



सीमा शुल्क(अपील) आयुक्त का कार्यालय, अहमदाबाद

OFFICE OF THE COMMISSIONER OF CUSTOMS (APPEALS), AHMEDABAD,

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DIN- 20250571MN0000385328

क	फाइल संख्या FILE NO.	(1) S/49-115/CUS/MUN/2023-24 (2) S/49-114/CUS/MUN/2023-24
ख	अपील आदेश संख्या ORDER-IN- APPEAL NO. (सीमा शुल्क अधिनियम, 1962 की धारा 128क के अंतर्गत)(UNDER SECTION 128A OF THE CUSTOMS ACT, 1962)	MUN-CUSTM-000-APP-047 to 048-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	30.05.2025
ङ	उद्भूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN- ORIGINAL NO.	OIO No. MCH/ADJ/ADC/RK/77/2023-24 dated 03.07.2023
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	30.05.2025
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	1. M/s Array Stone Hub P Ltd. 356-357, Shashtri Nagar, Dada Bari, Kota, Rajasthan 2. Shri Lal Chand Yadav, Director M/s Array Stone Hub P Ltd. 356-357, Shashtri Nagar, Dada Bari, Kota, Rajasthan



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



	amount of duty and interest demanded, fine or penalty levied is one lakh rupees or less, fees as Rs.200/- and if it is more than one lakh rupees, the fee is Rs.1000/-.	
4.	मद सं. 2 के अधीन सूचित मामलों के अलावा अन्य मामलों के सम्बन्ध में यदि कोई व्यक्ति इस आदेश से आहत महसूस करता हो तो वे सीमाशुल्क अधिनियम 1962 की धारा 129 ए (1) के अधीन फॉर्म सी.ए.-3 में सीमाशुल्क, केन्द्रीय उत्पाद शुल्क और सेवा कर अपील अधिकरण के समक्ष निम्नलिखित पते पर अपील कर सकते हैं	
	In respect of cases other than these mentioned under item 2 above, any person aggrieved by this order can file an appeal under Section 129 A(1) of the Customs Act, 1962 in form C.A.-3 before the Customs, Excise and Service Tax Appellate Tribunal at the following address :	
	सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ	Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench
	दूसरी मंज़िल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016	2 nd Floor, Bahumali Bhavan, Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016
5.	सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (6) के अधीन, सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (1) के अधीन अपील के साथ निम्नलिखित शुल्क संलग्न होने चाहिए-	
	Under Section 129 A (6) of the Customs Act, 1962 an appeal under Section 129 A (1) of the Customs Act, 1962 shall be accompanied by a fee of -	
(क)	अपील से सम्बन्धित मामले में जहाँ किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए या उससे कम हो तो एक हजार रूपए.	
(a)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is five lakh rupees or less, one thousand rupees;	
(ख)	अपील से सम्बन्धित मामले में जहाँ किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए से अधिक हो लेकिन रुपये पचास लाख से अधिक न हो तो; पाँच हजार रूपए	
(b)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than five lakh rupees but not exceeding fifty lakh rupees, five thousand rupees ;	
(ग)	अपील से सम्बन्धित मामले में जहाँ किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पचास लाख रूपए से अधिक हो तो; दस हजार रूपए.	
(c)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than fifty lakh rupees, ten thousand rupees	
(घ)	इस आदेश के विरुद्ध अधिकरण के सामने, मांगे गए शुल्क के 10% अदा करने पर, जहाँ शुल्क या शुल्क एवं दंड विवाद में हैं, या दंड के 10% अदा करने पर, जहाँ केवल दंड विवाद में है, अपील रखा जाएगा।	
(d)	An appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.	
6.	उक्त अधिनियम की धारा 129 (ए) के अन्तर्गत अपील प्राधिकरण के समक्ष दायर प्रत्येक आवेदन पत्र- (क) रोक आदेश के लिए या गलतियों को सुधारने के लिए या किसी अन्य प्रयोजन के लिए किए गए अपील :- अथवा (ख) अपील या आवेदन पत्र का प्रत्यावर्तन के लिए दायर आवेदन के साथ रुपये पाँच सौ का शुल्क भी संलग्न होने चाहिए.	
	Under section 129 (a) of the said Act, every application made before the Appellate Tribunal-	
	(a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or	
	(b) for restoration of an appeal or an application shall be accompanied by a fee of five Hundred rupees.	



ORDER-IN-APPEAL

M/s. Array Stone Hub Private Ltd.(hereinafter referred to as 'the appellant No.1') Situated at 356-357, Shashtri Nagar, Dada Bari, Kota, Rajasthan and Shri Lal Chand Yadav, Director of M/s Array Stone Hub P Ltd. (hereinafter referred to as 'the appellant No.2') have filed the present appeals challenging Order-in-Original No. MCH/ADJ/ADC/RK/77/2023-24 dated 3.7.2023 (hereinafter referred to as 'the impugned order') passed by the Additional Commissioner, Customs House, Mundra (hereinafter referred to as 'the adjudicating authority').

2. Facts of the case, in brief, are that the appellant No. 1 are engaged in export of Sandstone falling under CTH 68010000, 68022190 and 68029900 of Customs Tariff (during the period Sept., 2019 onwards). They were claiming and availing Drawback of 1% of FOB Value of export goods under Scheme Code 19 in terms of Rule 3 of Customs and Central Excise Duties Drawback Rules, 2017 read with Section 75 of Customs Act, 1975 and respective Notifications issued by Central Govt, with respect to rate of Drawback specified from time to time.

2.1 Intelligence gathered by the officers of Directorate of Revenue Intelligence (hereinafter referred to as "DRI) Indicated that the appellant No. 1 were wrongly availing drawback by way of misclassifying their export goods under CTH/Heading 68010000/68022190/68029900 of Customs Tariff instead of correct classification under CTH/Heading 25162000. The intelligence further suggested that the appellant No. 1 were exporting 'Sandstone and correctly classifying the same under CTH/Heading 2516 till 2018-19 where no drawback benefits were available but later on they started classifying the some goods under CTH/Heading 6801/6802 for which drawback 1% of FOB Value of export goods was available. Since the subject exported goods were appropriately classifiable under CTH/Heading 2516 and the appellant No. 1 had mis-classified the same under CTH/Heading 6801/6602 instead of appropriate CTH/Heading 2516, the appellant No. 1 had wrongly claimed/availed the drawback.

2.2. During the physical examination of the subject export which were goods ready to be shipped at Mundra port, it was noticed that the subject goods (Sandstone) appeared merely cut Into rectangular shapes and square shapes having rough surface and the same were not polished/or processed by adding any material, and nor the same were given into any shape of Statues, statuettes, pedestals, high or low reliefs, crosses, figures of animals, bowls, vases, cups, cachou boxes, writing sets, ash-trays, paper weights, artificial fruit and foliage, etc. This indicates that the goods were not processed to the extent that the same should be considered as an article classifiable under CTH/HEADING 6801/6802. Shri Lal Chand Yadav, appellant No. 2 and Director of appellant No. in his



statement dated 28.12.2020 also admitted and explained that they did not add any other raw material/inputs for manufacturing of final products and no polishing was done on the same. He stated that all activities such as cutting and resizing were done on the Sandstone Blocks to get final product for export and sometimes they were purchasing processed/manufactured Sandstone from the domestic suppliers and exporting the same as it was (without doing any manufacturing activity). From these facts stated by appellant No.2 and description/CTH/HEADING mentioned in the purchase Invoices of subject goods from domestic supplier, it appeared that the appellant No. 1 did not carry out further process on the subject goods purchased by them from domestic suppliers and exported by them under claim of Drawback.

2.3 During the course of investigation, It emerged that appellant No. 1 were classifying all their products under CTH/HEADING 2516 till 01.09.2019 where the drawback was neither available, nor claimed by the appellant No. 1 However, w.e.f. 02.09.2021, appellant No. 1 started classifying their products under CTH/HEADING 6801/6802 and started claiming/availing drawback of 1% of FOB value. Thus, it transpired that appellant No. 1 started miss-classifying the subject export goods with fraudulent Intent to avail undue benefit of Drawback under CTH/HEADING 2516 under which they were classifying their subject export goods prior to 02.09.2019.

2.4 It appeared that the domestic suppliers of subject goods while supplying the same (duly cut to fix size) to appellant No. 1 were classifying the goods correctly by declaring correct HSN 2516 In the Bills/Invoices Issued by them. Whereas, while making export of goods having similar description and the same goods, appellant No. 1 were deliberately manipulating the classification by changing the CTH/HEADING for same goods from 2516 to 6801/6802.

2.5 Thus, the appellant No.1 were suppressing the actual classification of export goods under CTH/heading 2516, mis-declaring the same under CTH/heading 6801/6802 with sole aim to avail the undue benefits of drawback in contravention of Section 50(2) and 50(3) of Customs Act, 1962.

2.6 The appellant No. 1 vide letter dated 28.12.2020 requested Customs House, Mundra for provisional release of the subject export goods seized vide Seizure Memo dated 23.12.2020. Accordingly, the seized export goods were allowed to be released on provisional basis by the Jurisdictional Customs Authorities i.e. Customs House, Mundra subject to furnishing Bond for full value of the offending goods ie. Rs. 6,93,80,355/- and Bank Guarantee of Rs. 34,69,018/-. The Deputy Commissioner of Customs (Export), CH Mundra vide letter dated 30.12.2020, informed that Mis. Array had fulfilled the conditions and submitted Bank Guarantee bearing No. 0184NDDG00013121 for Rs. 34,69,018/- issued by ICICI Bank, Gandhidham and Bond for Rs. 6,93,80,355/- duly accepted by the



Deputy Commissioner (Export) on 30.12.2020. Accordingly, the export goods seized vide Seizure Memo dated 23.12.2020 were provisionally released for export.

2.7 After detailed investigation in the matter, interalia, Show Cause Notice F.No. CUS/DBK/SCN/5/2023-DBK dtd. 16.03.2023 was issued to appellant No. 1, appellant No. and other co-noticees , as to why

(a) The declared classification of the subject goods under CTH No. 6801/6802 in the Shipping Bills as detailed in Annexure-B and Annexure 5 of the Show Cause Notice, should not be rejected and the goods exported vide Shipping Bills listed in Annexure-B of the Show Cause Notice, including that of mentioned in Annexure-S of the Show Cause Notice, classified under CTH/HEADING 68010000/68022190/68029900 should not be held appropriately classifiable under CTH/HEADING 25162000 of the Customs Tariff and re-assessed accordingly under Section 17 of Customs Act, 1962.

(b) The export goods valued at Rs. 68,64,81,940/- exported vide Shipping Bills listed in Annexure-B, of the Show Cause Notice, including that of mentioned in Annexure-5, of the Show Cause Notice, under CTH/HEADING 68010000/68022190/68029900 should not be held liable for confiscation under Section 113 (1) of the Customs Act, 1962.

(c) The drawback amount of Rs. 4,81,621/- claimed by them and sanctioned by Authority as detailed in Annexure-C of the Show Cause Notice, should not be demanded and recovered from them under Section 75 A(2) of the Customs Act, 1962 read with Rule 17 of Customs and Central Excise Duties Drawback Rules, 2017 along with applicable interest under Section 28AA of Customs Act, 1962. The remaining drawback amount of Rs. 63,83,309/-claimed by them vide various Shipping Bills as detailed in Annexure-B of the Show Cause Notice, should not be denied to be sanctioned by the competent authority.

(d) The drawback amount of Rs. 3,79,844/- paid by them alongwith Interest of Rs 52,212/- as discussed in para 8.1 of impugned order , should not be appropriated against the demand being raised vide the Investigation Report.

(e) Penalty should not be imposed on appellant No. 1 under Sections 114(iii) and 114AA of the Customs Act, 1962, for the reasons discussed above.

(f) Penalty should not be imposed on appellant No. 2 and other co-noticees under Sections 114(iii) and 114AA of the Customs Act, 1962, for the reasons discussed above



2.1. The adjudicating authority passed the impugned order wherein he ordered as under :-

- The Shipping Bills as detailed in Annexure – B and Annexure S of the Show Cause Notice were ordered to be re-assessed and classified under CTH 25162000.
- The above said goods, valued at Rs. 68,64,81,940/- were confiscated under Section 113 (i) of the Customs Act, 1962 and an option to redeem the said goods on payment of Rs. 7,75,000/- was accorded under Section 125 of the Customs Act, 1962
- Drawback amounting to Rs. 68,66,930/- (in respect of Shipping Bills as mentioned in Annexure B to the Show Cause Notice) and Rs. 6,93,804/- (in respect of Shipping Bills as mentioned in Annexure S of the Show Cause Notice) was denied under Section 75A(2) of the Customs Act, 1962 read with Rule 17 of Customs and Central Excise Duties Drawback Rules, 2017
- Out of the above, Drawback amounting to Rs. 3,79,344/- which was disbursed and subsequently paid during investigation was appropriated
- Interest in respect of an amount disbursed/ credit to the Exporter Account as per the provisions of Customs Act, 1962 was charged and an amount of Rs. 52,212/- deposited by the Exporter during investigation was appropriated.
- Penalty of Rs. 2,25,000/- was imposed on M/s Array Stone Hub under the provisions of Section 114(iii) of the Customs Act, 1962.
- Penalty of Rs. 2,25,000/- was imposed on Mr. Lal Chand Yadav, Director of M/s Array Stone Hub under the provisions of Section 114(iii) of the Customs Act, 1962.
- Penalty of Rs. 75,000/- was imposed on M/s Array Stone Hub under the provisions of Section 114AA of the Customs Act, 1962.
- Penalty of Rs. 75,000/- was imposed on Mr. Lal Chand Yadav, Director of M/s Array Stone Hub under the provisions of Section 114AA of the Customs Act, 1962.

3. Being aggrieved with the impugned order passed by the adjudicating authority, the appellant No. 1 and appellant No. 2 have filed the present appeals. They have, *inter-alia*, raised various contentions and filed detailed submissions which are similar as given below in support of their claims:





- Past practice is not a factor while determining the classification of goods in terms of the principle enunciated at Rule 6 of the General Rules of Interpretation of Import Tariff.
- The subject goods are covered under Chapter 25 in light of Chapter Note 1 of Chapter 25
- The main head 2516 includes '*monumental or building stone*' as opposed to the CTH 6802 which includes '**worked** *monumental or building stone*'. Secondly, the main head 2516 contains the phrase '*merely cut but sawing or otherwise*' as opposed to the description '*simply cut or sawn **with a flat or even surface***'. This indicates that the word '**worked**' and the phrase '*with a flat or even surface*' are the differentiating factors for goods under CTH 25 and 68.
- CTH 6802 is more specific to the effect that the goods should be cut or sawn and should necessarily have a flat or even surface.
- The goods under consideration are cut to size and reduced to thickness of 20mm +/- 2 which is evident from the concerned Shipping Bills and as such are ready for use as building stones. This fact is also evident from the statement dated 28.12.2020 of Shri Lal Chand Yadav which has been narrated at para 7.1 of the Show Cause Notice
- The goods under consideration had been subjected to the processes of calibration, tumbling, honing, sand blasting, machine cutting, flaming, etc. which is evident from the dated 28.12.2020 of Shri Lal Chand Yadav.
- Explanatory notes to HSN for the CTH 6802 stipulates that the said heading covers stone of any shape which has been planed or sand dressed. In the instant case, the statement of Shri Lal Chand Yadav clearly mentions that the exported goods are subjected to the process of sand blasting. Further, the picture in the foregoing para and that shown in the panchnama dated 22.12.2020 indicate that the goods have been planed i.e. having flat surface.
- They had been exporting the goods by processing the natural stone in a manner of reducing the thickness, flattening the surface and cutting to size. Accordingly, the stone which is in the nature of Marble, travertine and alabaster have been correctly classified under 68022190 and other processed stone i.e. Sandstone has been correctly classified under CTH 68029900.



- The CTH adopted by the supplier cannot over-ride the chapter notes and the section notes and be made the basis of classification of goods.
- Even if the goods under consideration are prima facie classifiable under two headings i.e. 2516 and 6802, the same would be classifiable under CTH 6802 in terms of the provisions of Rule 3(c) of the General Rules for Interpretation of Import Tariff.
- The DRI investigation culminated in issuance of two Show Cause Notices viz. 1) The present Show Cause Notice and 2) Show Cause Notice issued by Deputy Commissioner, Customs, ICD CONCOR, Kota, Rajasthan of which the Show Cause Notice issued by the Customs, Kota, Rajasthan has been decided in favour of the appellants vide Order-in-Original NO. 49/2022 dated 24.11.2022
- Reliance was placed on the judgment in the case of M/s Premji Haridas & Co. reported at 1997 (89) ELT 658 (Bom) wherein it has been held that it is well settled rule of interpretation that in cases involving classification dispute, if there is a doubt on interpretation, then the benefit must go to the assessee.
- Representative samples of the export goods had been drawn under panchnama dated 22.12.2020 drawn at the CFS, Mundra. However, the Show Cause Notice is absolutely silent about the fact whether such samples had been sent for testing by the competent authority or otherwise and if so, the test results thereof.
- It is a well settled principle of law that the onus to prove that the goods are classifiable under a particular heading lies on the department and such onus had not been discharged. Reliance was placed on the case laws of M/s Srinavasa Trading Company reported at 2013 (295) ELT 614 (T), M/s D-Link India Ltd. reported at 2018 (9) GSTL 388 (T), M/s Hindalco Industries Ltd. reported at 2007 (217) ELT 343 (Cal) and M/s S S Enterprises reported at 1988 (36) ELT 135 (T)
- It is a settled law that penalty cannot be imposed when the matter is pertaining to classification dispute since it is only a matter of interpretation. Reliance was placed on the case laws of M/s Eastern Steel Industries reported at 2017 (349) ELT 324 (T), M/s Thyssenkrupp Industries India P. Ltd. reported at 2016 (343) ELT 533 (T), M/s INdofil Chemicals Co. reported at 2016 (333) ELT 115 (T), M/s Bharti Airtel reported at 2009 (235) ELT 150 (T), M/s Abraham J Thakaran reported at 2007 (210) ELT 112 (T) and M/s Shree Ganesh International reported at 2004 (174) ELT 171 (T)

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- Neither is there anything in the Show Cause Notice nor has the adjudicating authority mentioned in the findings to the impugned order that the appellants had done or omitted to do any act which rendered the subject goods liable to confiscation and as penalty under Section 114 of the Customs Act was not imposable.
- Section 114AA of the Customs Act is applicable only to cases where a false or incorrect declaration, statement or document is signed or used. In the instant case, there is no false or incorrect declaration, statement or document signed or used by any person and as such penalty under Section 114AA of the Customs Act was not imposable.
- It is a settled law that for the purpose of imposition of penalty something positive other than mere inaction or failure on the part of the appellants or conscious or deliberate withholding of information when the appellant knew otherwise, is required to be established. Reliance was placed on the case laws of M/s Anand Nishikawa Co Ltd reported at 2005 (188) ELT 149 (SC), Padmini Products Limited v CCE reported at 1989 (43) ELT 195 (SC), Chemphar Drugs & Liniments 1989 (40) ELT 276 (SC), Gopal Zarda Udyog v. CCE 2005 (188) ELT 251 (SC) and Lubri-Chem Industries Ltd. v. CCE 1994 (73) ELT 257 (SC).
- The said goods are not available for confiscation and in such cases where the goods itself are not available for confiscation, confiscation cannot be done. Hence, in absence of any confiscation no redemption fine can be imposed. Reliance was placed on the case laws of M/s. INDOKEM LTD. reported at ELT 2017 (352) ELT 386 (Tri.- Mumbai) and M/s VIDHI DYESTUFF MANUFACTURING LTD. reported at 2015 (327) E.L.T. 500 (Tri. - Mumbai).

PERSONAL HEARING

4. Personal hearing in the matter was held on 13.12.2024 wherein Shri John Christian and Shri Ashish Jain, Consultants appeared for hearing on behalf of both the appellants and they reiterated the submissions made in appeal memorandum. Due to change in appellate authority, fresh Personal hearing in the matter was held on 24.04.2025 wherein Shri John Christian and Shri Ashish Jain, Consultants appeared for hearing on behalf of both the appellants and they reiterated the submissions made in appeal memorandum.



DISCUSSION & FINDINGS

5. I have carefully examined the impugned order, the appeal memorandum filed by the appellants, the submissions made during the hearing, as well as all documents and evidence on record. Both the appellants have filed the present appeals on 01.09.2023. In the Form C.A.-1, the Appellant has mentioned date of communication of the Order-In-Original dated 03.07.2023 as 05.07.2023. Hence, the appeal has been filed within normal period of 60 days, as stipulated under Section 128(1) of the Customs Act, 1962. The appellant No. 1 has submitted copy of challan No.3468 dtd. 28.08.2023 for Rs. 22,500/- towards pre-deposit. The appellant No. 2 has also submitted copy of challan No.3467 dtd. 28.08.2023 for Rs. 22,500/- towards pre-deposit. As both the appeals have been filed within the stipulated time-limit under Section 128(1) of the Customs Act, 1962 and with the mandatory pre-deposit as per Section 129E of the said Act, the same have been admitted and being taken up together for disposal.

5.1 The primary issue to be decided in this appeal is whether the sandstone falls under Chapter 25 or Chapter 68. All other issues arise as consequential matters dependent on the correct determination of this classification.

5.2 Since the classification of the disputed goods is proposed under CTH 25162000, it is essential to examine the scope of this chapter heading. The scope of Chapter 25 is defined in Note 1 to the Chapter, which reads as under:

Except where their context or Note 4 to this Chapter otherwise requires, the headings of this Chapter cover only products which are in the crude state or which have been washed (even with chemical substances eliminating their impurities without changing the structure of the product), crushed, ground, powdered, levigated, sifted, screened, concentrated by flotation, magnetic separation or other mechanical or physical processes (except crystallization), but not products that have been roasted, calcined, obtained by mixing or subjected to processing beyond that mentioned in each heading.

The above narration specifies that products that meet the following criteria are covered under the ambit of Chapter 25:

- a) The products covered under the said Chapter would be crude in state.

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- b) Goods which have been subjected to the processes of washing, crushing, grounding, powdering, levigating, sifting, screening, concentrating by flotation, magnetic separation or other mechanical or physical processes

The said Chapter Note lays down another important criterion to the effect that goods which have been subjected to processes other than the ones specified at (b) above or the processes of roasting, calcining or mixing would not be covered within the scope of Chapter 25.

5.3 I find that the proper approach to determining the correct classification is to assess the nature of the goods in light of the relevant Chapter Note, rather than relying on the exclusion clause in Chapter 68 or on parameters such as past practice or the classification adopted by the suppliers. The first question that arises in this case is whether the goods in question are crude in nature. The answer is evident from the descriptions provided in the Shipping Bills and Invoices, which indicate that the goods have been cut to specific dimensions and reduced to a thickness of 20mm \pm 2mm. That the goods are of uniform size and square in shape is further corroborated by the case records—Invoice No. 8893, taken illustratively, describes the goods as "S-Stone H/C 20 \pm 2 mm 600 x 600". Additionally, the panchnama dated 22.12.2020, drawn at M/s Ashutosh Container Service Pvt. Ltd., CFS, Mundra, includes photographs of representative samples, which clearly show that the goods are cut to size and have flat surfaces. These facts, drawn directly from the case record, clearly establish that the goods are not crude but have been processed—cut, sized, and flattened—to the extent that they are ready for use as building stones. Goods in such a finished condition cannot, by any reasonable interpretation, be considered crude. On the contrary, the Show Cause Notice lacks any material evidence to substantiate the claim that the goods were crude in nature.

5.4 Turning to the next consideration—whether the processes applied to the subject goods fall within the permissible limits specified under Chapter Note 1 of Chapter 25—it is observed that the nature of processing has been outlined in the statement dated 28.12.2020 of Shri Lal Chand Yadav. According to the statement, the goods underwent calibration, tumbling, honing, sandblasting, machine cutting, flaming, and similar processes. It is a well-established principle of law that a statement recorded before a Customs officer is admissible as evidence. In the absence of any contrary evidence on record, it must be accepted that the disputed goods were indeed subjected to the aforesaid processes. These processes clearly go beyond the limited scope of operations permitted under Chapter Note 1 of Chapter 25 and, therefore, take the goods outside the purview of this chapter.



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5.5 The foregoing discussion clearly establishes that both the conditions stipulated under Chapter Note 1 of Chapter 25 are not satisfied in the present case. Accordingly, the goods in question cannot be classified under Chapter 25 by virtue of the limitations imposed by the said Chapter Note.

6. It is further observed that the Explanatory Notes to the Harmonized System of Nomenclature (HSN) for Heading 6802 specify that the said heading encompasses stone of any shape that has been planed or sand-dressed. In the present case, the statement of Shri Lal Chand Yadav explicitly confirms that the exported goods were subjected to the process of sand blasting. Additionally, the images referred to in the preceding paragraph and those annexed to the panchnama dated 22.12.2020 clearly indicate that the goods have been planed, as evidenced by their flat surface. Accordingly, in light of the HSN Explanatory Notes, the goods in question are more appropriately classifiable under Heading 6802.

7. Before parting, it is imperative to note that representative samples of the export goods were drawn under panchnama dated 22.12.2020 at the CFS, Mundra. However, no test results have been placed on record. There is no explanation as to why the investigation failed to produce or rely upon the results of such testing. This omission reveals a significant lapse on the part of the investigating authority in discharging the burden of proving that the goods are classifiable under CTH 25162000. The appellants have submitted a relevant order pertaining to ICD CONCOR, Kota, Rajasthan, arising from the same investigation, wherein the goods were held to be classifiable under CTH 6801. The classification in that case was conclusively determined based on the test results of the representative samples drawn. In contrast, although samples were admittedly drawn in the present case, no test reports have been cited in the Show Cause Notice or submitted at any subsequent stage. In view of the above, it is evident that the investigating authority failed to utilise a critical opportunity to substantiate its claim regarding the classification of the goods. This failure materially undermines the case set forth in the Show Cause Notice.

8. In light of the above discussions, I have no hesitation in concluding that the goods under dispute do not merit classification under CTH 25162000. Accordingly, the classification adopted by the appellants is upheld.

9. Having come to the above conclusion, I find that the consequential actions of imposition of penalties on both the appellants, denial and drawback, appropriation of the amount of drawback paid during the course of investigation, holding the goods liable to confiscation and imposition of redemption fine thereon are not sustainable.

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10. Accordingly, I set aside the impugned order to the extent it relates to the appellant No. 1 and appellant No. 2 and allow the appeal filed by appellant No. 1 and appellant No. 2 with consequential relief, if any, in accordance with law.



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


(AMIT GUPTA)

Commissioner (Appeals),
Customs, Ahmedabad

Date: 30.05.2025

F.No. S/49-115/CUS/MUN/2023-24

F.No. S/49-114/CUS/MUN/2023-24

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By Registered post A.D/E-Mail

To,

1. M/s Array Stone Hub P Ltd.
356-357, Shashtri Nagar,
Dada Bari, Kota, Rajasthan
2. Shri Lal Chand Yadav, Director
M/s Array Stone Hub P Ltd.
356-357, Shashtri Nagar, Dada Bari,
Kota, Rajasthan

Copy to:

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