he stated that M/s. Kailash Marble Industries Pvt. Ltd. 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 Marble Blocks, Epoxy Resin, General Resin, Fiber Net, etc. The company have fully automated state of the art Marble processing Plant has only 01 Marble processing unit situated at Survey No.15/3, Near Savita Chemical, Village Kharadpada, Silvasa, UT of Dadra Nagar Haveli. The inputs mainly Marble Blocks required for processing are procured by way of import from Italy, Turkey, Portugal, Greece, Spain, etc. On being asked about the imports of Rough Marble Blocks undertaken by M/s. Kailash Marble Industries Pvt. Ltd., he stated that they had regularly imported "Rough Marble Block" declaring under HSN code/CTH 2515; Marble slabs declaring under HSN code/CTH 68022190 and Rough Dolomite Block declaring under HSN code/CTH 2518 from various suppliers paying applicable Customs duty;
- about selling of processed marble slabs he stated that their retail customers which are in building construction line visit their factory at Silvasa and godown in Mumbai to select the processed and polished marble as per their requirement. After selection of material by the buyers, deal finalized and they sell the goods. He further stated that as such they do not execute any written agreement with any of buyers and sell the material under sales invoice only as marble /Dolomites labs. Very few quantities of marble slabs are sold as polished marble slab. He further stated that the processed marble slabs are sold to for use in building floor or walls by the persons engaged in this field. Sometime retail walk-in customers also visit their godown to purchase the marble slabs for use in their residential or commercial building as

flooring / kitchen material;

- about purchase procedure of M/s. Kailash Marble Industries Pvt. Ltd. he stated that for their company he visited the quarry sites for selection of marble blocks either directly to the quarry owners/manufacturer or through traders and after selection and marking the block they purchase it for which neither they execute any agreement nor made any correspondence with the suppliers. It is mostly done on telephonic discussion;
- On being specifically asked about the Bills of Entry No. 6107970 dated 17.12.2019 & 6204822 dated 23.12.2019, he stated that the above Bills of Entry filed by M/s. Kailash Marble Industries Pvt. Ltd. and the goods imported was declared as Rough Dolomite Blocks classifying under HSN code/CTH 2518. He further stated that the goods imported under the above Bills of Entry No. 6107970 dated 17.12.2019 & 6204822 dated 23.12.2019 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 Slab, to different Indian buyers. On being asked he stated that they do not maintain sale records Bill of Entry wise, therefore, it is not possible to correlate the imported goods with their sale, however, he produced sample invoices showing sale to their buyer as ' Dolomite Slab (2518)';
- They do not obtain mine test report, mineral and chemical analysis certificate from the supplier and manufacturer in respect of goods imported under the above Bills of Entry at the time of finalizing purchase, however, later on vide e-mail dated 28.09.2020, they have requested to their supplier M/s. Marmyk Iliopoulos S.A., Greece for dolomite block test report and export declaration customs copy for the shipments under Invoice No. IMOM-000015 dated 25.10.2019 and INOM-000016 dated 04.11.2019 of dolomite blocks. He further stated that in response to their above email, the supplier has forwarded dolomite declaration vide e-mail dated 29.09.2020. In the said document they have mentioned the mineralogical analysis of the material under above invoices and stated the composition as Dolomite 98% and 2% Calcite. He produced copy of the above e-mail correspondences;
- He was shown the panchnama dated 21.08.2023 drawn at the premises of ICD Tumb, Vill – Tumb, Distt. Valsad, Gujarat. He read and understood the contents of the said panchnama and put his 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. He read and understood the table of the panchnama and found the Bills of Entry No. 6107970 dated 17.12.2019

& 6204822 dated 23.12.2019 in the table. Then, he was shown ICD, Tumb Letter F. No. VIII/24/ICD-Tumb/2023-24 dated 23.11.2023 alongwith test memos No. ICD-Tumb/195/23-24 dated 23.11.2023 and ICD-Tumb/196/23-24 dated 23.11.2023 sent to the Geological Survey of India, Nagpur, he read the same and understood that the above sealed samples of the imported cargo i.e. 'Rough Dolomite Block' imported by their company vide above Bills of Entry at ICD, Tumb were sent to the Geological Survey of India, Nagpur for testing and put his dated signature on the same;

- He was shown the letter reference No. 131/Customs/TCS/GSI/CR/2023 dated 26.12.2023 issued by the Director, Geological Survey of India alongwith Petrological Test Report dated 18.12.2023, issued by the Geological Survey of India, Nagpur for the above said sample and after reading and understanding the said document he put his dated signature on the same. The Geological Survey of India, Nagpur has provided the 'Petrological Test Report' in respect of the above said sample of "Rough Dolomite Blocks" imported by their company vide above Bills of Entry at ICD, Tumb. 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 Marble";
- He was 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. He was 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. He read and understood the e-mail correspondence and the document and put his 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, it seems 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;
- He was 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? If yes, which type of marble it is?

- He was 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 him. He read and understood the e-mail correspondence and the attached document and put his dated signature. He found that in the attached document their Bills of Entry No. 6107970 dated 17.12.2019 & 6204822 dated 23.12.2019 are there and stated that from the query answers it seems that the rock has been identified as Marble (recrystallized sedimentary rock with density 2.81 g/cc / 2.83 g/cc and chemical composition Calcium carbonate with magnesium). Marble is **metamorphic rock** and can be polished and used as slabs. It meets the specifications of marble and can be categorized as **Marble**. He also understood 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 CO_3) or dolomitic marble (mainly Ca Mg CO_3). The specific gravity (density) varies from 2.6 to 2.8.g/cc;
- He was 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 him. He read and understood the e-mail correspondence and the attached document and put his dated signature. He found that queries

are replied by the Geological Survey of India as under:

Query	Reply (BE No. 6107970 dtd. 17.12.2019)	Reply (BE No. 6204822 dtd. 23.12.2019)
Whether the rock is sedimentary or metamorphic in nature	Recrystallized carbonate sedimentary rock. Please see the note below.	Recrystallized carbonate sedimentary rock. Please see the note below.
Specific gravity of the rock	2.81 g/cc	2.83 g/cc
Chemical composition of the rock	Calcium carbonate with magnesium	Calcium carbonate with magnesium
Whether the stone is formed from the recrystallization of limestone and/or dolomitic limestone	Yes, the rock is formed due to recrystallisation of carbonate sedimentary rock	Yes, the rock is formed due to recrystallisation of carbonate sedimentary rock
Whether the rock is sufficiently hard and capable of taking polish and can be used as marble slabs	Yes	Yes
Petrographic analysis of the rock	Petrological test report submitted earlier is attached as pdf	Petrological test report submitted earlier is attached as pdf
Whether it meets the specifications of marble? If yes, which type of marble it is	Yes	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 CO_3) or dolomite marble (mainly Ca Mg CO_3). The specific gravity (density) varies from 2.6 to 2.8 g/cc.

- On being asked during recording of statement, Shri Kamal Kailash Mour stated that as per the above Test/Analysis Report, specific comments and response of the specific queries, it seems that the material declared as 'Rough Dolomite Blocks' and imported vide above Bills of Entry No. 6107970 dated 17.12.2019 & 6204822 dated 23.12.2019 by their company are actually 'Rough Marble Block of Dolomitic nature with specific gravity of more than 2.81 and composed of Calcium carbonate with magnesium. On being asked during recording of statement, Shri Kamal Kailash Mour stated that it seems that as per the contents of the analysis report shown to him that day according to which the samples meets the specification of marbles. However, He stated that the samples of the goods imported under the above Bills of Entry No. 6107970 dated 17.12.2019 & 6204822 dated 23.12.2019 was sent for testing at Central Excise and Customs Laboratory, Vadodara and their reports dated 26.12.2019 and 01.01.2020

confirming the material imported was composed of carbonates of Calcium and Magnesium (Dolomite).

- Shri Kamal Kailash Mour was 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 Limestone or dolomitic limestones and are distinguished from limestone by even visibly crystallized nature and non-flaggy stratification."

- Further, Shri Kamal Kailash Mour was 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/1,000 cm').

- On being specifically asked, he stated that after going through the above literature and Test Analysis Report of the Geological Survey of India, Nagpur, Shri kamal Kailash Mour Stated that it seems 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. On being asked during recording of statement, Shri Kamal Kailash Mour also explained that name of Marble Blocks/Dolomite Blocks are classified as per their genesis and chemical composition, colour, texture, origin of country, etc.;
- As per 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 Bills of Entry declaring as 'Rough Dolomite Block' meets the specifications of 'Marble' and should have been classified under the CTH 2515 instead of 2518. However, the live test reports confirmed that goods as Dolomite and accordingly customs duty was paid as per CTH 2518. Further, as per the classification based on the above test reports, duty applicable as per CTH 2515 was not paid at the time of import as the goods was "Dolomite Block" and classified under CTH 2518;
- On being asked about supplier, he stated that the goods under the above Bills of Entry was supplied by M/s. Marmyk Iliopoulos S.A., Greece. On being asked he stated that except the goods declaring Rough Dolomite Blocks imported under the above Bills of Entry, they did not purchase any consignment of goods declaring Rough Dolomite Blocks from this supplier, however, they had imported some consignment of Marble slabs from the same supplier and they cleared the same under CTH 68022190 after payment of applicable customs duty;
- On being asked about the imports of Rough Marble Blocks undertaken by M/s. Kailash Marble Industries Pvt. Ltd., he stated that they had regularly imported "Rough Marble Block" earlier under HSN code/CTH 25151210 from various suppliers. On being asked about subsequent imports of Rough Marble Blocks undertaken by M/s. Kailash Marble Industries Pvt. Ltd., he stated that the subsequent imports of the same goods undertaken by their company were declared as "Rough Marble Blocks" and classified under CTH 25151210;
- On being asked he stated that the said classification of goods under CTH 2518 was decided by their company as the goods imported under the above Bills of Entry was 'Rough Dolomite' and also paid Customs Duty accordingly. He assured that they would make the payment of differential duty at the earliest after arranging the funds, if they found liable to pay.

6.2 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 02.12.2024, wherein he inter-alia stated that:

- He is 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. He is directly in touch with all the clients for the purpose of details to be submitted and filed before Customs for clearance of imported goods.
- On being asked he stated that M/s. International Cargo Corporation, is working as a Custom Broker at different ports/ ICDs including ICD Tumb. Apart from other items, they are also in the clearance of imported Marbles /slabs. They have several clients for clearance of different import export commodities including M/s. Kailash Marble Industries Pvt. Ltd., Silvasa. M/s. Kailash Marble Industries Pvt. Ltd., Silvasa has used services of their firm M/s. International Cargo Corporation for filing of Bills of Entry at Nhava sheva Port, ICD Tumb for clearance of their imported goods, mainly 'Rough Marble Blocks/slabs'. He further stated that few consignments of 'Rough Dolomite Blocks' were also cleared by them (importer) using services of their firm M/s. International Cargo Corporation. He further stated that the Bills of Entry for clearance of imported goods were filed by them on behalf of the importer;
- On being asked regarding the imports of Marbles, he stated that they deal in the clearance of Rough Marbles Blocks / Marble Slabs on behalf of their clients. On being further asked he stated 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 Bills of Entry No. 6107970 dated 17.12.2019 and 6204822 dated 23.12.2019, he stated that they have filed the above Bills 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 them by respective importer M/s. Kailash Marble Industries Pvt. Ltd., Dadar Nagar Haveli (Bill of Entry No. 6107970 dated 17.12.2019 & 6204822 dated 23.12.2019). He further stated that based on the import documents i.e. Bill of Lading, Invoice, packing list etc., discussion with the respective importer, previous import documents, they prepared checklist for classification, duty calculation etc. and after getting approval of the checklist from importer, they uploaded the documents at e-sanchit and filed the above

Bills of Entry on behalf of the importer as per their instructions and approved checklist. He further stated that on receipt of documents from the importer, they 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;

- He was shown BE No. Bills of Entry No. 6107970 dated 17.12.2019 and 6204822 dated 23.12.2019 alongwith commercial invoice, packing list, etc. which were filed by them on behalf of the importers M/s. Kailash Marble Industries Pvt. Ltd., Silvasa for clearance of the goods declared as 'Rough Dolomite Blocks' under CTH 25181000. He have perused the said Bills of Entry alongwith supporting documents. On being asked he stated that they 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 some of the cases, including the above Bills of Entry, the documents given to them by the importer were showing description as 'Rough Dolomite Blocks', therefore, they inquired with the importer about change in description and came to know from the importer that Rough Dolomite Block is also a separate product and the same has been classified separately in Customs Tariff. He has gone through the Customs Tariff and found that Dolomite have been mentioned in Chapter heading 2518. He further stated that they filed the above Bills 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, they have filed Bills of Entry seeking first check examination order and accordingly, live samples from the goods under the above Bills of Entry were drawn by the Customs officers and the said samples were tested at CRCL Laboratory, Vadodara. He further stated that under the test reports, the CRCL, Vadodara has confirmed that the goods under the above Bills of Entry is composed of carbonates of calcium & Magnesium (Dolomite);
- On being asked to define the goods Dolomite Blocks and its uses he stated that technically he was 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. Kailash Marble Industries Pvt. Ltd., Silvasa, he stated 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 he stated that M/s. Kailash Marble Industries Pvt. Ltd., Silvasa is in the business of Marbles and they are regularly importing the Marble Blocks/Slabs. Further, they were aware that they

will cut the blocks into slabs to sell in the market to use in the buildings for flooring, kitchen etc.;

- He was shown the panchnama dated 21.08.2023 drawn at the premises of ICDTumb, Vill – Tumb, Distt. Valsad, Gujarat. He read and understood the contents of the said panachnama and put his 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. He read and understood the table of the panchnama and find the Bills of Entry No. 6107970 dated 17.12.2019 and 6204822 dated 23.12.2019 in the table. He was shown ICD, Tumb Letter F. No. VIII/24/ICD-Tumb/2023-24 dated 23.11.2023 alongwith test memo No. ICD-Tumb/I-195/23-24 dated 23.11.2023 (Bill of Entry No. 6204822 dated 23.12.2019), test memo No. ICD-Tumb/ I-196/23-24 dated 23.11.2023 (Bill of Entry No. 6107970 dated 17.12.2019), sent to the Geological Survey of India, Nagpur, he read the same and understood that the above sealed samples of the imported cargo declared as 'Rough Dolomite Block' imported by the above stated respective importer vide above Bills of Entry at ICD, Tumb were sent to the Geological Survey of India, Nagpur for testing and put his dated signature on the same;
- In continuation to the above document he was shown the letter reference No. 131/Customs/TCS/GSI/CR/2023 dated 26.12.2023 issued by the Director, Geological Survey of India alongwith Petrological Test Reports dated 18.12.2023 i.r.o. Bills of Entry No. 6107970 dated 17.12.2019 and 6204822 dated 23.12.2019 issued by the Geological Survey of India, Nagpur for the above said samples. After reading and understanding the said document he put his dated signature on the same as a token of having perused the same. On being asked he explained that after Chemical Analysis/Testing of the samples of goods declared as "Rough Dolomite Blocks" imported by the above stated importer vide above Bills 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 physical, optical and limited chemical properties of rock, samples interpreted as Marble";
- Further, he was 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. He read and understood the letter and put his dated signature. From the letter dated 29.05.2024 he understood 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 'Dolomite' and 'Marble' respectively, therefore, it was requested to the GSI, Nagpur to specifically confirm whether the samples of rock covered in the above Bills of Entry are 'Dolomite' or 'Marble';

- He was 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. He read and understood the e-mail correspondence and the document and put his 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, he understood 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, he was 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 of and/or dolomitic limestone?
 5. Whether the rock is sufficiently hard and capable of taking polish can be used as marble slabs?
 6. Petrographic analysis of the rock?
 7. Whether it meets the specifications of marble? If yes, which type marble it is?
- He was 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 that e-mail also being shown to him. He read and understood the e-mail correspondence and the attached document and put his dated signature. He found that in the attached document above Bills of Entry are there and from the query answers he understood that the rock has been identified as Marble (recrystallized sedimentary rock with density 2.81/2.83 g/cc and more and chemical composition Calcium carbonate with magnesium).

Marble is **metamorphic rock / Dolomitic Marble** and can be polished and used as slabs. It meets the specifications of marble and can be categorized as **Marble**. It is understood 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. Compositonally marble can be calcite marble (mainly CaCO_3) or dolomitic marble (mainly CaMgCO_3). The specific gravity (density) varies from 2.6 to 2.8.g/cc;

- He was further 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 him. He read and understood the e-mail correspondence and the attached document and put his dated signature. He found that queries are replied by the Geological Survey of India as under:

Query	Reply (BE No. 6107970 dtd. 17.12.2019)	Reply (BE No. 6204822 dtd. 23.12.2019)
Whether the rock is sedimentary or metamorphic in nature	Recrystallized carbonate sedimentary rock. Please see the note below.	Recrystallized carbonate sedimentary rock. Please see the note below.
Specific gravity of the rock	2.81 g/cc	2.83 g/cc
Chemical composition of the rock	Calcium carbonate with magnesium	Calcium carbonate with magnesium
Whether the stone is formed from the re-crystallization of limestone and/or dolomitic limestone	Yes, the rock is formed due to recrystallisation of carbonate sedimentary rock	Yes, the rock is formed due to recrystallisation of carbonate sedimentary rock
Whether the rock is sufficiently hard and capable of taking polish and can be used as marble slabs	Yes	Yes
Petrographic analysis of the rock	Petrological test report submitted earlier is attached as pdf	Petrological test report submitted earlier is attached as pdf
Whether it meets the specifications of marble? If yes, which type of marble it is	Yes	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 CO_3) or dolomite marble (mainly Ca Mg CO_3). The specific gravity (density) varies from 2.6 to 2.8 g/cc.

- On being asked he stated 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' (Rough Dolomite Blocks- white colour) imported vide above Bills of Entry by M/s. Kailash Marble Industries Pvt. Ltd., Silvasa are actually 'Rough Marble Block of Dolomitic nature with specific gravity of more than 2.81 g/cc and composed of Calcium carbonate with magnesium. On being asked he stated that he agreed that as per the contents of the analysis report shown to him today the samples meet the specification of marbles. However, he would like to state that the sample of the goods imported under the above Bills of Entry were sent for testing at Central Excise and Customs Laboratory, Vadodara and their reports dated 26.12.2019 & 01.01.2020 (i.r.o. BE of M/s.Kailash Marbles) confirming the material imported was composed of carbonates of calcium and magnesium (Dolomite);
- On being asked about payment of customs duty against the imports under the above Bills of Entry he stated that in case of imports under above Bills of Entry customs duty was paid as applicable as per classification under CTH 25181000 instead of customs duty payable as per classification under CTH 2515, as per the test report issued of GSI, Nagpur;
- Then, he was 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 crystallized nature and non-flaggy stratification."

- Further, he 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, he stated that after going through the above literature, load port test report and Test Analysis Report of the Geological Survey of India, Nagpur, he understood and accepted 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 (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 re-crystallizes to form a rock that is a mass of interlocking calcite crystals. He also accepted 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 Shri Rupesh Jivanbhai Katariya stated that it seems that the goods imported by M/s. Kailash Marble Industries Pvt. Ltd., Silvassa declaring as 'Dolomite Blocks' under the above Bills of Entry meet the specifications of Dolomitic marble/ Marble and should have been classified under CTH 2515. Further, appropriate duty applicable on the imported goods under the above Bills of Entry, could not be paid at the time of import as the goods were declared as "Rough Dolomite Block" /"Rough Dolomite Block (White)" and classified the same under CTH 2518 instead of 2515;
- On being asked about the imports of Rough Marble Blocks undertaken by M/s. Kailash Marble Industries Pvt. Ltd., Silvassa; he stated that they had regularly imported only "Rough Marble Block" earlier under HSN code/CTH 2515 from various suppliers. On being specifically asked that when M/s. Kailash Marble Industries Pvt. Ltd., Silvassa, had earlier imported and classified the goods under CTH 2515 then why they were indulged in mis-classification under HSN code/CTH 2518, in this regard he stated that the importer informed them that the goods imported under the above Bills of Entry is different from the earlier imports and therefore, classified accordingly. He further stated that upon verification of Customs Tariff, they found that the declared description of goods in the import documents was covered under CTH 2518. On being asked about subsequent imports of Rough Marble Blocks undertaken by M/s. Kailash Marble Industries Pvt. Ltd., Silvassa he stated after DRI case on different importers they had started declaring the imported goods as Rough Marble Blocks (Rough Dolomite Blocks) classifying under CTH 25151210 and paid the customs duty applicable as per classification under CTH 2515;
- On being asked further he stated that being a company in the business of import and export in the capacity of a CHA, he was fully aware of the provisions of Customs Broker Licensing Regulations, 2018 and Customs Act, 1962. On being asked further regarding role and responsibility of a CHA under CBLR, 2018, he stated that being a Custom House Agent/Broker, as per the provisions of CBLR, 2018, they are abide by Regulation 10 of CBLR, 2018. He 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 them by the importer and the description was confirmed in live test report of the samples taken in the process of first check examination. He further stated that in the classification of the goods imported under the above Bills of

Entry their role as CHA was played by them with due precautions complying with the obligations under the CBLR,2018.

MODUS OPERANDI ADOPTED FOR EVASION OF CUSTOMS DUTY:

7. In view of the test report and facts discussed in the foregoing paras, it appears that 'M/s. Kailash Marble Industries Pvt. Ltd., Silvasa has imported the goods namely 'Rough Marble Blocks' by mis-declaring as 'Rough Dolomite Blocks' vide Bills of Entry No. 6107970 dated 17.12.2019 & 6204822 dated 23.12.2019. The importer, engaged in cutting of marble blocks into slabs and selling the same as rough marble slabs or polished marble slabs as per requirement of customer, was regularly importing Rough Marble Blocks, classifying under CTH 25151210 and paying applicable duty. The importer was in the field of processing the marble blocks and cutting into marble slabs to sale to the end user for use in building flooring, 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. It appears that the importer cleared the above consignment declaring as 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 subject goods.

7.1 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 Dolomite declaring under CTH 25181000 with intention to evade payment of customs duty. It appears that the goods 'Rough Dolomite Block' appears to be 'Rough Marble Block' and appears to be classified under CTH 25151210 with applicable customs duty, however, 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.

7.2 It appears that the importer in connivance with overseas supplier and submitting a test report which does not define and identify the critical parameters of the subject goods had evaded the applicable Customs duty liable to be paid to the Government Exchequer by way of mis-declaring the goods imported as 'Rough Dolomite Block' and thereby mis-classifying the same under CTH 25181000 in respect of the Bills of Entry No. 6107970 dated 17.12.2019 & 6204822 dated 23.12.2019 for which samples were tested by GSI, Central Region Nagpur and the test reports confirm that the sample meets the specification of marbles.

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

8.1 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 i.e. '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-196/23-24 dated 23.11.2023 i.r.o. of Bill of Entry No. 6204822 dated 23.12.2019 and test memo No. ICD-Tumb/I-196/23-24 dated 23.11.2023 i.r.o. of Bill of Entry No. 6107970 dated 17.12.2019 meets the specifications of "Marble". Further, the report clearly mentioned that the specific gravity of the rock is 2.81 /2.83 g/cc. The test report also confirmed that the rock identified and interpreted as Marble by them can be polished and used as building material/slabs. Thus, it appears that goods imported by the importer vide the above Bills of Entry were Blocks of Marble but appears to be mis-declared as 'Rough Dolomite Blocks' with intent to evade payment of duty.

8.2 During the course of inquiry it emerged that the mine test report, mineral and chemical analysis certificate were not existed at the time of import and later on arranged vide e-mail dated 29.09.2020, as produced during the course of recording of statement as under:

Request for Dolomite Test Report & Export declaration

Konstantis Tentzeris - MARMYK <konstantis@marmyk.com>
To: MARMO WORLD <marmoworld@gmail.com>

29 September 2020 at 13:00

Dear Mr. Shiv,

Thank you for your email we are all safe here we hope the same for you during these tough times.

Following up to your request please find attached Dolomite declaration, with this paper all India is doing customs for our material so I think will be ok for you also ☺.

Please let me know if you need any further info and I will get back to you asap.

I always remain at your disposal, looking forward to hearing from you.

Best Regards,

Konstantis Tentzeris

Regional Sales Manager



MARMYK ILIOPoulos
MARBLE QUARRIES – FACTORIES – EXPORTS
e-mail: info@marmyk.com - www.marmyk.com



We declare that the materials under our invoice: 000016 & 000015 are Dolomite according to the below mineralogical analysis:

 Year: 2011		Reference standard: EN 12058, EN 12057 & EN 1469 Product original name: Kasta Gold Origin: Oxyro, Drama prefecture, Greece Characteristic color: White - Gold Product Commercial name: Kasta Composition: Dolomite 98% & 2% Calcite	
Producer: MARMYK ILIOPoulos SA. Address: 64 Ag. Adrianou Str., Nafplio 21100, Greece			
Characteristics	Declared Values	Test Method	
Reaction to fire	Class A1	Without testing (see Decision 96/603/EC, as amended)	
Flexural strength	Mean value: 4.5 MPa Lower expected value: 3.8 MPa	EN 12372	
Water absorption at atmospheric pressure	0.3 %	EN 13755	
Water absorption coefficient by capillarity	4.714 g/(m ² x sec ^{0.5})	EN 1925	
Apparent density	2830 kg/m ³	EN 1936	
Open Porosity	0.9 %	EN 1936	
Abrasion resistance	31236 mm ³ (volume loss)	EN 14157 (method B)	
Slip resistance: <i>Polished surface</i>	SRV DRY = 64 - SRV WET = 5	EN 14231	
Determination of flexural strength under concentrated load	Mean value: 4.6 MPa Lower expected value: 3.8 MPa	EN 12372	

Marbles B1 Mkt.
23/11/24

Yours faithfully,
on behalf of MARMYK ILIOPoulos SA.
Konstantinos Tentzeris

The document appeared not existed at the time of import and subsequently, the same appeared that it had been arranged by exchanging correspondences between the importer and supplier. It appears that the document appears afterthought but an attempt by the importer to coverup the mis-classification. It appears that the subject goods imported by them under the above Bills of Entry appears Marble, as confirmed in the test reports by Geological Survey of India, Nagpur.

8.3 An e-mail dated 27.11.2024 was sent to M/s.Marmykl Iliopoulos S.A. Head office: 64, AG.Adrianou STR.-N Afplion 21100, Greece, e-mail id - info@marmyk.com, the supplier of goods cleared under the above Bill of Entry of M/s.Kailash Marble Industries Pvt. Ltd., seeking their submission/clarification regarding supply of goods by them declaring 'Rough Dolomite Blocks'. No response was received therefore, reminder e-mail dated 05.12.2024 was again sent specifically stating that failing to submit the desired submission/clarification/information called under the provisions of the Section 108 of the Customs Act,1962, it would be presumed that the goods supplied under the above invoice was 'Marble' and you have knowingly mentioned the description of goods as 'Rough Dolomite Blocks' in connivance with the Indian buyer (Indian importer) and necessary action shall be initiated under the provisions of the Customs Act, 1962. No response was received therefore, reminder e-mail dated 09.12.2024 was again sent to M/s. Marmykl Iliopoulos vide e-mail dated 11.12.2024 has forwarded the report received from the Hellenic Survey of Geology and Mineral Exploration, which is the organization of the Ministry of Environment and Energy of Greece and responsible for the classification of the marbles in Greece.

8.4 An excerpt of the report speaks about Dolomitic Marble, as follows:

The Greek marble «VOLAKAS» of Ochyro, Drama Prefecture

Introduction

*The following discussion has been issued and it is referred to the dolomitic dimension stone material **commercially** known as «VOLAKAS» of Ochyro. **This dolomitic marble** is quarried in East Makedonia – Greece, the most productive region of white marble: Drama and Thassos.*

8.5 It is further appears from the above report that:

The following table shows the complete classification of the marble according to dolomite content:

Marble according to dolomite content

Calcitic marble	0 % vol. to 10 % vol.
Calcitic-dolomitic marble	10 % vol. to 50 % vol.
Dolomitic-calcitic marble	50 % vol. to 90 % vol.
Dolomitic marble	90 % vol. to 100 % vol.

*Taking into consideration what above and comparing that with the result of the chemical and mineralogical test carried out to the dolomitic dimension stone material **commercially** known as «VOLAKAS» of Ochyro marble, it is possible to state that the material is 96 to 98% Dolomite with a 2 to 4% of Calcite. **The chemical analyses allow to classify this marble as “Pure Dolomitic marble” suitable for the purposes of application.***

8.5.1 *The conclusion para of the report states that:*

“Conclusion

On the basis of the chemical analyses and the physical mechanical properties, the writer certainly affirm that the marble in question has the characteristics to be an excellent dimension stone and also by the above data is that the marble commercially known as commercially «VOLAKAS» of Ochyro are in all respects a Dolomitic marble or magnesian marble (according the EN 12670).

Taking into consideration that these stone are used and traded as dimension stone generally leads the Customs Authorities to classify this material as marble (code 2515: marble, travertine, eucassine and other calcareous monumental or building stone), but if we were to consider the nature of the product, regardless of its use, it seems logical that «VOLAKAS» of Ochyro blocks should be classified as dolomite (code 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 shape).

The main reason that suggest to classify these dimension stone blocks with the code 2518 is essentially due to the fact that the description of the materials included in the code 2515 clearly states that they must be calcareous while these are absolutely dolomitic in nature.”

8.5.2 The report initially mentions dolomitic marble in the introduction, but later refers to both marble and dolomitic marble in the conclusion. Finally, it reports that ‘it seems logical that the block should be classified as dolomite. In the above report under introduction para, it reports dolomitic marble, and in the conclusion para it reports marble and dolomitic marble and thereafter that these are dolomitic in nature. Therefore, inconsistency is there in the report and hence, it appears that the above report is not a decisive report.

8.6 It appears that in the above report emphasis has been given that the goods supplied by M/s.Marmyk Iliopoulos S.A. vide invoice No. INOM 000015 dated 25.10.2019 and INOM-000016 dated 04.11.2019 and imported by M/s.Kailash

Marble Industries Pvt. Ltd. declaring as 'Rough Dolomite Blocks' was 'Dolomitic Marble'. The test reports by Geological Survey of India, Nagpur, has also confirmed that the rock sample has interpreted as Marble. Further, **Dolomitic Marble** is also a form of marble, 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) as detailed below.

8.7 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. **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.

8.8 Further, the subsequent imports undertaken by the importer under several Bills of Entry were declared as "Rough Marble Blocks" and classified under CTH 25151210, and paid the customs duty applicable as per classification under CTH 2515, as stated by Shri Kamal Kailash Mour. The version of Shri Kamal Kailash Mour also corroborated with the import data of the importer which shows that the importer has declared the good in subsequent imports as "Rough Marble Blocks". Sample Bills of Entry are mentioned here 6802417 dated 07/02/2020; 6875093 dated 13/02/2020; 7556716 dated 30/04/2020; 8101537 dated 07/07/2020; 9098234 dated 08/10/2020. The same appears to indicate that the goods imported by the importer under the above Bills of Entry No. 6107970 dated 17.12.2019 & 6204822 dated 23.12.2019 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.

8.9 Shri Kamal Kailash Mour, Director & authorized signatory of M/s. Kailash Marble has admitted in his statement dated 23.10.2024 that their company imports and deals in the marble blocks and slabs. After processing the imported marble blocks into slabs at their processing plant, they sell it as marble slabs. He visited/interacted with overseas buyers for import and after selection of rock to be imported, they finalised the deal and accordingly obtain documents from the overseas supplier. They had regularly imported only "Rough Marble Block" earlier under HSN code/CTH 25151210 from various suppliers. They have imported the Marble Blocks of Dolomite nature with its genesis name 'Dolomite Blocks' with classification under HS Code/CTH 2518 and imported the same under the above mentioned Bills of Entry. About subsequent imports of Rough Marble Blocks undertaken by the importer, he stated that, the subsequent imports of the same goods undertaken by their company were declared as "Rough Marble Blocks" and classified under CTH 25151210. The said classification was decided by the importer company as the same was classified and imported by other importers as well. He has accepted that the customs duty on the goods imported under above Bills of Entry was paid as per classification under CTH 2518 and has assured that they would make the payment of differential duty at the earliest after arranging the funds, if found liable to pay.

8.10 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 crystallized nature and non-flaggy stratification. (**Note-** Sometimes rocks, such as serpentine are also polished and used in trade as marble.)

8.11 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').

8.12 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.* 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').*

8.13 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 Bill of Entry appears classifiable under chapter heading 25151210 of Indian Customs Tariff.

8.14 Shri Kamal Kailash Mour, Director & authorized signatory of M/s. Kailash Marble and Shri Rupesh Jivanbhai Katariya the G-card holder of Customs House broker have stated in their respective statements that as per the test reports, IS 1130-1969 (Indian Standard: Specification for Marble), and the HSN notes, the goods imported by M/s. Kailash Marble under the above Bills of Entry declaring as 'Rough Dolomite Block' meets the specifications of 'Marble' and should have been classified under the CTH 2515 instead of 2518. Further, the goods imported by the importer under the above Bills of Entry declaring as Dolomite Blocks appears processed in their plant located at Silvasa in the same manner as they do for Marble blocks into Marble Slabs and the same was sold to use in building/kitchen flooring etc. as building material.

9. In view of the above, it appears that goods declared as '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'.

10.1 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.*'

10.2 The importer appears to have imported 'Rough Marble Block' by mis-declaring the same as 'Dolomite Block' and thereby appears to have mis-classified under Customs Tariff Heading 25181000 vide the Bills of Entry No. 6107970 dated 17.12.2019 & 6204822 dated 23.12.2019. Further, the Geological Survey of India, Central Region, Nagpur after testing/chemical analysis of the sample along with response of queries confirmed that the samples 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 classification under CTH 25181000 declared.

11. From the facts in the case, it appears that the importer was well 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, 'Rough Dolomite Blocks' are infact 'Rough Marble Blocks'. The above wilful suppression and wilful 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.

12. Therefore, it appears that the goods imported by the importer appears to be been appropriately classified under CTH 25151210 and accordingly appears to have been assessed to applicable rate of Customs duty as applicable for CTH 25151210 during relevant period.

VIOLATION OF LEGAL PROVISIONS OF CUSTOMS ACT, 1962

13. 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 is evident that the actual facts was only known to the importer about the product and aforesaid fact came to light only subsequent to the in-depth investigation and after chemical analysis of the product. 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.

14. From the aforesaid, it appears that the importer had knowingly and deliberately indulged in suppression of facts and had wilfully misrepresented/mis-stated the material facts regarding the goods imported by them, in the declarations made in the import documents including Check lists presented for filing of Bills of Entry presented before the Customs at the time of import for assessment and clearance, with an intent to evade payment of applicable Customs Duty. Therefore, the duty not paid/short 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.10,90,733/-** 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. -

- (1) 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.
- (2) 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, reassess 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. —

.....

.....

[(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 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.]

15. The importer appears to have imported 'Rough Marble Blocks' valued at **Rs.21,59,655/-** as detailed in **Annexure-A to this SCN** 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 Section 46(4) of the Customs Act, 1962. In terms of Section 46(4) of Customs 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 had failed to fulfil in respect of the imports of 'subject goods' vide above Bills 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;

16. The aforesaid acts which appear to be of suppression of facts and wilful mis-statement by the importer appears to result in evasion of Customs duty of **Rs.10,90,733/-**, 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.10,90,733/-** appeared evaded by reason of wilful 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.21,59,655/-** 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 only 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;]

(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.]

17. It further appears that mis-declaration of description and mis-classification of goods in the import documents viz. Bills of Entry presented by the importer before the Customs authorities, was done on the directions and under the guidance of Shri Kamal Kailash Mour, Director and Authorized Signatory, of M/s. Kailash Marble Industries Pvt. Ltd. to willfully suppress the correct description and classification of goods with an intent to evade payment of applicable Customs Duty. Shri Kamal Kailash Mour appears to have knowledge about the mis-classification of the said imported goods in as much as he was overall responsible for all imports and finalization of classification of imported goods. All the aforesaid acts of omissions and commissions on the part of Shri Kamal Kailash Mour 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 Kamal Kailash Mour 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 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 'Dolomite Blocks' was different from the description mentioned in earlier consignment and that the importer was engaged in the process of cutting the marble blocks into slabs and polishing it to sale the same for use in building /kitchen flooring and 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 it was evident from the documents available in the form of chemical analysis/test report of samples taken from import consignments of the importer and statements of Shri Kamal Kailash Mour, Director and Authorized Signatory of the importer and Shri Rupesh of M/s. International Cargo Corporation. 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 exercise 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 appears 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. The relevant provisions of Section 112(a), and Section 114AA of the Customs Act, 1962.

19.1 In view of the above, Show Cause Notice No. CUS/APR/INV/439/2024-ICD-UMGN-CUS-COMMRTE-AHMEDABAD dated 07.01.2025, bearing DIN No.20250171MN00001631B9 issued to the importer M/s. Kailash Marble Industries Pvt. Ltd., (IEC No. 0301024201), Survey No.15/3, Near Swati Chemical, Village Kharadpada, Silvasa, UT of Dadra Nagar Haveli - 396235, are hereby called upon to show cause to the Additional Commissioner of Customs, ICD, Tumb, having his office at 1th Floor, ICD, Tumb, S. No. 44/1/P.K. 2, Village-Tumb, Tal.: Umbergaon, Dist.: Valsad, Gujarat-396150 as to why:-

- (i) The declared classification of the subject goods under CTH 25181000 in the Bill 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;
- (ii) The goods valued at Rs.21,59,655/- (Rs. Twenty One Lakhs, Fifty Nine Thousand, Six Hundred and Fifty 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 are not available for confiscation, why fine in lieu of confiscation should not be imposed;
- (iii) Differential/Short paid Customs duty amounting to Rs. 10,90,733/- (Rs. Ten Lakhs, Ninety Thousand, Seven Hundred and Thirty Three 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.

19.2 In view of the above, Show Cause Notice No. CUS/APR/INV/439/2024-ICD-UMGN-CUS-COMMRTE-AHMEDABAD dated 07.01.2025, bearing DIN No.20250171MN00001631B9 issued to the importer M/s. Kailash Marble Industries Pvt. Ltd., (IEC No. 0301024201), Survey No.15/3, Near Swati Chemical, Village Kharadpada, Silvasa, UT of Dadra Nagar Haveli - 396235 calling upon to show cause, in writing, to the Additional Commissioner of Customs, ICD, Tumb, as to why:-

- i. Penalty should not be imposed upon him under Section 112(a) and 112(b) of the Customs Act, 1962 for his role as discussed in para supra.

- ii. Penalty should not be imposed upon them under the provisions of Section 114AA of the Customs Act, 1962.

19.3 In view of the above, Show Cause Notice No. CUS/APR/INV/439/2024-ICD-UMGN-CUS-COMMRTE-AHMEDABAD dated 07.01.2025, bearing DIN No.20250171MN00001631B9 issued to M/s. International Cargo Corporation (Customs Broker) 221, Ecstasy, 1st Floor, Business Park, City of Joy, Mulund (W), Mumbai - 400080 calling upon to show cause, in writing, to the Additional Commissioner of Customs, ICD, Tumb, as to why:-

- i. Penalty should not be imposed upon him under Section 112(a) of the Customs Act, 1962 for his role as discussed in para supra.
- ii. Penalty should not be imposed upon them under the provisions of Section 114AA of the Customs Act, 1962.

20. Written Submission:

20.1 M/s. Kailash Marble Industries Pvt. Ltd. vide their letter dated 07.01.2025 received on 30.04.2025 filed common rely to the Show Cause Notice issued to the importer (Noticee No.1) and Shri Kamal Kailash Mour, Director and Authorized Signatory, M/s. Kailash Marble Industries Pvt. Ltd. (Noticee No.2) wherein they interalia stated as under:

20.1.1 That noticee No.1 and 2 denies all the allegations raised in the captioned SCN and submits that they have not contravened the provisions of the Customs Act and/or the Rules made thereunder or any other statutory provisions. They further submits that there has been no mis-declaration on their part in respect of the imported goods and the applicable duties of Customs have been duly assessed and paid. Accordingly, it is submitted that the captioned SCN is bad in law and deserves to be dropped on the basis of the submissions set out hereunder, each of which is in the alternative and without prejudice to the other.

20.1.2 That Noticee is, *inter alia*, engaged in the business of manufacturing rough marble/dolomite into marble/dolomite slabs respectively and trading in such marble/dolomite slabs. The Noticee accordingly, imports natural rough marble/dolomite blocks and undertakes manufacturing and processing, as per the requirements of its customers.

20.1.3 That Noticee had imported rough dolomite blocks vide two Bills of Entry and had classified the said imported goods under CTI 2518 10 00. The said imported goods had been subjected to thorough testing by the supplier, Marmyk Iliopoulos, who provided a Test Report declaring the goods as 'Dolomite', which is an attachment to RUD-11 of the SCN. Thereafter, the Department itself had directly requested the supplier for clarification of the goods, vide emails in November 2024 (RUD-13 of the SCN). To this, the supplier had obtained a Certification from the Hellenic Survey of Geology & Mineral Exploration, Greece ('**HSGME**'), wherein, it was certified that the said imported goods were Dolomite. Copies of the Bills of Entry are part of a separate compilation of documents and have been marked as "**Exhibit-A (Colly.)**". Furthermore, the copies of the Greek supplier's test reports as well as the HSGME Certification have been annexed.

20.1.4 That Noticee classified the goods under CTI 2518 10 00 and claimed the benefit of exemption from payment of Basic Customs Duty under Notification No. 57/2017-Cus dated 30.06.2017 (Sl. No. 120) and from payment of Integrated Goods and Services Tax under Notification No. 01/2017-IGST dated 28.06.2017 (Sl. No. 127).

20.1.5 That the Noticee states that the representative samples of the said imported goods were drawn and sent by the Department to the Chemical Examiner, Central Excise & Customs Laboratory, Vadodara ("CRCL") to ascertain the nature of the said goods. It is stated that CRCL is a Government Laboratory under the control of Central Board of Excise and Customs ("CBEC"), as it was known then (now known as CBIC), Department of Revenue, Ministry of Finance, responsible for providing high quality chemical analysis of samples received, by testing through standard test procedures and issuing unbiased test reports/technical opinions to assist field formations of CBIC and other agencies in discharge of their functions.

20.1.6 After testing the samples of the imported goods, the Ld. Chemical Examiner, CRCL concluded that the goods imported by the Noticee were composed of Carbonates of Calcium ('Ca') and Magnesium ('Mg') and were hence, Dolomite. Accordingly, basis the said Test Reports of the CRCL, the assessments made by the Noticee were accepted and Out-of-Charge orders under Section 47 of the Customs Act were issued against each Bill of Entry for clearing the said goods for home consumption. The details of the Bills of Entry, corresponding CRCL Test Reports and Out-of-Charge orders are more particularly set out hereunder:

Sl. No.	Bill of Entry details	CRCL Test Report details	Date of Out-of-Charge Order
1.	6107970 17.12.2019	dated ICD-Tumb/I-164/19- 20 dt. 19.12.2019	26.12.2019
2.	6204822 23.12.2019	dated ICD-Tumb/I-173/19- 20 dt. 24.12.2019	01.01.2020

20.1.7 After a period of almost three years, it appears that the Revenue, for reasons best known to them, chose to send the remnant samples of the goods imported by various importers of Marble and Dolomite, including those of the Noticee, to the Geological Survey of India, Central Region, Nagpur ('GSI') for testing on the following counts (as set out in Para 3.1 of the SCN):

- i. *"Test reports 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 1C503M, 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."*

20.1.8 The representative samples of goods imported by various importers including those of the Noticee, which were drawn under Panchnama dated 21.08.2023 at the premises of ICD Tumb were sent to GSI under cover of letters dated 23.11.2023 (RUD No. 3 and RUD No. 4) issued by

the Deputy Commissioner of Customs, ICD Tumb with two queries viz. i) Whether the sample conformed to the description 'Rough Dolomite Block', and ii) If the sample was other than Rough Dolomite Block, to specify the exact description of the sample. Copy of the Panchnama dated 21.08.2023 is part of the compilation Furthermore, the cover of letters dated 23.11.2023 (RUD No.4) issued by the Deputy Commissioner of Customs, ICD Tumb are annexed

20.1.9 The GSI issued the Petrological Test reports in respect of the samples sent to them. Their observations in respect of each sample are more particularly stated hereunder:

Sl. No.	Bill of Entry and GSI test memo details	Findings in CRCL Test Report	Findings in GSI Test Report
1.	6107970 dated 17.12.2019. Sent to GSI vide Test Memo No. ICD-Tumb/I-196/23-24 dated 23.11.2023.	Sample composed of carbonates of Ca and Mg (Dolomite); CaO (Calcium Oxide): 33.2% by weight; MgO (Magnesium Oxide): 19.3% by weight	Based on physical, optical and limited chemical properties of rock sample interpreted as Marble.
2.	6204822 dated 23.12.2019. Sent to GSI vide Test Memo No. ICD-Tumb/I-195/23-24 dated 23.11.2023.	Sample is composed of carbonates of Ca and Mg (Dolomite).	Based on physical, optical and limited chemical properties of rock sample interpreted as Marble.

20.1.10 Pursuant to receipt of the said Test Reports from GSI, the Deputy Commissioner of Customs, ICD Tumb found that certain observations made by GSI in respect of the above samples (whereby it was concluded that the samples were that of Marble) were similar to cases where GSI had concluded the samples to be Dolomitic Marble or Dolomite. Accordingly, vide letter dated 29.05.2024, the Deputy Commissioner requested GSI to confirm whether the above samples were Dolomite or Marble. In response to the said request, GSI, vide email dated 31.07.2024 remarked 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.'

20.1.11 Thereafter, vide email dated 16.08.2024 and letter dated 21.08.2024, the Deputy Commissioner posed the following questions with respect to the test reports issued by GSI:

- 20.2 Whether the rock is sedimentary or metamorphic in nature?
- 20.3 Specific gravity of the rock?
- 20.4 Chemical composition of the rock?
- 20.5 Whether the stone is formed from the re-crystallisation of limestone and/or dolomitic limestone?
- 20.6 Whether the rock is sufficiently hard and capable of taking polish and can be used as marble slabs?
- 20.7 Petrographic analysis of the rock?
- 20.8 Whether it meets the specifications of marble? If yes, which type of marble is it?

20.1.12 The Noticee states that GSI, vide email dated 30.08.2024, responded to the above queries:

Sl. No.	Bill of Entry and GSI test memo details	GSI's response
1.	6107970 dated 17.12.2019. Sent to GSI vide Test Memo No. ICD-Tumb/I-196/23-24 dated 23.11.23.	The rock has been identified as ' Marble '; Recrystallised carbonate sedimentary rock; Specific gravity: 2.81 g/cc ³ Chemical composition: Calcium carbonate with magnesium; Rock formed by recrystallization of dolomitic limestone; Sufficiently hard and capable of taking polish and can be used as marble slabs; Meets the specifications of Marble .
2.	6204822 dated 23.12.2019. Sent to GSI vide Test Memo No. ICD-Tumb/I-195/23-24 dated 23.11.23.	The rock has been identified as ' Marble '; Recrystallised carbonate sedimentary rock; Specific gravity: 2.83 g/cm ³ Chemical composition: Calcium carbonate with magnesium; Formed by recrystallization of carbonate sedimentary rock; Sufficiently hard and capable of taking

Sl. No.	Bill of Entry and GSI test memo details	GSI's response
		polish and can be used as marble slabs; Meets the specifications of Marble .

20.1.13. Basis the above observations made by GSI, the Revenue was of the view that the goods imported by the Noticee were actually 'Rough Marble Blocks', composed of calcium carbonate with magnesium and met the specifications of marble.

20.1.14 Further, the Noticee submits that the Department itself had requested clarification on the classification of the imported goods from the Greek Supplier vide email sent by the Customs Commissionerate to Marmyk Iliopoulos on 27.11.2024,. The Greek supplier then, vide email sent on 11.12.2024, supplied to the Customs Commissionerate a certification by HSGME, which is the organization of the Ministry of Environment and Energy of Greece, and responsible for the classification of Marble in Greece. The email specified that the products have been classified on the basis of laboratory tests held by the Greek Authorities following the Greek and European Standards.

20.1.15 Further also the Noticee submits that the HSGME Certification dated 12.09.2024 (RUD-14 of the SCN) identifies the goods imported as Pure Dolomitic Marble under the commercial name "VOLAKAS". The HSGME certification has explained, in depth, the characteristics of Dolomitic Marble such as the physical mechanical properties and the chemical composition. In its conclusion, it has specified that the said imported goods, on the basis of chemical and physical mechanical analyses, have the characteristics of 'Volakas' of Ochyro, which is in all respects a Dolomitic marble. In relation to the entry under the Indian Customs Tariff specifically, it has specified that considering the nature of the product, it should be classified as Dolomite under Chapter Heading 2518. The main reason for this being that the description of the materials included under Chapter Heading 2515 clearly states that they must be calcareous, while the imported goods are "absolutely dolomite in nature."

20.1.16 That the Noticee submits that the Department has further failed to appreciate that the institute HSGME, Greece, which has issued the aforementioned certification, is a reputed institute and therefore, the certifications issued by them carry certain authority. Accordingly, it is submitted that the Department ought not have disregarded such certification, prior to issuance of the captioned SCN, especially in the absence of any cogent

reason for doing so, especially because it was the Department itself that had sought the clarification.

20.1.17 That the Noticee submits that the Department ought not have disregarded the HSGME Certification, without any cogent basis when the said certification was arrived at after a detailed analysis by a well-reputed institute, at the request of the Department itself vide its email to the Greek supplier.

20.1.18 Without prejudice to the other submissions, the Noticee submits that the Department's conclusion that 'Dolomitic Marble' falls under Marble as per Chapter Heading 2515 of the Indian Customs Tariff is erroneous.

20.1.19 That the Notice seems to be using the terms 'Dolomitic Marble' and 'Marble' synonymously (Paragraph 17.5 of the SCN). They have relied upon the Indian Minerals Yearbook 2013 (Part III : Mineral Reviews) to classify Dolomitic Marble as Marble (Para 17.5 of SCN with reference to RUD-15). The entries under 'Marbles' in the Indian Minerals Yearbook include 'Calcite Marble', 'Dolomitic Marble', 'Serpentine or Green Marble', and 'Travertine Marble'.

20.1.20 That the Noticee submits that the Indian Minerals Yearbook refers to 'Marbles' in a wider, more generic context, which is not in line with the narrower, more specific context prescribed under Chapter Heading 2515. The Chapter Heading 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

20.1.21 That the Noticee submits that 'Marble' as referred to in the Chapter Heading 2515 is referring to 'Calcite Marble' as it is followed by "and other calcareous monumental or building stone." This classifying condition suggests that the reference to 'Marble' is to be read as Calcareous Marble or 'Calcite Marble.' As is seen through the GSI, Nagpur report the imported goods under the Bills of Entry No. 6107970 dated 17.12.2019 and No. 6204822 dated 23.12.2019, are 'dominantly composed of Dolomite with subordinate Calcite', clearly indicative that the samples are not calcareous in nature.

20.1.22 Furthermore, the Noticee submits that the 'Marble' referred to in the Chapter Heading 2515 cannot mean to include all the classifications of Marble as in the Indian Minerals Yearbook as 'Travertine Marble' is one of the types of Marble. This is not harmonious with the Tariff entry which reads "Marble,

travertine," where there is a distinction drawn between Marble and Travertine, classifying them as separate materials. The different classifications of materials viewed under the genus 'Marble' in the Indian Minerals Yearbook cannot be translated to mean that those classifications would fall under 'Marble' in Chapter Heading 2515.

20.1.23 That the Noticee submits that the Department has been erroneous in reading the Indian Minerals Handbook harmoniously with the Indian Customs Tariff as it is abundantly clear that 'Marble' in the former is referred to in its wider context, while the former refers to 'Marble' in its narrower sense, in its Calcareous form and distinct from Travertine.

20.1.24 Therefore, the classification of Dolomitic Marble under Marble as per the Indian Minerals Yearbook cannot be made to translate to Dolomite being 'Marble' as per the Indian Customs Tariff, which refers to marble in its calcareous and narrower sense. The Department has erred in drawing such a conclusion by directly translating the interpretation of the Indian Minerals Yearbook to the classification of Marble under Chapter Heading 2515.

20.1.25 At the outset, the Noticee submits that the representative samples of the goods in question, along with specific test queries, were sent to the Chemical Examiner, CRCL, which is specifically authorized to test samples for Excise and Customs purposes only. Accordingly, the concerned Chemical Examiner had conducted a detailed examination and issued the Test Reports, basis the queries sought to be answered, certifying that the goods were composed of Carbonates of Calcium & Magnesium (Dolomite).

20.1.26 The Noticee submits that CRCL is a Government Laboratory and the Department's own division, specifically authorized to test samples for Excise and Customs purposes. These laboratories assist the field formations in chemical analysis of samples of various trade commodities to enable appropriate assessment of duties. Thus, it was incumbent on the part of the Department to take into account the Test Reports issued by CRCL, which is specifically authorized by CBIC to test samples and ought to have not disregarded the same, merely on the ground that the said Test Reports were allegedly prepared in a very short period and had not considered certain critical parameters.

20.1.27 Reliance in this regard is placed on the judgment of the Hon'ble Supreme Court in the case of **Quinn India Ltd. v. C.C.E., Hyderabad [2006 (198) E.L.T. 326 (S.C.)]**, wherein it was held that test report of CRCL should

be accepted unless demonstrated to be erroneous and the said report cannot be brushed aside. In the instant case, the Department has not produced any evidence to indicate, let alone establish, that the CRCL reports were erroneous in any way, apart from making vague allegations in the SCN that the said reports were issued in a very short period and that allegedly certain critical parameters were not tested, which were never asked to be tested by the Department at the first place.

20.1.28 The Noticee submits that the Chemical Examiner had examined the goods and prepared the reports basis the test queries put to him by the Department. It is pertinent to note here the Department had not instructed/requested CRCL to test any specific parameter such as specific gravity and in the absence of such query/instruction forming part of the test memo, the Test Reports could not have been disregarded for want of certain specific parameters having not been mentioned in the test memo at the first place.

20.1.29 Moreover, even the report of GSI, which was prepared after multiple queries were put to it to examine the specific gravity of the goods, has actually failed to examine the specific gravity, which as per the Department is a critical criterion for ascertaining the nature of the imported goods. This is evident from the query answers which provide for the density of the goods and the petrological reports which interchangeably use the terms 'density' and 'specific gravity', but express the values for both in g/cm³ (which is a unit representing density and not specific gravity).

20.1.30 Thus, in light of the above, it was not permissible for the Department to disregard the Test Reports issued by CRCL on the ground that specific parameters were not tested, or that the report was issued in a very short period of time and conclude that CRCL had deliberately and wilfully attempted to certify the goods in question as Dolomite.

20.1.31 It is submitted that the aspersions cast on the CRCL in the SCN are serious, grave, unfounded and without any basis whatsoever and raise a larger question as to whether opinions and reports of the CRCL can at all be relied upon in matters of assessment of duties in respect of imported goods.

20.1.32 The Noticee submits that the opinion of the CRCL must prevail over any other expert in matters relating to classification of the products resulting from chemical process as held by the Hon'ble Customs, Excise & Service Tax Appellate Tribunal ('Hon'ble Tribunal') in the case of **Rane Brake Linings v. C.C.E., Chennai [2007 (215) E.L.T. 144]**. Accordingly, the Noticee

submits that it was incumbent on the part of the Department to consider the said Test Reports and opinion of the CRCL which appropriately certified the goods to be "Dolomite".

20.1.33 The Noticee submits that the Department ought to have asked the CRCL to re-test the goods in 2020 itself if they were not satisfied with the manner in which the CRCL had conducted the tests and issued their reports.

20.1.34 Without prejudice to the above, the Noticee submits that, when the Department received intelligence of the alleged mis-declaration and misclassification of goods undertaken by the Noticee, it ought to have sent samples of the goods to the very same laboratory viz. CRCL for retesting, with a list of specific parameters to be analyzed, instead of sending the same to the Geological Survey of India, Nagpur, which is an altogether different organization.

20.1.35 Reliance in this regard is placed on the decision of the Hon'ble Tribunal in the case of **Smart Designer v. Commissioner of Customs (Import), Mumbai [2019 (367) E.L.T 299 (Tri-Mumbai)]**, wherein it was held that subsequent revision of the classification based on second contrary Test Report was not sustainable and second test, if required, ought to have been carried out by the same Laboratory (i.e. CRCL) after following the prescribed procedure.

20.1.36 Thus, in light of the above, the Noticee submits that the Test Reports of the CRCL cannot be disregarded to propose a change in classification of the imported goods. Without prejudice, assuming whilst denying that the said goods were required to be re-tested, the remnant samples ought to have been sent to the CRCL itself. Accordingly, it is submitted that the SCN be dropped on this count alone.

21. That the Noticee submits that the CBIC, vide Circular No. 30/2017-Cus dated 18.07.2017 has prescribed the procedure to be followed in case of re-testing of samples. It is submitted that in cases where the re-testing procedure is done at the instance of the Department, the procedure prescribed thereunder was to be followed *mutatis mutandis*.

22. The said Circular prescribes that in cases of re-testing, the request for re-testing of the samples is required to be made in writing to the said officer within a period of 10 days from the receipt of the communication of the test results of the first test. The relevant portion of the Circular is reproduced below:

“b. In case the importer or his agent intends to request the Additional/ Joint Commissioner of Customs for a re-rest, then the same shall be made in writing to the said officer within a period of ten days from the receipt of the communication of the test results of the first test. Customs officers may take a reasoned view in case the importer or his authorized representative Customs Broker is unable to do so for reasons beyond his control.”

(emphasis supplied)

Copy of the Circular No. 30/2017-Cus dated 18.07.2017 is part of the compilation

- 23.** That the Noticee submits that the Test Reports from CRCL were received on 26.12.2019 and 01.01.2020. However, the remnant samples for retesting were drawn after a lapse of about 3.5 years on 21.08.2023 and sent for retesting to GSI, after a further delay, i.e. in December 2023. Thus, it is evident that the retesting in the present case has been conducted in contravention of the procedure prescribed in the said Circular.
- 24.** That the Noticee submits that it is a settled position of law that Circulars issued by the Board are binding on the Department. Reliance in this regard is placed on the following judgments of the Hon'ble Supreme Court:
 - i. **Commissioner of C. Ex., Bolpur v. Ratan Melting & Wire Industries [2008 (231) E.L.T. 22 (S.C.)];**
 - ii. **State of Kerala v. Kurian Abraham Pvt. Ltd. [2009 (16) S.T.R. 210 (S.C.)];**
 - iii. **Ranadey Micronutrients v. Collector of Central Excise [1996 (87) E.L.T. 19 (S.C.)];**
 - iv. **Union of India v. Arviva Industries (I) Ltd. [2007 (209) E.L.T. 5 (S.C.)]**
- 25.** Therefore, in light of the above, the Noticee submits that the manner of retesting in the present case being in blatant violation of the due procedure of law and the Department's own Circular, is illegal and thus, the SCN, issued solely on the basis of the reports of such retesting, deserves to be dropped on this count alone.
- 26.** Without prejudice to the above, the Noticee submits that as per the Panchnama, the remnant samples, as returned by CRCL, had been stored in a godown, from where it was retrieved and samples were drawn and sent for retesting to GSI.

27. Further, it appears that samples of 15 importers were stored together at ICD Tumb which were then sent to GSI for testing after a period of more than three years under cover of letters dated 26.08.2023, 20.12.2023 and 10.01.2024. From the contents of the Panchnama, it is not forthcoming as to (i) how the remnant samples had been stored since 2019/2020, (ii) the precautions taken while drawing the samples to ensure that the samples didn't get mixed up and (iii) the manner in which these samples were sealed and dispatched to GSI.

28. It is further submitted that given the fact that all samples, i.e., pertaining to various importers, look the same to the naked eye and have no distinguishing features in physical appearance, it was imperative on the part of the Department to have taken utmost care in storing, drawing and sending such samples for re-testing, which it has evidently failed to do. There is an apparent possibility that various factors such as passage of time, multiple number of importers, similar nature of goods and lack of precautions in storing, sampling and dispatching the said goods led to erroneous results in the test reports issued by GSI.

29. It is pertinent to note that proper sampling and testing of the samples drawn by the Department was imperative under the facts and circumstances of the present case, as the very assessment (which had attained finality by virtue of the Out-of-Charge orders issued pursuant to the CRCL Test Reports) has been brought into question on the basis of the GSI Test Reports.

30. Without prejudice to the above, the Noticee submits that the reports issued by GSI do not inspire confidence in the manner in which conclusions have been arrived at, which are contrary to the observations made in the very same reports. It is submitted that the observations and corresponding conclusions are not at all in tandem as is evident from a plain reading of the same.

31. It is further submitted that on perusal of different reports issued by GSI, it is evident that they have arrived at different conclusions in respect of goods imported by different importers, although the observations made in such reports were similar. Therefore, the overall reading of the GSI reports leaves one wanting further clarification in respect of the conclusions, which is also evident from the correspondence exchanged between the Department and GSI. However, even the responses shared by GSI from time to time lend no credence to an otherwise unreliable report.

32. The Noticee submits that the Department has disregarded the reports of CRCL on the count that CRCL has not considered the specific gravity of the goods and deliberately avoided the terminology and characteristic properties as per ASTM 503/C503M wherein it is mentioned that dolomite having specific gravity above 2.5 is considered as marble. In this regard, it is submitted that, the Department has not placed on record any evidence to indicate, let alone establish, that “specific gravity” on which such heavy reliance has been placed by the Department, is a determinative factor for the classification of goods, whether as marble or dolomite.

33. Without prejudice to the above, even assuming without admitting that specific gravity is a determinative factor, it is pertinent to note that, the GSI report itself vide its letter dated 29.05.2024, has certified the goods imported vide BoE 6496896, having specific gravity between the range of 2.63 to 2.83 g/cc³, to be “Dolomitic marbles”, and furthermore, goods imported vide BoE 3456493, having specific gravity as 2.81 g/ cc³ as “Dolomite”, which is not in line with the ASTM 503/C503M. Thus, it is evident that, the GSI report has itself not placed reliance on the ASTM 503/C503M, which was allegedly ignored by CRCL and thus the same cannot be a ground to reject the CRCL report.

34. The Noticee submits that the Department has not placed reliance on any material apart from ASTM 503/C503M in support of its contention that Dolomites with specific gravity above 2.5 are marbles, and therefore, the same cannot be the basis to draw any adverse inference against the Noticee.

35. It is submitted that one of the other importers whose samples were sent for retesting along with the Noticee's was M/s Nitco Limited (Bill of Entry No. 5616596 dated 09.11.2019). The Show Cause Notice issued to Nitco in respect of the said Bill of Entry was adjudicated by holding that the goods imported by them were Dolomite. Further, the appeal filed by the Revenue before the Hon'ble Tribunal, Ahmedabad upheld the observations in the adjudication order in respect of the said Bill of Entry vide Final Order No. 12000-12009/2024 dated 11.09.2024. Copy of the said Final Order dated 11.09.2024 is part of the compilation

36. Further that the sample under the said Bill of Entry of Nitco was tested by CRCL and GSI and their observations were similar to those made in respect of the goods imported by the Noticee. The findings in respect of the samples drawn from the goods imported by Nitco vis-à-vis that in the case of the Noticee are as under:

Importer	GSI observations	CRCL observations
Nitco (5616596 dt. 09.11.19)		Sample composed of carbonates of Ca and Mg (Dolomite); CaO (Calcium Oxide): 30.4% by weight; MgO (Magnesium Oxide): 24% by weight
Nitco (3103627 dt. 18.10.17)	Mainly composed of dolomite; Low effervescence with HCl; mainly composed of dolomite with subordinate calcite; 3-3.5 (Moho hardness scale); Has characteristics of Dolomite	
Noticee (6595700 dated 23.01.2020. Sent to GSI vide Test Memo No. ICD- Tumb/I- 223/23-24 dated 20.12.23.)	Based on physical, optical and limited chemical properties of rock sample interpreted as Marble	Sample composed of carbonates of Ca and Mg (Dolomite); CaO (Calcium Oxide): 30.1% by weight; MgO (Magnesium Oxide): 23.1% by weight
Noticee (7609655 dated 07.05.2020. Sent to GSI vide Test Memo No. ICD- Tumb/I-	Based on physical, optical and limited chemical properties of rock sample interpreted as Marble .	Sample composed of carbonates of Ca and Mg (Dolomite);

Importer	GSI observations	CRCL observations
246/23-24 dated 10.01.24.)		

37. That although similar observations were made by GSI in respect of the samples of Nitco and that of the Noticee, the conclusion arrived at by them were completely different, whereby the samples of Nitco were held to be Dolomite while the samples from the Bills of Entry filed by the Noticee were held to be Marble.

38. In view of the above, it is submitted that there are visible irregularities in the reports issued by GSI and such reports ought not be relied upon to deny the benefit of exemption to the Noticee, which it is otherwise entitled to.

39. That the it is a well settled position in law that the Department bears the burden of proof of classification of goods imported. If a notice is issued alleging that the classification of the imported goods is different to the classification it was assigned by the importer, it is the onus of the Department to prove that with relevant evidence.

40. The notice in this regard placed on the decision of the Hon'ble Supreme Court in the case of **Union of India v Garware Nylons Ltd [1996 (87) E.L.T. 12 (SC)]**, wherein it was held that "*The burden of proof is on the taxing authorities to show that the particular case or item in question, is taxable in the manner claimed by them. Mere assertion in that regard is of no avail*" (Paragraph 15 of the Judgement). Similarly, in the Noticee's case, the burden to prove that the imported goods were Marble as per Chapter Heading 2515, and not Dolomite as per Chapter Heading 2518, is ought to be borne by the Department. In fact, given the specific facts of the Noticee, the burden of proof falls even heavier on the Department as they are seeking to dislodge their own Customs Clearance from a reputable Government Laboratory.

41. It was CRCL, a Government Laboratory and a Division of the Department itself, that had cleared the goods under the Noticee's classification of Dolomite under CTI 2518 10 00 in 2020. The department then, 3.5 years or so later, sent the samples for re-testing to a different laboratory and thereby issued notices to the importers stating that the goods cleared by the Government laboratory in 2020 were not Dolomite, but Marble

classifiable under CTI 2515 12 10, imposing penalties upon the Noticee for suppression of facts. The Noticee submits that since the Department is seeking to dislodge its own clearance given to the importers by challenging test reports and methods by a reputable Government laboratory and a division of the Department itself, the burden of proof falls even heavier on the Department.

42. Therefore, in light of the above, the Noticee submits that the burden of proof, while anyway falling upon the Department, falls even heavier when Department seeks to dislodge its own Customs Clearance of 3.5 years back, at the time of goods being imported.
43. That the Noticee submits that, the Department has grossly erred in concluding that the goods in question are "Marble" classifiable under CTI 2515 12 10 on the basis of the report of GSI, when a contradictory view was earlier taken by the Department's own laboratory viz. CRCL.
44. That the Noticee submits that the Department ought to have taken into consideration that the Test Reports were prepared by the laboratories viz. CRCL and GSI on the basis of the queries put forth to them by the Department. In such a situation, when two contradictory results were obtained in both the Test Reports, it is submitted that the Department ought not have simply adopted the view which was in its favour and disregarded the other, solely on the basis that test results were arrived at within a short period of time or that particular parameters were not tested, when the same were never asked to be tested.
45. That the Noticee submits that the HSN Explanatory Notes have not prescribed any tests or determinative factors to distinguish between dolomite and marble. The Department has not put forth any reliable basis to indicate that specific gravity is a critical parameter to decide whether the goods are marble or dolomite. In absence of the same, there is absolutely no basis whatsoever, to disregard the report of CRCL, which was in favour of the Noticee.
46. The notice in this regard placed on the decision of the Hon'ble Tribunal in the case of **Shri Lakshmi Cotsyn Ltd v. Commissioner of Cus. & C.Ex. [2011 (263) E.L.T. 299 (Tri. - Del.)]** wherein, in the wake of similar facts and circumstances, where the first report of the Textile Committee was in favour of the assessee and the subsequent retest by the Chief Chemist

was against them, the Hon'ble Tribunal granted relief to the importers by observing that -

“Having held that the relied portions of HSN Notes have not prescribed methods for determining whether yarn is textured or non-textured yarn, we do not find any valid reason to disregard the report of GCTL which is in favour of the assessee. We have not been shown any reliable evidence that advance test is mandatory to decide whether the yarn is textured yarn or not. The cross-examination of the experts namely, Shri C.K. Venkitachalam, Assistant Director, Shri M.D. Mondal, Chemical Examiner, Shri R.B. Saxena and Professor Shri H.D. Dixit do not show that such test by sophisticated machinery is required to be ascertained whether the textured yarn is textured or not. It is clearly coming out the test is subjective. In a subjective test, the benefit of doubt has to necessarily be extended to the assessee”

47. That the Noticee submits that it is a settled position of law that when confronted with two contradictory test reports, one which is in favour of importer and the other in favour of the Department, the benefit of doubt should be extended to the importer/assessee. Reliance in this regard is placed on the decision of Hon'ble Tribunal in the case of **Commissioner of Customs, Mumbai v. Atlas Mercantile Pvt. Ltd [2019 (366) E.L.T. 911 (Tri. - Mumbai)]**.
48. Thus, in light of the above, the Noticee submits that when confronted with two contradictory test reports, one in favour of Noticee and the other in favour of the Department, the benefit of doubt ought to be extended to the Noticee.
49. Without prejudice to the above, the Noticee submits that the goods imported by it, being Rough Dolomite Blocks, have been correctly classified under CTI 2518 10 00. The SCN has proposed classification of the imported goods under CTI 2515 12 10. The competing Tariff entries and chapter headings have already been set out hereinabove in Paragraph 2.
50. At the outset, the Noticee submits that on perusal of the Test Reports issued by both CRCL and GSI, it is evident that the imported goods meet all the characteristics of 'Dolomite' and have been rightly classifiable under CTI 2518 10 00.

51. That the Noticee submits that rocks are broadly of three types, viz. igneous, sedimentary and metamorphic:

- i) Igneous rocks are those which are formed from melted rock deep inside the Earth such as granite, pumice, etc.
- ii) Sedimentary rocks are formed by the deposition and subsequent cementation of that material within bodies of water and at the surface of the Earth such as Dolomite, sandstone, anthracite, etc. The process that causes various organic material and minerals to settle in a place is called sedimentation. The process of sedimentation may also occur as minerals precipitate from water solution.

There are three types of sedimentary rocks viz. a) Clastic – formed by mechanical weathering debris, b) Organic – formed by accumulation of plant and animal debris and c) Chemical – formed from dissolved minerals that precipitate from the solution.

- iii) Metamorphic rocks are formed by being deep beneath the surface of the Earth and subjected to high temperature and immense pressure from the rock layers above it, such as marble, slate, etc.

52. That, the goods imported by the Noticee, i.e. Dolomites are chemical sedimentary rocks, as they are formed when Calcium Carbonate ('CaCO₃/'calcite') in limestone is modified by Magnesium rich groundwater. The chemical composition of Dolomite is CaMg(CO₃)₂. The process of formation of Dolomite is known as Dolomitization, which involves recrystallization to a large extent. Some of the characteristics which are specific to Dolomite are enumerated below:

- i. Slow effervescence with dilute Hydrochloric acid (HCl);
- ii. Mohs hardness of 3.5 to 4;
- iii. Lower solubility in acid;
- iv. Presence of considerable amount of Magnesium Oxide (MgO);
- v. Specific Gravity of 2.8 to 2.9

(source: www.geology.com)

53. That the Noticee submits that the above mentioned website (www.geology.com) has been referred to and relied upon by the Hon'ble Tribunal, while deciding a similar dispute in the case of Nitco (*supra*). In this case, a similar question had fallen for consideration before the Hon'ble Tribunal, i.e. whether the goods imported therein were Dolomite or Marble, and due reliance was placed on the information available on 'www.geology.com' in order to ascertain the characteristics of Dolomite.

Accordingly, the Noticee has relied upon the information available on the said website, insofar as it is relevant to the case at hand.

54. That the Noticee submits that the Test Reports issued by GSI indicate the following with respect to the samples tested:

- i. Dominantly consisting of Dolomite with minor amount of Calcite;
- ii. Rock sample is dominantly unstained due to the presence of Dolomite;
- iii. Low effervescence with dilute HCl;
- iv. Sample dominantly composed of Dolomite with subordinate Calcite;
- v. Has characteristics of Dolomite;

Therefore, it is evident that even the observations made by GSI indicate that the samples are nothing but Dolomite.

55. Further it is submitted that Marble is typically composed of Calcium Carbonate, which is around 90% of the total weight of the Marble. Other minerals, including Magnesium, are present in Marble in smaller quantities. In the present case, the Greek Supplier's provided test report as well as the reports issued by CRCL clearly state that there was a considerable amount of MgO present in the samples and therefore, in no sample was the percentage of Calcium Carbonate even close to 90%.

56. Further, that the Department erred in ignoring the Certification issued by HSGME, Greece, whereby it was specifically stated that the content of Dolomite was 98% while the content of calcite was only 2%. Accordingly, the specific gravity of the imported goods, on which the Department has placed undue reliance, becomes immaterial as Chapter Heading 2515 covers only marble, travertine, ecaussine and other calcerous monumental or building stone and not common-rock forming mineral such as Dolomite.

57. Further, when GSI, even after making the above observations, has erroneously concluded that the samples were Marble, and the Department has placed emphasis on the fact that the specific gravity mentioned in the GSI reports was that of Marble, the Department ought to have sought the details of specific gravity of Dolomite to clarify that the samples do not meet the specific gravity specifications of Dolomite, although all other characteristics of the samples match that of Dolomite.

58. It is therefore, submitted that the observations and conclusions made in the test reports, the CRCL reports and the GSI reports indicate that the samples were nothing but that of Dolomite. However, GSI has erred in arriving at the conclusion that the samples were that of Dolomitic Marble/Marble, which is unfathomable as the characteristics recorded in

the very same reports indicate otherwise. In view of this incongruency, the Noticee seeks cross-examination of the Investigator, Dr. Tushar Meshram (Superintending Geologist) and the Officer-in-Charge, Dr. Rajkumar Meshram (Director).

59. Further, it is submitted that even as per the HSN Explanatory Notes for Chapter Heading 2518, Dolomite is a natural carbonate of Calcium and Magnesium. Further, it has been stated that when Dolomite is calcined at a temperature range of 700-1000 degrees Celcius, it gets converted into MgO and CaO by releasing Carbon dioxide. In the present case, the load port reports and the CRCL reports mention significant quantity of MgO by weight, which is a characteristic specific to Dolomite.

60. It is further submitted that even as per the Indian Minerals Year Book, 2020, issued by the Indian Bureau of Mines, Ministry of Mines, Government of India, theoretically, Dolomite contains 54.35% CaCO₃ and 45.65% MgCO₃ or 30.4% CaO, 21.9% MgO and 47.7% CO₂. Therefore, even by these standards, as the goods imported by the Noticee contain a similar amount of MgO by weight, such goods ought to be classified under CTI 2518 10 00.

61. In view of the above submissions, it is amply clear that the goods imported by the Noticee were rightly classified as Dolomite under CTI 2518 10 00 and assessed correctly by the Department and accordingly, the SCN deserves to be dropped on this count alone.

62. At the outset, the Noticee submits that, the entire case made out in the SCN primarily pivots on the aspect that specific gravity, being a critical parameter, had not been tested by CRCL, which is purportedly a determinative factor in deciding whether the rock is a dolomite or marble. The Department has sought to reject the Test Reports of CRCL solely on the basis that the critical parameter viz. specific gravity was not examined and hence, the said reports are untenable and ought not to be relied upon.

63. In this regard, the Noticee wishes to point out that the GSI reports, on the basis of which the Department has issued the captioned SCN, have failed to examine the specific gravity of the goods in question and have arrived at the findings in reports and the query answers, basis the density of the goods only. This fact is evident from the petrological Test Reports and the query answers wherein the terms "density" and "specific gravity" have been used interchangeably, with the values expressed in units of grams per cubic centimetres.

64. That the Noticee further submits that the Department has failed to appreciate that specific gravity may be a parameter to determine the nature of goods, but it is neither the only parameter, nor the parameter on the basis of which it can be conclusively found whether the goods in question are Dolomite or not. Therefore, the over-reliance on this aspect by the Department is unwarranted and without any scientific or technical basis.

65. That the Noticee submits that density and specific gravity of a substance are two different parameters and the same cannot be used interchangeably. There is a technical difference between specific gravity and density. Density is defined as the mass per unit volume of a substance. Water has a density of 1 kg/l at 4°C. When the specific gravity is defined based on water at 4°C, then the specific gravity is equal to the density of the liquid. However, if the specific gravity is expressed at different temperatures, it will no longer be equal to the density. Although there is a difference between specific gravity and density, for the most part the values are similar enough to be used interchangeably in most situations. Density is expressed in units of grams per cubic centimeter, kilograms per cubic meter, or pounds per cubic inch whereas specific gravity is dimensionless, expressed as a pure number.

(source: *National Physical Laboratory (UK)*-
<https://www.npl.co.uk/resources/q-a/density-specific-gravity-differences#:~:text=Density%20is%20defined%20as%20mass%20relative%20quantity%20with%20no%20units>)

66. Without prejudice to the above, it is submitted that vide email dated 26.09.2024, GSI, in the context of marble, had mentioned that '*the specific gravity (density) varies from 2.6 to 2.8 g/cc.*' It is pertinent to note that vide the very same response, the specific gravity in respect of the samples drawn from the goods imported by the Noticee under the two Bills of Entry was more than 2.80 g/cc. Therefore, even by that metric, the specific gravity of these samples is more than the range indicated by GSI for marble and accordingly, the said samples ought to have been certified as 'Dolomite'.

67. In view of the above, the Noticee submits that GSI has erred in interchangeably using the terms 'specific gravity' and 'density' when they are two completely different concepts and may indicate different characteristics. It is submitted that the Department has conveniently placed reliance on GSI's report wherein the values of density expressed in g/cm³ are equated with specific gravity, considering both the terms to be

the same. Consequently, the entire case having been premised on an erroneous interpretation of the observations stands vitiated on this count alone.

68. The Noticee submits that the Department has erred in raising the demand, invoking the extended period of limitation of five years under Section 28(4) of the Customs Act, alleging that the imports were deliberately mis-declared and misclassified by the Noticee with an intention to evade the applicable duty, leading to suppression of facts and wilful mis-statement.

69. That the Noticee submits that Section 28(4) of the Customs Act can be invoked only in cases where any duty has not been levied or not paid or has been short levied or short paid, by reason of collusion or any willful statement or suppression of facts. It is submitted that there is no question of any collusion willful statement or suppression of facts in the instant case inasmuch as the goods were cleared for home consumption after the Test Reports of the CRCL, which is the sub-organ of the Department itself certifying the goods as "Dolomite" were received and the Proper Officer of the Department itself was satisfied that the Noticee had paid duties of Customs, as assessed. Thus, the extended period of limitation under Section 28(4) of the Customs Act cannot be invoked in the facts and circumstances of the present case and therefore, the demand raised in the SCN is completely barred by limitation.

70. That the Noticee submits that it had imported goods under two Bills of Entry in December 2019. Samples drawn from the said imported goods had been sent for testing to CRCL and on the basis of the Test Reports issued by CRCL, the said imported goods had been cleared for home consumption after the Proper Officer was satisfied that the Noticee had paid duties of Customs, as assessed. Further, pertinently, the assessments in respect of the Bills of Entry filed by the Noticee were never challenged by the Department and therefore, such assessments had attained finality. Accordingly, in view of the observations made by the Hon'ble Supreme Court in the case of **ITC Ltd. v. Commissioner of Central Excise, Kolkata-IV [2019 (368) ELT 216 (SC)]**, it was not open for the Department to issue the present SCN in the absence of a challenge to the assessment in respect of the said Bills of Entry.

71. Further, it is submitted that there was no mis-statement, let alone willful misstatement, and/or suppression of facts on the part of the Noticee and the declarations made by the Noticee were correct, which was also

confirmed by the Test Reports issued by CRCL. The said Test Reports issued by CRCL, being a Government Laboratory were duly accepted by the Revenue and the Noticee was therefore, permitted to clear the imported goods for home consumption.

72. Further, it appears that basis some information, the Revenue sought to get the remnant samples retested by GSI, whereby it was alleged that the goods imported by the Noticee were actually marble blocks and not dolomite blocks. In this regard, it is submitted that on perusal of the Test Reports issued by GSI, it becomes evident that the observations made by GSI are similar to those made by CRCL, however, the interpretation adopted by GSI to arrive at its conclusion on the basis of the said observations is different from that adopted by CRCL. Accordingly, it is submitted that the different conclusions arrived at by two Government Laboratories could, at best, be attributable to difference in their interpretation of the various parameters tested by the said Laboratories. Further, the declarations made by the Noticee were supported by the Greek test report and the fact that the Noticee had specifically placed orders for Dolomite blocks, there was no infirmity in the declarations made by the Noticee. Thus, the very fact that two Government laboratories arrived at two different conclusions in respect of samples of the very same goods, no *mala fides* or allegations of suppression or mis-declaration could be attributed to the Noticee. Therefore, the extended period of limitation could not have been invoked in the facts and circumstances of the present case.

73. Moreover, the Noticee submits that a mere difference of opinion between the department and the importer regarding classification cannot be equated with suppression of facts or misstatement. The Department ought to have brought on record necessary evidence to establish such allegations of suppression or mis-statement. This principle has been laid down in a catena of judgements, wherein the Hon'ble Supreme Court has consistently held that where the issue relates to interpretation, suppression of facts cannot be alleged and extended period of limitation cannot be invoked. The Noticee relies on the following judgements in this regard:

- a. International Merchandising Company, LLC vs. Commissioner of Service Tax, New Delhi [2022 (67) G.S.T.L. 129 (S.C.)];**
- b. Sundaram Finance Ltd. vs. Commissioner [2019 (25) G.S.T.L. J30 (S.C.)];**

c. Commissioner vs. Singh Transporters [2018 (13) G.S.T.L. J40 (S.C.)];

d. Commissioner vs. N.C. Paul & Company [2020 (43) G.S.T.L. J93 (S.C.)].

Thus, the captioned notice proposing to recover the demand invoking the extended period of limitation deserves to be dropped on this count alone.

74. Reliance in this regard is also placed on the Order of the jurisdictional Bench of the Hon'ble Tribunal in the case of Stonex India Private Limited vs. Commissioner of Customs – Mundra Customs, Order No.12527-12528/2024 decided on 25.10.2024. In the facts of this case, the goods were allegedly misclassified by Stonex India as 'Dolomite' under CH 2518 whereas the Department claimed that it must be under CH 2515, as the goods were 'Marble.' The Hon'ble Tribunal found that there was no suppression of facts by Stonex India as they had relied on Reports issued by their foreign supplier which showed 'Dolomite' to be ranging from 92% to 99%. The relevant paragraph from the order has been reproduced below for ease of reference.

"5.5. We find that there is no suppression by appellant in the present case. Analysis reports issued by foreign supplier are on record which clearly provides chemical and mineral analysis of imported goods i.e. dolomite is ranging from 92% to 99%. There is no dispute that predominantly, imported goods are nothing but dolomite."

75. The Hon'ble Bench thereafter analyzed the Test Reports on record and their finding is reproduced below for ease of reference.

"5.6. In present case also CaO is ranging from 32 to 36% and MgO is ranging from 17 to 19%. Thus, in the present case, goods can be considered as dolomite. In any case, appellant were bonafide in treating the goods as dolomite. In any case, it cannot be treated as case of willful suppression or mis-declaration. In view of the above extended period under section 28(4) of Customs Act in not invokable in the present case as there is no suppression or mis-statement."

76. With reference to the above, the Noticee submits that the present case cannot be a case of suppression or mis-declaration either, as the Noticee had presented Test Reports from their supplier in Greece, which certified the goods as 'Dolomite' and furthermore, even the reports from CRCL Vadodara at the time of import, confirmed the goods to be Dolomite. Therefore, as there is no willful suppression or mis-declaration on the part of the Noticee, the extended period cannot be invoked and the SCN dated 07.01.2025 is barred by limitation.

77. That the Noticee submits, the entire chain of events, right from the drawing of samples for retesting after a lapse of about 3.5 years from the date of the report of the CRCL to sending it to GSI, even much later in December 2023, is clearly indicative of the fact that the entire purpose of invoking the extended period of limitation in the instant case was to raise a demand, which was otherwise patently time barred.

78. Without prejudice to the above, the Noticee submits that the captioned SCN has been issued beyond the statutory limitation period of two years under Section 28(1) of the Customs Act and accordingly, the captioned SCN is required to be dropped on this ground alone, being barred by limitation.

79. Without prejudice to the above, the Noticee submits that the details of the goods imported by it were correctly declared by it at the time of import of such goods, and therefore, there was no violation of the provisions under Section 46(4) and/or Section 46(4A) of the Customs Act and accordingly, the provisions under Section 111(m) of the Customs Act do not get attracted in the facts and circumstances of the present case.

80. That the Noticee submits that the Hon'ble Supreme Court in the case of **Northern Plastic Ltd v. Collector [1998 (101) ELT 549 (SC)]** has held that Section 111(m) of the Customs Act is attracted only when the particulars of the goods are mis-declared. It is submitted that a statement in the Bill of Entry as to classification or Notification is not a statement about the particulars of the goods and hence, there was no occasion for the Revenue to have invoked the provisions under Section 111(m) of the Customs Act.

81. In view of the above submissions, it is submitted that the captioned SCN deserves to be dropped on this count alone.

82. Without prejudice to the above, the Noticee submits that the captioned SCN has erred in proposing levy of interest under Section 28AA of the Customs Act. It is submitted that the interest under Section 28AA of the Customs Act can be levied only when there is a liability to pay duty under Section 28 of the Customs Act. In view of the above submissions, since there is no liability on the part of the Noticee to pay duty, the question of levying interest does not arise at all.

83. Without prejudice to the above, the Noticee submits that the captioned SCN has erred in proposing imposition of penalty under Section 114A of the Customs Act. It is submitted that in view of the above submissions, there is no collusion, willful mis-statement or suppression of facts in the present case and in absence thereof, no penalty can be imposed under Section 114A of the Customs Act.

84. The Noticee submits that the submissions made herein above in respect of inapplicability of Section 28(4) and Section 111(m) equally apply in support of the submission that Section 114A has no application whatever and the said submissions are reiterated in respect of Section 114A.

85. Without prejudice to the above, the Noticee submits that penalty under Section 114AA cannot be imposed in the present case inasmuch as the aforesaid Section 114AA is invokable, only in the cases of mis-declaration of goods at the time of export, not where the “imported” goods have been allegedly mis-declared.

86. The Noticee submits that, Section 114AA has been introduced in the statute consequent upon the Taxation Laws (Amendment Bill), 2005. The said Taxation Amendment Bill was moved on the basis of the recommendation of the 27th Standing Committee on Finance, which records the purpose and object behind insertion of the Section 114AA, by stating that Section 114 of the Customs Act provided only for imposition of penalty for improper exportation of goods. However, there had been instances where export was only on paper and no goods had ever crossed the border. Such serious manipulators could escape penal action as Section 114 did not provide for penalty in such situation. Accordingly, to overcome this legal lacuna and provide for penal action in cases where false and incorrect declarations of material particulars in respect of export cargo had been made, Section 114AA was proposed to be introduced. The report records that the said section 114AA would only apply to cases where no goods were exported but only papers were being created for availing the benefits under various export promotion schemes. The Report of the Finance Commission records that the Ministry of Finance had specifically informed that the new Section 114AA had been proposed consequent to the detection of several cases of fraudulent exports where the exports were shown only on paper and no goods crossed the Indian border.

87. Reliance in this regard is placed on the decision of the Hon'ble Tribunal in the case of **Commr. Of Cus, Sea, Chennai-II v. Sri Krishna Sound and**

Lightings v. [2019 (370) E.L.T. 594 (Tri. - Chennai)] wherein, while setting aside the penalty imposed under Section 114AA of the Customs Act in case of importation of goods, held that:

*"6. The Ld. AR has submitted that the Commissioner (Appeals) has set aside the penalty under Section 114AA for the reason that penalty has been imposed by the adjudicating authority under Section 112(a) and therefore there is no necessity of further penalty under Section 114AA. I find that this submission is incorrect for the reason that in the impugned order in paras 7 and 8, the Commissioner (Appeals) has discussed in detail the provision with regard to Section 114AA. It is seen stated that as per the Taxation Laws (Amendment) Bill, 2005, introduced in Lok Sabha on 12-5-2005, the Standing Committee has examined the necessity for introducing a new Section 114AA. The said Section was proposed to be introduced consequent to the detection of several cases of fraudulent exports where the exports were shown only on paper and no goods crossed the Indian border. The said Section envisages enhanced penalty of five times of the value of the goods. The Commissioner (Appeals) has analyzed the object and the purpose of this Section and has held that in view of the rationale behind the introduction of Section 114AA of the Customs Act and the fact that penalty has already been imposed under Section 112(a), the appellate authority has found that the penalty under Section 114AA is excessive and requires to be set aside. Thus, the penalty under Section 114AA is not set aside merely for the reason that penalty under Section 112(a) is imposed. **After considering the ingredients of Section 114AA and the rationale behind the introduction of Section 114AA, the Commissioner (Appeals) has set aside the penalty under Section 114AA.**"*

(emphasis supplied)

88. That the Noticee further submits that, similar view that penalty under Section 114AA of the Customs Act is not imposable in cases of importation of goods has been adopted by the Hon'ble Tribunal in the cases of **M/s. V.R. Tools v. Commissioner of Customs, Chennai [2021 (11) TMI 847 - CESTAT CHENNAI]** and **Interglobe Aviation Ltd. v. Pr. Commissioner of Cus., Bangalore [2022 (379) E.L.T. 235 (Tri. - Bang.)]**.
89. Thus, in light of the report of the Standing Committee and decisions of the Hon'ble Tribunals, the Noticee submits that Section 114AA can only be invoked in cases where fraudulent declaration statements are

made/filed in respect of goods being exported out of the country. The said provision is not applicable in cases of alleged mis-declaration made with respect to import consignments, for which adequate provisions otherwise exist under the Customs Act and therefore, penalty imposed under Section 114AA of the Customs Act, deserves to be quashed.

90. Without prejudice to the above, even assuming without admitting that Section 114AA was invokable in the present case, the Noticee submits that the SCN has failed to indicate, let alone establish, that there has been a violation of Section 114AA of the Customs Act. It is submitted that penalty under Section 114AA of the Customs Act is imposable in a case where a person knowingly or intentionally does something in the transaction of business under the Customs Act, knowing fully well that the same is false or incorrect. In the present case, there is nothing to establish that anyone knowingly or intentionally made a false or incorrect declaration/statement or otherwise in the transaction of business under the Customs Act. Accordingly, it is submitted that no penalty under Section 114AA of the Customs Act can be imposed upon the Noticee.

91 Customs Broker M/s. International Cargo Corporation, Mumbai filed their written submission dated 25.1.2025 received by this office on 30.04.2025 wherein they interalia stated as under:

92 that on the basis of import documents viz. Commercial Invoice, packing list, House Bill of Lading etc. provided by the Importer, which declared the goods as "Rough Dolomite Blocks", the Noticee Customs Broker prepared check- list for the same and after due approval/ confirmation of the same by the Importer, filed the said Bill of entry for clearance of the aforesaid goods at ICD Tumb and as a Customs Broker, their scope of work is limited to preparation of the Bill of Entry on the basis of the import documents provided by the importer and to file the Bill of Entry before the Customs authority as per the instructions of the Importer and facilitate clearance of goods through Customs by following the due procedure adopted in this regard; that the Importer had sought clearance of the aforesaid goods under CTH 25181000 with exemption from Basic Customs Duty @5% in terms of Notification no. 050/2017-Cus dated 30.6.2017 Sr no. 120 and Exemption from IGST @5% in terms of Notification no 01/2017-Integrated Tax (Rate) dated 28.6.2017 Schedule II Sr No 27. The effective duty rate payable was @10.78%; that they applied for **First Check** examination in respect of the said Bill of Entry for correct determination of description of the goods and ascertainment of appropriate Customs duty payable on the subject goods and the Proper officers of Customs examined the said goods under First Check and forwarded representative sealed samples drawn from the said consignment to the Central Excise and Customs Laboratory, Vadodara (CECL in brief) for test vide T.R. Memo No. VIII/ICD-Tumb/Test Memo/19-20 dated 19.12.2019 and 24.12.2019 from the F.No. VIII/ICD-Tumb/Test Memo /19-20 by raising

queries as to (i) Whether the sample conforms to the description Rough Dolomite Block and (ii) If sample is other than Rough Dolomite Block kindly specify exact description of the sample; that the Chemical Examiner Grade-I of CECL, Vadodara vide Test report no. RCL/SU/IMP/1879/20.12.2019 dated 24.12.2019 and Test Report No. RCL/SU/IMP/1945/30.12.2019 dated 01.01.2020 on analysis of the sample opined inter alia that "The sample is in the form of white broken pieces of irregular shape. It is composed of carbonates of calcium& magnesium (Dolomite). Seal Remnant returned; Accordingly, the Proper Officer of Customs posted at ICD Tumb completed the assessment in respect of the said Bill of entry by extending the benefit of exemption claimed under the said Notification/s and ordered clearance of the goods for home consumption; that copies of the said Test Report issued by the CECL, Vadodara in respect of the said Bill of Entry as available with the them is annexed.

93 that after a period of almost (5) years, it appears that the Revenue, for the reasons best known to them, chose to send remnant samples of the goods imported by various importers of marble and Dolomite including those of the main Noticee to the Geological Survey of India, Central Region, Nagpur (GSI) for testing on the ground set out in Para 3.1 of the SCN; that the SCN avers that the Revenue received certain information that the goods imported and cleared as Rough Dolomite Blocks by declaring classification under CTH 25181000 in the Bill of entry were actually Rough Marble blocks classifiable under CTH 25151210 and the same were cleared by the Importer by mis-declaring and misclassifying the same and availing the exemption from payment of BCD under Sr no. 120 of Notification no. 050/2017-Cus and also availing the exemption from payment of GST under Notification No 1/2017-Integrated Tax Rate dated 28.06.2017 with an intention to evade duty; that observation/ Opinion made by the GSI vide their various reports dated 26.12.2023 (RUD-05), 31.7.2024 (RUD-07) & 30.8.2024(RUD-09), the GSI, Nagpur reported that "the rock has been identified as Marble (recrystallized sedimentary rock with density 2.81 g/cc and chemical composition calcium carbonate with magnesium). Marble is metamorphic rock and can be polished and used as slabs. It meets the specifications of marble and can be categorized as Marble".

94 that during the course of investigations, statement of Shri Kamal Kailash Mour, Director of Importer was recorded on 23.10.2024 and Statement of Shri Rupesh Jivanbhai Katariya, partner of the Customs Broker Firm M/s International Cargo Corporation (the Noticee herein) was recorded on 02.12.2024; that Shri Rupesh Katariya , the Noticee and authorized signatory of CB in his statement dated 02.12.2024 stated inter alia that they filed the bill of entry as per the description of goods mentioned in documents and as per Importer's instructions and approval of checklists from importer; that they uploaded the import documents such as Bill of Lading, Invoice, packing list on e- Sanchit; that in order to verify the nature of imported goods they have filed Bill of entry seeking first check examination order and accordingly, live sample was taken by the customs officers and the same was tested at CRCL Vadodara; that as per CRCL, Vadodara test report confirmed that the goods under the said bill of entry is composed of carbonates of calcium & Magnesium(Dolomite); that technically he is not aware about the goods i.e. dolomite blocks; that marble blocks and dolomite blocks are same in appearance and the goods were cleared as dolomite on the basis of test report of live sample drawn under first check examination;

95 Further submitted that Shri Kamal Kailash Mour, Director of Importer, inter alia stated that he is responsible for all the customs work related to the company; all the customs work related to filing of documents before the customs authorities was looked after under his guidance and supervision;

96 That they deny all the allegations levelled against them and respectfully submit that the same are totally baseless and unsupported by any evidence and as such, the SCN is liable to be dismissed; that a Customs Broker's purview of work is to provide easy means to file bill of entry and take care of procedural aspects of the filing and documentation with the Customs authorities; that a Customs Broker looks after import and export of goods and verifies whether the goods as declared in the import or export documents such as Invoice, packing list, Bill of lading etc., are correctly mentioned in the Bill of entry or the shipping Bill and in the right quantity as mentioned in the Invoice/packing list; that it is pertinent to note that it is not the job of the Customs Broker to verify technicalities of any goods mentioned in the documents or the Bill of entry; that nowhere it is provided in the Act or CBLR that a Customs Broker is required to classify the goods which they handle on behalf of their clients.

97 that they denies all the allegations in the SCN and submits that they have not contravened the provisions of Act or rules made thereunder or the provisions of the CBLR or any other statutory provision whatsoever they had no role to play in the classification of goods imported by the importer; that the goods imported under the said Bill of entry were examined by the Proper Officer of Customs posted at ICD Tumb on First Check basis at the instance of the Noticee CB and the assessments were completed by the Proper officer of Customs on the basis of examination of the goods and test reports issued by the Customs Laboratory viz C.E.C.L, Vadodara before ordering out of charge; that the CECL, Vadodara in its test reports in response to the queries raised in test memo by the Proper Officer reported that "the goods are Dolomite". It is submitted that in this manner, the self-assessment made by the Importer was verified by the Proper officer of Customs consistent with the provisions of Section 17(2) of the Customs Act, 1962 before ordering release of the goods. The documents such as Invoice, packing list, Bill of Lading etc. were uploaded on E- Sanchit by the Customs Broker and the same were readily available to the Proper officers for carrying out assessment; that nothing would have prevented the Proper Officers of Customs from calling for more documents, if required, before completing the assessment and therefore, allegation made in the SCN that the Customs Broker was aware that the goods were actually marble blocks and not dolomite blocks cannot be sustained;

98 That in terms of provisions of Section 12 of the Customs Act, 1962, the duties of customs are leviable on the goods imported into India and in consideration of the fact that the goods imported vide the said Bill of entry were examined and the sample drawn from the imported goods was tested by Customs laboratory which confirmed the declared description of goods as Dolomite, the nature of goods in the previous consignments is no valid criteria for determination of duty in respect of the goods imported against the said bill of entry; that it is also submitted that the Importer's business of being engaged in cutting of marble blocks into slabs and polishing it for sale is no valid ground to allege that the Custom Broker was aware that the goods imported vide the said Bill of entry were Marble Blocks falling under CTH 25151210; that the Customs Broker is not privy to business activities of the importer post clearance of goods and assuming that the Importer was engaged into the

activities of cutting and polishing of Marble blocks, such activities per se would not necessarily mean that the goods imported vide the said Bills of Entry were Marble blocks falling under CTH 25151210; that in consideration of the fact that the goods were examined first and subjected to test at Customs Laboratory viz CECL Vadodara by the Proper officers of customs before ordering clearance of the same, the Customs broker had no role to play; that it is also not the case that the Customs Broker manipulated the test reports issued by the CECL, Vadodara at the time of import of goods and therefore, in the absence of any evidence either documentary or oral, the allegation that the Custom Broker was aware that the goods imported were Marble blocks falling under CTH 25151210 on the basis of subsequent test report issued by the GSI, Nagpur cannot be sustained; .

99 that the CECL, Vadodara Test report have not been challenged in the manner as provided under the law and as such, the assessments made by the Proper officers of customs in respect of the said Bills of entry have attained finality; that in such background of the matter, allegation that the Customs Broker appeared to be aware that the consignment imported by importer under the aforesaid Bills of entry declaring the description as "dolomite blocks" was different from the earlier consignment cannot be sustained; that it is not forthcoming from any of the statements recorded by DRI that the Custom Broker had any knowledge of alleged misdeclaration/misclassification of the goods by the Importer; that no documentary evidence has been led by the respondents to establish that the Custom Broker had any knowledge of alleged misdeclaration by the Importer; that the SCN relies upon the statement of the Custom Broker and it may be appreciated that in the said statement, the authorized signatory of the Custom Broker only commented on the said test report/s of GSI, Nagpur when it was shown to him during recording of his statement and the said statement does not establish that the Custom Broker was concerned or aware of any alleged misdeclaration by the Importer; that in any case, the goods were examined by the Proper officer of Customs on First check basis and assessment in respect of the aforesaid bill of entry was completed on the basis of test report issued by CECL, Vadodara consistent with provisions of Section 17(2) of Customs Act 1962; that in the absence of any challenge to the said test report of CECL, Vadodara in the manner as provided by law, the assessment made in respect of aforesaid Bill of entry has attained finality; that the assessment of imported goods and levy of duty thereon is a sovereign function required to be performed by the Proper Officer of Customs only and the Customs Broker have no role to play in the said function in the absence of any empowerment or delegation under the Customs Act, 1962 in this regard; that in consideration of the fact that the responsibilities of the Proper Officers of Customs cannot be abdicated in favour of the Customs Broker for the purpose of assessment/classification of goods, the allegations made against the Customs Broker in the SCN are misconceived and totally misdirected. As such, the proceedings initiated against the Customs Broker are liable to be dropped.

100 that the importer has contested the correctness of sample sent to GSI Nagpur on the ground that in the absence of markings on the packet, the same could not be correlated to their Bill of Entry; that in the absence of any rebuttal from the respondents, the Test report issued by the GSI Nagpur cannot be accepted as pertaining to the said Bill of entry; that on this ground, the entire edifice of the SCN would fall like a pack of cards and as such, the SCN is liable to be dismissed as unsustainable.

101 that Section 112(a) of the Act lays down that any person 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 an act shall be liable to penalty and it is alleged in the SCN that they caused to file the subject Bills of entry allowing the importer to avail the benefit of notification by facilitating misclassification and thus abetted the offence rendering the goods liable for confiscation under Section 111(m) of the Act; that as brought out in paras herein above, they have filed the said bill of entry on the basis of import documents provided by the Importer and on the instructions of the Importer who admittedly decided the classification of goods and the goods were examined by the Proper officers of customs on First Check basis and the Bill of entry was assessed on the basis of test reports issued by CECL, Vadodara which is a government laboratory functioning under the auspice of the Department of Revenue; that it is well settled that no penalty is imposable on the Customs Broker under Section 112(a) of the Customs Act, 1962 in cases where the Customs Broker has requested for First check examination in the matters of classification of goods; that in this regard, they relied upon decisions of Hon. CESTAT New Delhi in the case of Him Logistics Private Ltd v/s Commissioner of Customs New Delhi reported in 2016(338) ELT 721 (TRI-Del); they also relied on the Hon. CESTAT, Mumbai in the case of Aakash Thakkar vs Commissioner of Customs (Import) ACC, Mumbai reported in 2024(2) TMI 209-CESTAT Mumbai and stated that the ratio of decision in the case of Akash Thakkar(supra) will also apply to the facts of the matter involved in the present appeal in as much as that the goods were examined by proper officers of customs on "First Check basis" and assessments were completed in respect of Bill of Entry dated 20.12.2019 on the basis of test report issued by the Customs laboratory Viz CECL, Vadodara.

102 that the Bills of entry were prepared by the Custom Broker on the basis of documents such as Invoice, packing list, House Bill of Lading etc. provided by the Importer and as per the instructions of the Importer; that the import documents were uploaded on E- Sanchit and the same very much available for the Proper officer for inspection before completing the assessment; that it is a matter of record that the Proper officer of Customs had verified the assessment in respect of the said Bill of entry in consistent with the provisions of Section 17(2) of the Customs Act, 1962 after due examination of goods under First Check and testing of samples by the customs Laboratory; that it is well settled law that no penalty under Section 112(a) of the Customs Act, 1962 could be imposed on the Customs Broker when the Bill of entry or the Shipping Bill, as the case may be, is prepared by the Customs Broker on the basis of documents provided by the Importer /Exporter with no notice of fraud on the part of the Importer; that they relied upon following decisions of Hon. Supreme Court/ Hon. CESTAT in this regard: -

- (i)Brijesh international v/s Commissioner of Customs, New Delhi 2017 (352) ELT 229 (Tri).
- (ii)Prime Forwarders v/s Commissioner of Customs, Kandla 2008(222) ELT 137 (Tri-Ahm).
- (iii)Escorts Heart Institutes & Research Centre v/s Commissioner of Customs, New Delhi reported in 2016 (336) ELT 185 (Tri-Delhi) upheld by Hon'ble Supreme Court 2017 (348) ELT A131.
- (iv) *P.S. Bedi and Company* [[2001 \(133\) E.L.T. 86](#) (CESTAT)],

- (v) Commissioner of Customs v/s Vaz forwarding Ltd 2011 (266) ELT 39 (Guj)
- (vi) Cargo & Travel Services Pvt Ltd v/s Commissioner of Customs 2010 (252) ELT 82 (Tri)
- (vii) Premier instruments & controls Ltd v/s CC 2008 (227) ELT 139 (Tri)
- (viii) Panjratn Road Carriers v/s Commissioner of Ludhiana 2018 (359) ELT 408 (Tri)

103 that SCN proceeds against the Custom Broker with the allegations of “abettment” in the said acts or omission so as to mis declare/ misclassify the goods in order to evade applicable duty of customs for imposition of penalty under Section 112(a) of the Customs Act 1962 and submitted that the such allegations against the Noticee cannot be sustained mainly because there is no evidence to support such allegation; that it is on record that the Importer in his statement recorded under Section 108 of the Customs Act, 1962 categorically deposed that he was responsible for all imports and that he used to interact with overseas supplier; that the Importer also stated that the classification of goods was decided by under CTH 2518 as Dolomite was imported by them under the said Bill of entry; that there is not a shred of evidence in the SCN against them to indicate their involvement in alleged misdeclaration or misclassification of goods in any manner; that Section 107 of IPC defines “abettment”; that as per third limb of this definition, if a person intentionally aids, by any act or illegal omission, the doing of that thing, it would be abetment of an offence. *Mens rea* is a main ingredient as the third limb uses the word intentionally; that nothing has been brought on record in the nature of evidence to establish that they had done or omitted to do any act intentionally and therefore, the allegation of abetment has no legal basis and cannot be sustained; they relied upon the decision of Hon’ble Supreme Court in the case of Shree Ram v. State of U.P.: 1975 3 SCC 495 and also the decision in case of Amrit Lakshmi Machine Works v. The Commissioner of Customs (Import), Mumbai: 2016 (335) E.L.T. 225 (Bom.); that in the case of Rajan Arora vs Commissioner of Customs (ICD TKD), New Delhi reported in 2017(352) ELT 37(Tri-Del), it has been observed by Hon. Tribunal that for imposition of penalty under Customs Act, it is apparent that mere filing of bill of entry without knowledge or role in the importation of cargo is not sufficient. The Hon. Tribunal accordingly set aside the penalty imposed under Section 112(a) of the Customs Act, 1962.

104 that without prejudice to the submissions herein above, in any case, as per the settled law, classification of goods under the customs tariff is the bounden responsibility of the officers of customs as per Section 17 of the Customs Act 1962; that there is neither any empowerment nor any delegation of powers under the provisions of Customs Act 1962 in favour of Customs Broker to classify the goods under the Customs Act 1962 and as such, no question would arise for imposition of penalty on the Custom Broker under section 112(a) of the Customs Act 1962 and they relied upon the following case laws:

- (i) *Brijesh International v. The Commissioner of Customs (Import & General), New Delhi reported in 2017 (352) ELT 229 (Tri Del)*
- (ii) *HIM Logistics Pvt Ltd., v. the Commissioner of Customs, New Delhi reported in 2016 (338) ELT 721 (Tri Del)*

(iii) Him Logistics Pvt Ltd vs Commissioner of Customs New Delhi 2016(340) ELT 388(Tri-Del),

(iv) M/s Classic Shipping & Co vs Commissioner of Customs Tuticorin 2024(9) TMI 1326-CESTAT CHENNAI;

(v) Fairdeal Shipping Agency Pvt Ltd vs Commissioner of Customs (General) Mumbai 2019-TIOL-990-CESTAT-MUM

(vi) Kunal Travels (Cargo) vs CC(I&G), IGI Airport, New Delhi 2017(354) ELT 447(Del),

105 that Confiscation of the goods is not warranted in the present case to the extent the role of the Customs Broker and no penalty imposable under Section 112(a) of Customs Act 1962; that Section 111(m) provides for confiscation of any goods which do not correspond in respect of value or in any other particular with entry made under the Act. It is submitted that the provisions of section 111(m) of the Customs Act 1962 are invoked for alleged failure to advise the client about proper classification of goods and for failure to exercise due diligence while discharging duties as a Customs Broker; that even on the assumption that the Customs Broker failed to advise the Importer to do correct classification of goods or failed to exercise due diligence, the provisions of section 111(m) of Customs Act, 1962 would not be attracted for such acts of commission and/or omissions in the face of wordings employed under Section 111(m) ibid and therefore, the SCN must fail on this ground; that the provisions of Section 111(m) of the Customs Act, 1962 would be attracted only in the cases of misdeclaration of value or misdeclaration of any other particular with the entry made under Section 46 of the Customs Act, 1962; that the Proper officer of customs had allowed clearance of the goods after examination of goods under first check and on the basis of test report issued by the CECL, Vadodara and it is not the case that the Custom Broker had manipulated the test report issued by the CECL, Vadodara or presented the Bill of entry with incorrect import documents so as to facilitate clearance of goods resulting in loss of duty and thereby rendering the goods liable to confiscation; that the import documents provided by the Importer such as Commercial Invoice of the shipper, packing list, Bill of Lading etc., were uploaded on E- Sanchit and the same were made available to the Proper officer of Customs for facilitating assessment; that the Proper officer of customs had completed assessment in respect of Bills of entry consistent with provisions of Section 17(2) of the Customs Act, 1962 after examination of goods and on the basis of test report issued by CECL Vadodara and therefore submits that the provisions of Section 111(m) of the Customs Act, 1962 would not be attracted for their acts of commission or omission. Consequently, no penalty is imposable under Section 112(a) of the Customs Act 1962; that the Hon. Supreme Court in the case of Northern Plastics reported in 1998 (101) ELT 549(SC) has observed that claiming of untenable classification or wrong exemption is not a statement or declaration of any other particular of the goods. Therefore, provisions of section 111(m) would not be attracted even if wrong classification were to be declared in the bill of entry; that Customs Broker has acted bona fide and complied with provisions of CBLR, 2018 and as such, they denies the allegation that they violated obligations cast on them under CBLR; that the allegations made in the SCN to the effect that the Custom Broker failed to advise the client and failed to observe due diligence correspond to obligations of the Customs broker under regulation 10(d) and 10(e) of CBLR, 2018; that it is well settled that no penalty under section 112(a) of the Customs Act 1962 is imposable on the Customs Broker for alleged failure to perform duties as a CHA/ obligation

under the Customs Broker Licensing Regulations, 2018 (CBLR); that they relied upon the following decisions of Hon. CESTAT in this regard: -

- (i) Adani Wilmar Ltd vs Commissioner of Customs (Prev) Jamnagar 2015(330) ELT 549 (Tri-Ahmd);
- (ii) Sarosh Nagarwala v/s Commr of Customs (Export) Nhava Sheva 017(358) ELT 542 (Tri-Mum);
- (iii) Fast cargo Movers vs Commissioner of Customs, Jodhpur 2018(362) ELT 184 (Tri-Del)
- (iv)** Hera Shipping Solutions Pvt Ltd vs Commissioner of Customs, Chennai-IV reported in 2022(382) ELT 552 (Tri-Chennai).

106 that no penalty under Section 114AA could be imposed on the Custom Broker; that at the outset, no such documents purported to have been prepared by them and presented before customs authority, which appeared to be false, have been specified by the respondents in the SCN thereby giving no opportunity to the Customs Broker to rebut; that such an act on the part of respondent is violative of the principles of natural justice and as such, the allegation of falsification of document cannot be sustained; that such allegations are not worthy of being responded being bald in nature; that they had filed the Bills of entry on the basis of import documents provided by the Importer and claimed classification of goods under CTH 25181000 as per the instructions of the Importer; that the said Bills of entry were assessed by the Proper Officer of Customs after First Check examination of goods and on receipt of test reports from CECL, Vadodara consistent with provisions of Section 17(2) of the Customs Act, 1962; that considering that the Noticee had prepared the Bills of entry on the basis of import documents such as Invoice, Packing List, Bill of Lading etc provided by the Importer and which documents were uploaded on E- Sanchit by the Custom Broker, the same were available for verification by the Proper Officer of Customs posted at ICD Tumb and as such, the revenue were not justified in alleging that the documents presented before Customs authority were falsely prepared by the Customs Broker; that for alleging falsification of documents, it is required to be established that the Customs Broker was aware of actual import documents but had presented false documents before the customs authority; and therefore, no penalty under Section 114AA of Customs Act, 1962 could be sustained; that in order that the provisions of Section 114AA of the Act are attracted, the falsification of document has to be intentional or with prior knowledge; that the term knowingly and intentionally used in Section 114AA requires presence of mens rea and . No evidence has been led against the Customs Broker in the present SCN to indicate which document has been falsely prepared and knowingly/intentionally presented by the Custom Broker before the Customs authority for effecting clearance of goods; that on the contrary, it is the case of the Custom Broker that they had filed the Bills of Entry on the basis of import documents provided by the Importer and as per the instructions of the Importer after due confirmation of check lists by the Importer; that Custom Broker had applied for First Check examination of the goods and the assessment was completed by the Proper officer based on the test report of CECL Vadodara and therefore, in the facts of the matter, there is no scope for invoking provisions of Section 114AA of the Customs Act, 1962 against them and accordingly no penalty under Section 114AA of the Customs Act is imposable on them and accordingly the proposal to impose penalty on the

Noticee under Section 114AA is not justified and requires to be dropped; that they relied on the following decisions in their support: -

- (i) Fast Cargo Movers v/s Commissioner of Customs, Jodhpur 2018(362) ELT 184 (Tri-Delhi)
- (ii) Hera Shipping Solutions Pvt Ltd vs Commissioner of Customs, Chennai-IV 2022(382) ELT 552 (Tri-Chennai).
- (iii) Commissioner of Customs (Import) vs Trinetra Impex Pvt Ltd 2020(372) ELT 332(Del)

107 that without prejudice to above, it is to place on record that Section 114AA can be applied only in cases of fraudulent exports to avail benefit of export promotion schemes and thus no penalty under section 114AA can be imposed in case of importation of goods and thus provisions of Section 114AA have been wrongly invoked; that in this regard, it is brought to the notice that Section 114AA was inserted in the Customs Act vide the Taxation Laws (Amendment) Bill, 2005 owing to the proposal from the Ministry of Finance before the Standing Committee on Finance (2005-2005) consequent to detection of several cases of fraudulent exports which were shown only on paper to avail benefits under various export promotion schemes without actually exporting any goods; that the Standing Committee on Finance observed that owing to the increased instances of willful fraudulent usage of export promotion schemes, the provision for levying of penalty up to five times the value of goods appeared to be in the right direction as the offences involve criminal intent which cannot be treated at par with other instances of evasion of duty; that however, the Committee advised for implementation of the provision with due diligence and care so as to ensure that it does not result in undue harassment, that thus, the said Section 114AA cannot be applied for imposing penalty in respect of any violation in respect of imported goods.; that they relied upon a decision of Hon. CESTAT Chennai in the case of Commissioner of Customs, Sea, Chennai-II vs Sri Krishna Sounds and Lightings reported in 2019(370) ELT 594 (Tri-Chennai);

108 that it is well settled that claiming classification or exemption from customs duty in terms of exemption notification is not the job of the customs Broker; that they relied on the decision of M/s Fairdeal Shipping Agency Pvt Ltd v/s Commissioner of Customs (General) Mumbai 2019-TIOL-990-CESTAT-MUM and M/s Classic Shipping &Co vs Commissioner of Customs Tuticorin 2024(9) TMI 1326-CESTAT CHENNAI; that in consideration of above, even otherwise, as per the settled legal position, the Custom Broker could not be held responsible for any claiming classification of goods under CTH 25181000; that without prejudice to above, submitted that the Central Board of Indirect Taxes and Customs, New Delhi(CBIC, New Delhi) issued instruction no. 20/2024-Customs vide F. No. 520/01/2023-Cus.VI on the issue of Implication Customs Brokers as co-noticee in cases involving interpretative disputes to say that implicating Customs brokers in matters involving interpretation of statutes must be avoided unless element of abetment of the Customs broker in the investigation is established by the investigating authority; that it is not in dispute that the classification of goods in the subject case has been a matter of interpretative dispute considering that the test reports issued by CECL Vadodara and GSI Nagpur for the same goods appeared to be at variance on technicalities; that they have demonstrated in the submissions made herein above that they had classified the goods on the basis of the import documents provided by the importer and on the instruction of the

importer; that the fact that the Custom Broker had asked for First Check examination of goods by the Proper officer and the assessment in respect of the said Bill of entry was completed by Proper officers from time to time on the basis of test report issued by the Customs Laboratory viz CECL Vadodara which confirmed the declared description of the goods as "Dolomite" proves that the Appellant had acted bona fide and complied with the law; that no evidence has been led in the SCN to prove that the Custom Broker had any knowledge of wrong doing of the Importer and therefore, there is no scope for alleging abetment of the Custom Broker in the above-mentioned case and as such, the Custom Broker should not have been implicated in the above subject matter; that it is well settled that the circulars/instructions issued by the CBIC, New Delhi are binding on the departmental officers and they are not permitted to take a view contrary to the said instructions; that on this ground the Custom Broker submits that the penal proceedings initiated against them under the provisions of Customs Act, 1962 for imposition of penalty under Section 112 & 114AA of the Customs Act 1962 deserve to be dropped;

109 that that non-testing of goods by the CECL, Vadodara in the manner as mandated under para 3.1 of the SCN is an administrative issue between the respondents and the CECL, Vadodara; that it needs to be borne in mind that the Customs Broker have no role to play in such inter departmental disputes that it is to be however borne in mind that the CECL, Vadodara has issued test report in the subject matter on the basis of queries raised on the Test memo by the concerned officers of customs only; that Custom Broker had no role to play in the queries made on the respective test memos

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

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111 Personal Hearing: Personal Hearing held on virtual mode on 01.07.2025 attended by their Authorized Representative Shri Harsh Chaudhary, Advocate wherein he reiterated their common written submission dated 30.04.2025 and 30.06.2025 and further submitted that. Also Personal hearing held on 01.07.2025 for Customs Broker M/s. International Cargo Corporation attended by their advocate and Shri Rupesh J Katariya, Authorised Signatory of M/s. International Cargo Corporation wherein they reiterated their submission made vide letter dated 25.01.2025 submitted on 30.04.2025 and further submitted that they are not liable for penalty as they are not responsible for any misclassification of goods and they have not violated the provisions of regulation 10 of CBLR, 2018 and they relied upon Board's instructions No. 520/01/2023-Cus-IV dated 03.09.2024 as well as advisory no. 02/2024/JNCH dated 23.10.2024. Further they submitted in identical case of M/s. Heritage Marble Pvt. Ltd vide SCN No. CUS/APR/INV/440/2024-ICD-UMGN-CUS-COMMRTE-Ahmedabad, the proceeding for imposition of penalty under Section 112 (a) and 114AA of Customs Act, 196 have been dropped vide Order IN Original No. 05/SS/DC/ICD-TUMB/2025-26 dated 29.04.2025 by the Deputy Commissioner of ICD, Tumb and same Order has been accepted by the Commissioner of Customs, Ahmedabad vide reference no. CUS/APR/INV/440/2024-ICD-UMGN-CUS-COMMRTE-Ahmedabad dated

02.07.2025 and submitted copy of said letter and requested to drop the proceeding initiated against them in SCN.

112. Findings: I have carefully gone through the Show Cause Notices dated 07.01.2025 and common written submission dated 30.04.2025 and 30.06.2025 filed by importer M/s. Kailash Marble Industries Pvt Ltd. and its Director Shri Kamal Kailash Mour. Also gone through the submission made during the Personal Hearing held on virtual mode on 01.07.2025 attended by their Authorised Representative Shri Harsh Choudhary, Advocate. I have also gone through the written submission dated 25.01.2025 received by this office on 30.04.2025 from Customs Broker M/s. International Cargo Corporation and submission made during the course of Personal Hearing held on 01.07.2025.

113. 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.21,59,655/- (Rs. Twenty One Lakhs, Fifty Nine Thousand, Six Hundred and Fifty 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 to **Rs. 10,90,733/- (Rs. Ten Lakhs, Ninety Thousand, Seven Hundred and Thirty Three 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) Whether penalty should be imposed under the provisions of Section 112(a), 112 (b) and Section 114AA of the Customs Act, 1962 on Shri Kamal Kailash Mour, Director and Authorized Signatory, M/s. Kailash Marble Industries Pvt Ltd.?
- (g) 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?

114. The most vital question that comes up for consideration in case on hand is 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 113(b) to 113(g) 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.

115 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 (including square) 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

115.1 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,

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

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

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

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

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

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

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

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

The heading also excludes:

(a) Serpentine or ophite (a magnesium silicate sometimes called marble) (**heading 25.16**).

(b) Limestone (known as 'lithographic stone' and used in the printing industry) (**heading 25.30** when in the crude state).

(c) Stones identifiable as mosaic cubes or as paving flagstones, even if merely shaped or processed as specified in the text of this heading (**heading 68.02 or 68.01** respectively).

115.3 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 700°C – 1000°C 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 1700°C – 1900°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**)

115.4 I find that CRCL Vadodara had given their Test report vide Test Result No. RCL/SU/IMP/1879/20.12.19 as under:

B/E No. & Date	Description as per B/E	Findings returned in Test Reports
6107970 dated 17.12.2019	Rough Dolomite Blocks	The sample is in the form of white broken pieces of block. It is composed of Carbonates of Calcium & Magnesium (Dolomite). % of CaO contents =36.02 by wt. %Mgo content = 22.17 % by wt.

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. ICD-Tumb/195/23-24 dated 23.11.2023. 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.

115.5 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. 6107970 dated 17.12.2019 & 6204822 dated 23.12.2019 by the importer was actually ‘Rough Marble Blocks’ with specific gravity of 2.81g/cm³ 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’.

115.6 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 $\text{CaMg}(\text{CO}_3)_2$.

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

115.8 In Indian Standard Specification for **Marble, IS:1130-1969**, Entry No. 0.2 marbles have been described as *metamorphic rocks capable of taking polish, formed from the re-crystallization of limestones or dolomitic limestones and are distinguished from limestone by even visibly crystallized 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."

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

- i) **Calcite Marble:** It is a crystalline variety of limestone containing not more than 5% magnesium carbonate. Colour and design wise, it may vary from grey to white to any colour, and even figurative light- brown to pink.
- ii) **Dolomitic Marble:** It is a crystalline variety of limestone containing not less than 5% or more than 20% magnesium carbonate as dolomite molecules.
- iii) **Dolomite Marble:** It is a crystalline variety of dolomite containing in excess of 20% magnesium carbonate as dolomite molecules. It has variegated colours and textures. As the whiteness increases, the lustre and translucency increases to an extent that it starts resembling with onyx. The main advantage of this marble is availability of exotic colours and patterns and its low maintenance cost. Marbles of Banswara in Rajasthan and Chhota Udaipur in Gujarat belong to this category.
- iv) **Siliceous Limestone:** It is a limestone containing high silica with smooth appearance due to fine-grained texture. It is difficult to cut and polish this type of marble but once polished, it gives a pleasant look. It is available in several colours and designs. The pink marble of Babarmal and Indo-Italian variety from Alwar belongs to this category.
- v) **Limestone:** Several varieties of limestone are being exploited and used as marble. The Oolitic limestone of UK, Black Marble of Bhainslana, Katra & Sirohi and Golden-yellow Marble of Jaisalmer belong to this category. This type requires frequent maintenance in the form of polishing as they are non-metamorphosed and hence are softer in nature.
- vi) **Serpentine or Green Marble:** This marble is characterised mainly by the presence of a large amount of serpentine mineral. It has various shades of green varying from parrot-green to dark-green and is known for having varying degrees of veinlet intensities of other minerals, chiefly carbonate of calcium and magnesium. Most of the green marbles from Gogunda, Rikhabdeo, Kesariyaji and Dungarpur belong to this category. This marble is mostly used for anelling. The darker variety of this marble, which is so dark-green that it looks like black, has been termed as Verde Antique.
- vii) **Onyx:** It is a dense crystalline form of lime carbonate deposited usually from cold water solutions. It is generally transparent to translucent and shows a characteristic variegated colour layering due to mode of deposition. Such type of marble is found in Kupwara district in Jammu and Kashmir. It is used for making decorative articles.
- viii) **Travertine Marbles:** It is a variety of limestone regarded as a product of chemical precipitation from hot springs. The depositional history has left exotic patterns, when this is cut into thin slabs and polished, it become translucent.

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

115.10 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. 6107970 dated 17.12.2019 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.

115.11 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.

115.12 I find that Shri Kamal Kailash Mour, Director in his written submission dated 30.06.2025 and E mail dated 26.09.2024 has alleged statement dated 23.10.2024 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 23.10.2024 of Shri Kamal Kailash Mour 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 Kamal Kailash Mour has not produced any evidence that his statement dated 23.10.2024 was recorded under, threat / duress and it was tendered voluntarily and therefore, such allegation is nothing but an afterthought.

115.13 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 Kamal Kailash Mour at the time of recording of his statement on 19.09.2024.

Further, I rely on the decision of Hon'ble Tribunal, Mumbai 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 Corp 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.

116. Whether the goods valued at Rs.21,59,655/- (Rs. Twenty One Lakhs, Fifty Nine Thousand, Six Hundred and Fifty 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?

116.1 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.

116.2 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.

116.3 I find that the importer had imported 94.164 MTS totally valued at **Rs.21,59,655/-** 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

116.4 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. 6107970 dated 17.12.2019 & 6204822 dated 23.12.2019 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. 6107970 dated 17.12.2019 & 6204822 dated 23.12.2019 is liable for confiscation under Section 111(m) of Customs Act, 1962.

116.5 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...”

116.6 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).*

....
....
....”

116.7 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 94.164 MTS totally valued at Rs.21,59,655/- 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.

116.8 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.21,59,655/-** as detailed in Annexure A to Show Cause Notice.

117. Whether differential/short paid Customs Duty amounting to Rs. 10,90,733/- (Rupees Ten Lakhs, Ninety Thousand, Seven Hundred and Thirty- Three 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?

117.1 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. 10,90,733/-** 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.

117.2 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. 10,90,733/-** 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.

117.3 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

118. 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. Kailash Marble Industries?

118.1 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. 10,90,733/-** 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*.

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

118.2.1 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.”*

118.2.2 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.

118.2.3 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”*.

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

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

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

In the instant case, I have already found that Importer M/s. Kailash Marble Ind. Pvt Ltd, 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.

119. Whether, Penalty under Section 112 and Section 114AA of the Customs Act, 1962 should be imposed on Shri Kamal Kailash Mour, Director and Authorized Signatory of M/s. Kailash Marble Ind. Pvt Ltd?

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 Kamal Kailash Mour, Director of M/s. Kailash Marble Industries Pvt. Ltd. to willfully suppress the correct description and classification of goods with an intent to evade payment of applicable Customs Duty. Shri Kamal Kailash Mour had full knowledge about the mis-classification of the said imported goods in as much as Shri Kamal Kailash Mour 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 Kamal Kailash Mour of M/s. Kailash Marble Industries Pvt. Ltd has admitted in his statement dated 19.09.2024 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 Marble Blocks, Epoxy Resin, General Resin, Fibre etc., and company have fully automated state of the art Marble Processing Plant. Further, Shri Kamal Kailash Mour, Director, on being asked categorically for the goods imported vide Bill of Entry No. 6107970 dated 17.12.2019, 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 Kamal Kailash Mour 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 Kamal Kailash Mour have rendered the imported goods liable for confiscation under Section 111 (m) of the Customs Act, 1962. Further, I find that Show Cause Notice proposes penalty on Shri Kamal under

Section 112(a) and Section 112(b) of Customs Act, 1962. In this regard, I find that penalty under Section 112(a) and 112(b) are not mutually exclusive, however, both can be imposed simultaneously, as there is no provision in the Act that bars their simultaneous levy. Section 112 deals with penalties for goods that are liable for confiscation, with clause (a) generally applying when a person deals with goods in contravention of the law, and clause (b) applying when a person brings goods into India that contravene the Act, such as by failing to declare them. The relevant clause for penalty depends on the specific facts and circumstances of the case. In the instant case, from the facts and findings, I note that Shri Kamal Kailash Mour, Director and Authorized signatory of M/s Kailash Marble Industries Pvt. Ltd signed the relevant documents used in misdeclaration of impugned goods before the Customs Authority, which resulted into short levy of customs duty and therefore, the act of omission and commission on the part of Shri kamal Kailash Mour squarely liable for penalty under Section 112(a) of the Customs Act, 1962 and not under Section 112(b) of the Customs Act, 1962. Therefore, I hold that Shri Kamal Kailash Mour is liable for penalty under Section 112(a)(ii) of Customs Act, 1962. Further, I refrain from imposing simultaneous penalty under Section 112(b) of Customs Act, 1962 on Shri Kamal Kailash Mour.

Further, I find that Shri Kamal Kailash Mour 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.

120. While deciding each issue as above, I have examined the judgments cited by the Advocate of Importer and Shri Kamal Kailash Mour, Director and authorized signatory of the Importer firm M/s. Kailash Marble Industries Pvt. Ltd. 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 Director Shri Kamal Kailash Mour 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.

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

121.1 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.

121.2 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.

121.3 I find that in the present case said Customs Broker had sought First Check of the Bill of Entry No. 6107970 dated 17.12.2019. Further representative sample were also drawn to CRCL Vadodara vide Test Memo No. ICD- Tumb/I-164/19-20 dated 19.12.2019 and accordingly, CRCL Vadodara had given their Test Result vide Test Result No. RCL/SU/IMP/1879/20.12.19 wherein the reported that " The sample is in the form of white broken piece of block. It is composed of carbonates of Calcium and Magnesium (Dolomite), % of CaO content as 36.02% by wt and % of Mgo as 22.17%". Based on this Test Report of CRCL, Vadodara, Out of Charge was given. 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 penalised.

121.4 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.

121.5 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 Delhi High Court in the case of Commissioner v. Trinetra Impex Pvt. Ltd. — 2020 reported in (372) E.L.T. 332 (Del.) has held that though under Section 112(a) *ibid* mensrea may not be required to be proved as condition precedent, however, when it comes to imposition of penalty, it is necessary to show that said essential, element/ingredient is present. No element of mensrea or conscious knowledge which can be attributed to CHA. The CHA acted *bona fide* 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.

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

:: ORDER ::

122.1 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;

122.2 I hold the seized declared goods viz. " Rough Dolomite Block " imported vide Bill of Entry Bills of Entry as detailed in **Annexure-A** valued at **21,59,655/- (Rs. Twenty One Lakhs, Fifty Nine Thousand, Six Hundred and Fifty Five only)** liable for confiscation under Section 111 (m) of the Customs Act, 1962. However, I give M/s. Kailash Marble Industries Pvt. Ltd., (IEC No. 0301024201), Survey No.15/3, Near Swati Chemical, Village Kharadpada, Silvasa, UT of Dadra Nagar Haveli – 396235 and the option to redeem the goods on payment of Fine of **Rs.5,39,900/- (Rupees Five Lack Thirty Nine thousand and Nine Hundred only)** under Section 125 of the Customs Act, 1962.

122.3 I confirm the demand of Differential Customs Duty amounting to **Rs. 10,90,733/- (Rs. Ten Lakhs, Ninety Thousand, Seven Hundred and Thirty Three Only)** leviable on 'Rough Marble Block' imported by M/s. Kailash Marble Industries Pvt. Ltd., (IEC No. 0301024201), Survey No.15/3, Near Swati Chemical, Village Kharadpada, Silvasa, UT of Dadra Nagar Haveli – 396235 declaring as 'Rough Dolomite Block' as detailed in Annexures A to the

Show Cause Notice issued under Section 28(4) of the Customs Act, 1962, under the provisions of Section 28(8) of the Customs Act, 1962 and order to recover the same.

122.4 Interest at the appropriate rate shall be charged and recovered from M/s. Kailash Marble Industries Pvt. Ltd., (IEC No. 0301024201), Survey No.15/3, Near Swati Chemical, Village Kharadpada, Silvasa, UT of Dadra Nagar Haveli - 396235 under Section 28AA of the Customs Act, 1962 on the duty confirmed at Para 122.3 above.

122.5 I impose penalty of **Rs. 10,90,733/- (Rs. Ten Lakhs, Ninety Thousand, Seven Hundred and Thirty Three Only)** plus penalty equal to the applicable interest under Section 28AA of the Customs Act, 1962 payable on the Duty demanded and confirmed above on M/s. Kailash Marble Industries Pvt. Ltd., (IEC No. 0301024201), Survey No.15/3, Near Swati Chemical, Village Kharadpada, Silvasa, UT of Dadra Nagar Haveli - 396235 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. Kailash Marble Industries Pvt. Ltd., 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. Further, 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.

122.6 I impose a penalty of **Rs.5,39,900/- (Rupees Five Lack Thirty Nine thousand and Nine Hundred only)** on Kailash Marble Industries Pvt. Ltd., (IEC No. 0301024201), Survey No.15/3, Near Swati Chemical, Village Kharadpada, Silvasa, UT of Dadra Nagar Haveli - 396235 under Section 114AA of the Customs Act, 1962.

122.7 I impose a penalty of **Rs.-1,09,000/- (Rupees One Lack Nine thousand only)** on Shri Kamal Kailash Mour, Director and Authorized Signatory of M/s. Kailash Marble Industries Pvt. Ltd., (IEC No. 0301024201), Survey No.15/3, Near Swati Chemical, Village Kharadpada, Silvasa, UT of Dadra Nagar Haveli - 396235 under Section 112(a)(ii) of the Customs Act, 1962.

122.8 I impose a penalty of **Rs.5,39,900/- (Rupees Five Lack Thirty Nine thousand and Nine Hundred only)** on Shri Kamal Kailash Mour, Director and Authorized Signatory of M/s. Kailash Marble Industries Pvt. Ltd., (IEC No. 0301024201), Survey No.15/3, Near Swati Chemical, Village Kharadpada, Silvasa, UT of Dadra Nagar Haveli - 396235 under Section 114AA of the Customs Act, 1962.

122.9 I drop the penalty proposed in Show Cause Notice under Section 112(a)(ii) 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 121 to 121.5 hereinabove.

122.10 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 121 to 121.5 hereinabove.

123 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.

124. The Show Cause Notice No CUS/APR/INV/439/2024-ICD-UMGN-CUS-COMMRTE-AHMEDABAD DATED 07.01.2025 is disposed off in above terms.

(Lokesh Damor)
Additional Commissioner

F.No. No. CUS/APR/INV/439/2024-ICD-UMGN-CUS-COMMRTE-AHMEDABAD
Date :23.09.2025

DIN: 20250971MN000000B5F2

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

To Noticees:

1. M/s. Kailash Marble Industries Pvt. Ltd., Survey No.15/3, Near Swati Chemical, Village Kharadpada, Silvasa, UT of Dadra Nagar Haveli - 396235.
2. Shri Kamal Kailash Mour, Director and Authorized Signatory, M/s. Kailash Marble Industries Pvt. Ltd., Survey No.15/3, Near Swati Chemical, Village Kharadpada, Silvasa, UT of Dadra Nagar Haveli - 396235.
3. M/s. International Cargo Corporation (Customs Broker) 221, Ecstasy, 1st Floor, Business Park, City of Joy, Mulund (W), Mumbai – 400080.

Copy to:

- (1) The Principal Commissioner, Customs Ahmedabad Commissionerate, Ahmedabad; (kind Attn: RRA Section)
- (2) The Deputy/Assistant 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.