



सत्यमेव जयते

**OFFICE OF THE PRINCIPAL COMMISSIONER
OF CUSTOMS MUNDRA COMMISSIONERATE**
Custom House, Mundra (Kachchh)
MUNDRA PORT & SPL ECONOMIC ZONE,
MUNDRA-370421
PHONE No: 02838-271165/66/67/68,
FAX No.02838-271169/62



A	FILE NO.	GEN/ADJ/ADC/493/2023-ADJN
B	OIO NO.	MCH/ADJ/ADC/RK/77/2023-24
C	Passed by	RAGHUVANSH KUMAR, ADDITIONAL COMMISSIONER OF CUSTOMS, CUSTOMS HOUSE, MUNDRA.
D	Date of Order	22.06.2023
E	Date of Issue	03.07.2023
F	SCN NUMBER & DATE	CUS/DBK/SCN/5/2023-DBK DATED 16.03.2023
G	Noticee / Party / Importer	<ol style="list-style-type: none"> 1. M/S. ARRAY STONE HUB PVT. LTD., 356-357, SHASHTRI NAGAR, DADA BARI, KOTA (RAJASTHAN)-324001 2. SHRI LAL CHAND YADAV, DIRECTOR, M/S. ARRAY STONE HUB PVT. LTD., 356-357, SHASTRI NAGAR, DADA BARI, KOTA (RAJASTHAN)-324001 3. M/S SHREE AMBICA COMMERCIAL COMPANY, TENAMENT 4, PLOT NO- 283-284, WARD 8/A, SUBHASH NAGAR, GANDHIDHAM, KUTCH-370201 4. M/S IHA LOGISTICS, TENAMENT 4, PLOT NO- 283-284, WARD 8/A, SUBHASH NAGAR, GANDHIDHAM, KUTCH-370201 5. SHRI DHIRAJ SATYAPAL SHARMA, TENAMENT 4, PLOT NO- 283-284, WARD 8/A, SUBHASH NAGAR, GANDHIDHAM, KUTCH-370201 6. M/S. SSS SAI FORWARDERS PVT. LTD., A-305, CLASSQUE CENTRE, PLOT NO. 26, MAHAL INDUSTRIAL ESTATE, OFF MAHAKALI CAVES ROAD, ANDHERI (E), MUMBAI-400093 [REGD. OFFICE A/403, GOLDEN SANDS CHS, SVP NAGAR, MHADA, FOUR BANGLOW, ANDHERI (W), MUMBAI] 7. M/S UNIVERSAL CARGO MOVERS, 1ST FLOOR GOLDEN TIMES, SHOP NO. F-10, CENTRE SPINE, VIDHYADHAR NAGAR, JAIPUR, RAJASTHAN-302039
H	DIN NUMBER	20230771M00000222062

1. The Order – in – Original is granted to concern free of charge.
2. Any person aggrieved by this Order – in – Original may file an appeal under Section 128 A of Customs Act, 1962 read with Rule 3 of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. 1

The Commissioner of Customs (Appeal), MUNDRA
4th floor, HUDCO Building, IshwarBhuvan Road,
Navrangpura, Ahmedabad – 380009.

3. Appeal shall be filed within Sixty days from the date of Communication of this Order.
4. Appeal should be accompanied by a Fee of Rs. 5/- (Rupees Five Only) under Court Fees Act it must accompanied by (i) copy of the Appeal, (ii) this copy of the order or any other copy of this order, which must bear a Court Fee Stamp of Rs. 5/- (Rupees Five Only) as prescribed under Schedule – I, Item 6 of the Court Fees Act, 1870.
5. Proof of payment of duty / interest / fine / penalty / deposit should be attached with the appeal memo.
6. While submitting the appeal, the Customs (Appeals) Rules, 1982 and other provisions of the Customs Act, 1962 should be adhered to in all respect.

7. An appeal against this order shall lie before the Commissioner (A) on payment of 7.5% of the duty demanded where duty or duty and penalty or Penalty are in dispute, where penalty alone is in dispute.

BRIEF FACTS OF THE CASE

M/s. Array Stone Hub Pvt. Ltd., (IEC No. 1306015057), 356-357, Shashtri Nagar, Dada Bari, Kota (Rajasthan) having Head Office at Thermal Road, Opposite Police Station, Kunhadi, Kota (Rajasthan) (herein after referred to as 'M/s. Array' for the sake of brevity), are engaged in the export of 'Sandstone' (herein after referred to as 'the subject goods') classified by them under CTH/Heading 68010000/68022190/68029900 of Customs Tariff (during the period Sept., 2019 onwards). M/s. Array 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. Intelligence gathered by the officers of Directorate of Revenue Intelligence (hereinafter referred to as 'DRI') indicated that M/s. Array 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 said exporter 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 same 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 exporter had mis-classified the same under CTH/Heading 6801/6802 instead of appropriate CTH/Heading 2516, the exporter had wrongly claimed/availed the drawback.

3. 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, Director of exporter company M/s. Array 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 Shri Lal Chand Yadav and description/CTH/HEADING mentioned in the purchase invoices of subject goods from domestic suppliers, it appears that M/s. Array did not carry out further process on the subject goods purchased by them from domestic suppliers and exported by them under claim of Drawback.

3.1 During the course of investigation, it emerged that M/s. Array were classifying all their products under CTH/HEADING 2516 till 01.09.2019 where the drawback was neither available, nor claimed by the said exporter. However, in w.e.f. 02.09.2021, M/s. Array started classifying their products under CTH/HEADING 6801/6802 and started claiming/availing drawback of 1% of FOB value. Thus, it transpires that M/s. Array started mis-classifying the subject export goods with fraudulent intent to avail undue benefit of Drawback under CTH/HEADING 6801/6802 as no drawback was available under the CTH/HEADING 2516 under which they were classifying their subject export goods prior to 02.09.2019. Lists of Shipping Bills pertaining to M/s. Array showing declared description and CTH/HEADING of the subject export goods for the period after prior to

01.09.2019 and for the period thereafter are enclosed as **Annexure-A** and **Annexure-B** respectively of the Show Cause Notice.

3.2 It appeared that the domestic suppliers of subject goods while supplying the same (duly cut to fix size) to M/s. Array 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, M/s. Array were deliberately manipulating the classification by changing the CTH/HEADING for same goods from 2516 to 6801/6802.

3.3 Thus, the exporter M/s Array 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.

4. M/s. Array 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 i.e. 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 M/s. 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.

5.1 After detailed investigation in the matter, interalia, Show Cause Notice was issued to M/s. Array Stone Hub Pvt. Ltd., (IEC No. 1306015057) 356-357, Shashtri Nagar, Dada Bari, Kota (Rajasthan) may be called upon to show cause in writing to the Additional Commissioner of Customs, Custom House, Mundra, New Port User Building, Mundra Port & SEZ Mundra, Kutch, Gujarat-370421, [in terms of Notification No. 28/2022-Customs (NT) dated 31.03.2022] in respect of the Shipping Bills in Annexure-B of the Show Cause Notice, as mentioned in Column No. 2 of Table-IV of the Show Cause Notice, 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 S 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-S, of the Show Cause Notice, to this report under CTH/HEADING 68010000/68022190/68029900 should not be held liable for confiscation under Section 113 (i) 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. 63,85,309/-** 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. **3,79,344/-** paid by them alongwith interest of **Rs.52,212/-** as discussed in para 8.1 above, should not be appropriated against the demand being raised vide this Investigation Report.

(e) Penalty should not be imposed on them under Sections 114(iii) and 114AA of the Customs Act, 1962, for the reasons discussed above.

5.2 And to the following further persons / companies / firms / concerns as appearing in Column 2 of the following table, may be individually and separately called upon to show cause in writing to the Additional Commissioner of Customs, Custom House, Mundra, New Port User Building, Mundra Port & SEZ Mundra, Kutch, Gujarat-370421, in respect of the Shipping Bills in Annexure-B and Annexure-S of the Show Cause Notice, as mentioned in Column No. 2 of Table-IV, as to why Penalty should not be imposed on each of them individually under below mentioned penal provisions, separately, of the Customs Act,1962:-

S. No.	Name	Penal provisions (Sections) under Customs Act, 1962	
		(3)	(4)
(1)	(2)	(3)	(4)
1	Shri Lal Chand Yadav, Director of M/s. Array	114(iii)	114AA
2	M/s. Shree Ambica Commercial Co.	114(iii)	114AA
3	M/s. IHA Logistics	114(iii)	114AA
4	Shri Dhiraj Satyapal Sharma	114(iii)	114AA
5	M/s. SSS Sai Forwarders Pvt. Ltd.	114(iii)	114AA
6	M/s. Universal Cargo Movers	114(iii)	114AA

WRITTEN SUBMISSION

6.1 M/s Array Stone Hub Pvt. Ltd., Kota vide their letter Dated 12.05.2023, made detailed submission, wherein, interalia, submitted that, they are doing business of export of various types of Stones as per the specification mentioned in Purchase Order given to them; they purchase Blocks / Slabs / Jutte of Stone and Convert these into Flagstone or Ready to Use Stone for Paving, some times purchased processed stone from market and directly sent for Export; also mentioned process of natural sand stone from quarrying to convert into final product with supporting photographs and explain the conversion process as (a) quarrying in mines and getting rough blocks from mines merely cut or roughly cut into rectangular or square in shape measured in Cubic Feet (b) these blocks are spitted into thin blocks / slabs measured into Sq. Ft. (c) these rough slabs are converted in to flagstone, stone for paving or tiles measured in millimetres; listed different types of sand stones quality which has been exported by them; explained Provisions of HSN 2516, 6801 AND 6802 and coverage of Sand Stone under different HSN and concluded that as per HSN 25 all products which are merely cut or roughly in shape whether rectangular or square which required further processing for ready to use are included in this chapter; as per HSN 68, all products which are in perfect shape, size and ready to use without any further addition in finishing comes under this chapter i.e. Flagstone.

6.1.2 Products mentioned in Shipping Bills are fine cut with dimension in millimetres which is last perfection measure for tiles or flagstones; hence this product comes under Chapter 68; they are exporting to UK and their products are finished goods and can also say ready to use and are called as flagstone or tiles; as obtained from splitting, happing quarry stone by hands or machine; are not merely cut or shaped but perfectly shaped into least measurement which is in millimetre can be crossed checked with packing list and specification shown in invoices; further submitted that getting purchase order from buyer in perfect size, accordingly purchase rough stone and convert into specification specified by PO; and in chapter 68 it is stated that all product which are obtained by splitting, shaping quarry stone by hand or machine comes under this chapter whereas in chapter 25 all products which are merely cut or roughly shaped are included.

6.1.3. In reply to the allegation, misclassify export under CTH 68 (during the period Sept 2019 onwards) in stead of CTH 25 and claiming Drawback, interalia, stated that, in general practice of Business of Stone and followed the same.

6.1.4 Further, mentioned that, exporter got the clarification from Mr. Sanjay Gupta, ICD, Kota through mail on 28.03.2019 for the difference between HSN 25 and 68, wherein, interalia, mentioned that, difference between classification between the said referred CTH is that Chap 25 cover only the stones which are in Crude State and whereas all sawn stone falls under Chapter 68, further mentioned that this aspect may be irrelevant for commercial purpose but has importance under Customs and GST; further requested that specific classification may be ascertained depending upon the nature of exported consignment to consignment; and on perusal of the said clarification and with due discussion held in Trade Society Sand Stone Export know the real and correct HSN chapter to be applied for the material exported and export product come in CTH 68.

6.1.5 on perusal of CTH 2516, it is clear that covers quarry sand stone / rough sand stone i.e. crude or roughly trimmed, merely cut, by sawing or otherwise, into blocks or slabs of a rectangular (including square) shape; doing business of export of stones and selling products as per Buyer's requirements. Buyer send Purchase Order comprising Stone Color, Quality, Size and any other process done on it i.e. they are purchasing stone from mines / stone stock and converted it into the Buyer's specification mentioned in Purchase Order; on perusal of CTH 68 it is clear that the product which is being ready from blocks or rough sand stone as per buyer's specification and also are obtained by splitting, rough hewing or shaping quarry-stone, by hand or machine, setts and flagstones usually have rectangular (including square) faces, but whereas flagstones are thin in relation to their length and width, setts are roughly cubical or take the form of truncated pyramids i.e. Flagstone and ready to use Sand Stone covered in these Chapter.

6.1.6 Therefore, after receipt of mail from ICD, Kota and discussion with trade body and on consultation with Exports they are Exporting their Goods in HSN 68; thus before 2019.2020 they were exporting in HSN 25; 2018-2019 onwards were exported the same as in applicable HSN 25 / 68; were exporting under LUT hence were not paid / short paid any duty to Govt. hence, there is no loss to Govt., if by mistake shown HSN 25 prior to 2019-2020.

6.1.7 Purchased stone from mines and stock holders in rough / block / Finished Goods as and per HSN applicable on that goods; if purchased rough / block / not ready to paving stone then supplier classify the same in HSN 25 and on purchase of Finished Goods then supplier classify the same in HST 68; maximum purchased rough goods and convert into finished and make them ready to use for paving; hence considered in HSN 68. Therefore, classified goods as per applicable HSN viz. 25 or 68.

Thus on perusal of this it is evident that followed the provisions of the Act and eligible to take benefit of Duty Drawback, there is no intention to misclassify CTH / for claiming / availing 1% Duty Drawback on FOB Value and requested that the Credit of Duty Drawback and CTH is proper, demand does not arise at all.

6.2 Submission made by all the Co-Noticees (as mentioned in Para 5.2, supra), wherein interalia stated, that, the classification of the goods was declared by the exporter and the goods wear never physically examined by them in capacity of an expert and also their firm is not having any technical expert to evaluate the processes carried out on the Sandstone for deciding the classification of the sandstone under chapter 25 or chapter 68. they have filed the Shipping Bills on the basis of documents provided by the exporter and it is noteworthy that none of the documents provided by the exporter are fake or bogus in nature. The exporter categorically informed that the sandstone merits classification under chapter 68 and all other exporters were following the same practice of classification and also shared the copy of letter dated 16- 6- 2020 addressed by the exporter to the customs department informing change of classification from chapter 25 to chapter

68. On perusal of this letter and documents provided by the exporter, have performed their part that is filing of the shipping bills in accordance with the documents provided by the exporter.

It is further submitted that the exporter has made exports from various ports including Mundra Port and ICD, Kota. In the past, a show cause notice dated 03.12.2021 was issued to the exporter i.e. M/s Array Stone Hub Pvt. Ltd. proposing identical actions by the Customs Department, Kota, Rajasthan, alleging wrong classification under Chapter Heading 6801 and chapter heading 6802. The show cause notice came to be dropped by Order-In-Original dated 23-11-2022 and the issue came to be decided in the favour of the exporter i.e. M/s Array Stone Hub Pvt. Ltd.. The Additional Commissioner while deciding the show cause notice has categorically held that the benefit of drawback is available to M/s Array Stone Hub Pvt. Ltd. i.e. the present exporter and the goods exported by the exporter what is Sandstone are correctly classifiable under chapter heading 6801 and 6802. In this background when there is confusion and conflicting views regarding the classification of the product exported by the present exporter, the provisions of section 114 are not applicable and hence no penalty can be imposed in facts of this present case.

It is further submitted that the product exported by the exporter may fall under chapter 25 16 or chapter 6801 or chapter 6802 depending upon the process carried out on these Sandstones. Therefore, it cannot be conclusively held that there was any lack on our part while suggesting any particular classification for Sandstones when the goods were processed by the exporter depending upon the purchase orders received from the overseas buyers. It is not the case of the department that our firm has suppressed any information from the department or filed the shipping bills on the strength of forged documents and therefore proposing even a token penalty on our form in the facts of the present case would be illegal and without jurisdiction.

Also cited, the Hon'ble Supreme Court in the land mark case of Messrs Hindustan Steel Limited reported in 1978 ELT (J159) wherein the Hon'ble Supreme Court has held that penalty should not be imposed merely because it was lawful to do so. The Apex Court has further held that only in cases where it was proved that the person was guilty of conduct contumacious or dishonest and the error committed by the person was not bonafide but was with a knowledge that he was required to act otherwise, penalty might be imposed. It is held by the Hon'ble Supreme Court that in other cases where there were only irregularities or contravention flowing from a bonafide belief, even a token penalty would not be justified. Thus, proposal for imposing penalty under Sections 114(iii), 114A, 114AA, 114A and 117 of the Customs Act on us is unjustified and hence, it deserves to be withdrawn at once in the interest of justice. And also requested not to conclude the adjudication proceedings and pass any final order on this show cause notice without opportunity of personal hearing.

8. PERSONAL HEARING

Personal Hearing in the matter, was held on 01.06.2023 wherein, Shri Lal chand Yadav, Director of the Exporter M/s Aarey Stone Hub Pvt. Ltd., appeared for the Hearing and interalia, reiterated the submission made in the matter vide letter Dated 31.05.2023 and requested to decide the matter of merit.

For all remaining Noticees i.e. M/s. SSS Sai Forwarders Pvt. Ltd. and M/s Universal Cargo Movers, Aditya S. Tripathi, Advocate and Authorized Person, represented both the noticees for the Hearing and interalia, reiterated the submission made in the matter vide letter Dated 17.04.2023 and requested to decide the matter of merit.

For remaining Co-Noticees viz. M/s Shree Ambica Commercial Co., M/s IHA Logistics and Shri Dhiraj Satyapal Sharma, (as mentioned in Para 5.2, supra), Aditya S. Tripathi, Advocate and Authorized Person, represented the noticee appeared for the Hearing and interalia, requested to decide the matter of merit and sought for time for submission.

Principle of Natural Justice as provided in Section 122A of the Customs Act, 1962 have been complied with.

9. DISCUSSION & FINDING

I have carefully gone through the facts of the case, allegation made in the show cause notice as well as those pleaded in the reply, following the principles of natural justice as per the provisions of the Customs Act / Rules.

The case before me is to decide, as to whether, M/s. Array deliberately changed the classification of subject goods from CTH/HEADING 2516 and started classifying the same under CTH/HEADING 6801/6802 with intend to avail undue benefit of Drawback under CTH/HEADING 6801/6802 as no drawback was available under the CTH/HEADING 2516 under which they were classifying their subject export goods prior to 02.09.2019 and the roles played by the Co-Noticee is in connivance and liable for Penal Action or Otherwise.

10. Opportunity of Personal Hearing was offered and the same were held on Dated 01.06.2023, Principle of Natural Justice as provided in Section 122A of the Customs Act, 1962 have been complied with.

11.1 I have carefully gone through the relevant portion from the Customs Tariff as,

As per Customs Tariff Act, 1975, CTH/HEADING 2516 covers Granite, Porphyry, Basalt, **Sandstone and other Monumental or Building Stone**, whether or not roughly trimmed or merely cut, by sawing or otherwise, into blocks or slabs of a rectangular (including square) shape. Whereas, CTH/HEADING 25162000 specifically covers 'Sandstone' and the declared CTH/HEADING i.e. 25169090 denotes to 'Others' category of goods under CTH/HEADING 2516.

Whereas, as per Explanatory Note 1 of Ch. 25, the headings of this Chapter cover only products which are in the crude state or which have been washed (even with chemical substances eliminating the 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 which have been roasted, calcined, obtained by mixing or subjected to processing beyond that mentioned in each heading. The products of this Chapter may contain an added anti-dusting agent, provided that such addition does not render the product particularly suitable for specific use rather than for general use.

Further, the General Note of Ch. 25 provides as under:-

As provided in Note 1, this Chapter covers, except where the context otherwise requires, mineral products only in the crude state or washed (including washing with chemical substances to eliminate impurities provided that the structure of the product itself is not changed), crushed, ground, powdered, levigated, sifted, screened or concentrated by flotation, magnetic separation or other mechanical or physical processes (not including crystallization). The products of this Chapter may also be heated to remove moisture or impurities or for other purposes, provided that the heat treatment does not modify their chemical or crystalline structures. However, other heat treatments (e.g., roasting, fusion or calcination) are not allowed, unless specifically permitted by the heading text.

In certain cases, however, the headings:

- (1) Refer to goods which by their nature must have been subjected to a process not provided for by Note 1 to this Chapter.
- (2) Specify conditions or processes which are admissible in those cases in addition to those allowed generally under Note 1 to this Chapter. Similarly the materials of headings 25.06, 25.14, 25.15, 25.16, 25.18 and 25.26 may be roughly trimmed or merely cut, by sawing or otherwise, into blocks or slabs of a rectangular (including square) shape.

Whereas, **Ch. 68** covers Articles of stone, plaster, cement, asbestos, mica or similar materials and it does not covers the goods of Chapter 25. The **CTH/HEADING 6801/6802** covers the following kind of goods:-

6801- Setts, Curbstones and Flagstones, of Natural Stone (Except Slate)

6802:- Worked monumental or building stone (except slate) and articles thereof, other than goods of heading 6801; mosaic cubes and the like, of natural stone (including slate), whether or not on a backing; artificially coloured granules, chippings and powder, of natural stone (including slate)

Whereas the declared CTH/HEADING 68010000 covers goods such as Setts, Curbstones and Flagstones, of Natural Stone (except Slate) and CTH/HEADING 68029900 cover 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; other ornamental goods essentially of stone.

The explanatory Note 1 of Ch. 68 specify that this Chapter does not cover the goods of Chapter 25. Further, as per General Note to this Chapter, various products of Chapter 25 worked to a degree beyond that permitted by Note 1 to Chapter 25 are covered under Ch. 68.

11.2 Also gone through the Panchnama Dated 22.12.2010, RUD 3, vide which Samples were Drawn, wherein Panchas, interalia, stated that, they observed that the Sandstone are having rough surface on each side.

11.3 Also gone through the Statement of Shri Dhiraj Sharma recorded during the Investigation and relevant portion noticed in the matter that, on being asked to offer comments after perusing Drawn Sample and Chapter Note of Customs Tariff Act, 1975, Shri Dhiraj Satyapal Sharma interalia stated that he was not much aware about the processing done by the exporter on the Sandstone before export, hence he was not in position to comment in this regard, however, he deposed that as per the Chapter Notes of Ch. 25, CTH / Heading 2516 of Customs Tariff Act, 1975, the Sandstone which was cut into blocks / slabs of rectangular / square shape by sawing or otherwise, was classifiable under CTH / Heading 2516 and the representative samples drawn from the export goods pertaining to M/s. Array which were lying at Mundra Port Shri Dhiraj Satyapal Sharma added that he was not aware about the process, if any done by the exporter in respect of such export goods, but from the physical verification of representative sample shown to him it appeared that it was the Sandstone cut in rectangular shape by sawing and the same appeared to be classifiable under CTH / HEADING 2516.

11.4 Also gone through the Statement of Shri Dhiraj Sharma recorded during the Investigation and relevant portion noticed in the matter that, on being asked in the Statement, to offer comments after perusing Drawn Sample and Chapter Note of Customs Tariff Act, 1975, Shri Lal Chand Yadav, on being asked whether the export products of M/s. Array classified by them under CTH / HEADING 68029900 were falling under these categories and classifiable under heading 68029900, Shri Lal Chand Yadav stated that their export products were not falling under the said categories under heading 68029900, but they had classified the same under said heading 68029900 as 'other stone'. He deposed that they started classifying their export products under CTH/HEADING 6802 as per general trade-practice.

11.4.2. Shri Lal Chand Yadav was shown representative samples drawn from the export goods lying at Mundra Port vide Panchnama dated 22.12.2020 and on perusal of the same, he interalia, stated that these samples were of 'Sandstone Cali' and 'Sandstone Mix 20 mm+- 2mm and 'Sandstone C Segmant'. He added that as per the trade practice, they had classified these export goods under CTH/HEADING 6802.

11.4.3 Further on perusal of the shipping bills on sample basis for the period upto 2018-19 and for the subsequent period, it appeared that there was no difference between the description of goods declared by them in the shipping bills for the period prior to 2018-19 and for the subsequent period till then. However, the same export goods were classified by the exporter M/s. Array under CTH / HEADING 2516 for the period prior to 2018-19 and for the subsequent period till then, the same had been classified under 6801/6802; on being asked for the reason, Shri Lal Chand Yadav

submitted that due to general trade practice, they had adopted the classification of export goods in the said manner.

11.4.4 Shri Lal Chand Yadav was then shown list of some exports made by other exporters wherein the Sandstone having description calibrated into fix size has been classified under CTH/HEADING 2516. On being asked how M/s. Array were following the trade practice when other such exporters were classifying same, Shri Lal Chand Yadav agreed and stated that, some of the exporters were classifying their export products CTH / HEADING 2516, however majority of local exporters i.e. Kota based were classifying the subject goods under CTH / HEADING 6802 but they might have modified the declared description of the goods to show the description covered under CTH / HEADING 6802, however, the nature of export goods were almost same in respect of all local exporters in their vicinity.

11.4.5 Further, On being asked that, it appeared that the classification of similar goods was changed from CTH/HEADING 2516 to CTH/HEADING 6801/6802 to claim/avail the drawback only, he interalia, stated that, there was no malafide intention on his part behind changing of classification; that he would re-examine the issue in detail and in case there was any change required in classification or their eligibility for drawback, he would look into the matter and do the needful as per law further added that as regards the received amount of drawback, he undertook to pay up the amount of drawback received by him/his company, alongwith interest by 29.12.2020 and would also give undertaking not to receive the claimed drawback amount.

11.5. Also gone through the clarification obtained by Exporter from Mr. Sanjay Gupta, ICD, Kota through mail on 28.03.2019, wherein, interalia, concluded that, specific classification may be ascertained depending upon the nature of exported consignment to consignment;

11.6. Also gone through the Order in Original No. 49/2022 - ADC Dated 24.11.2022 issued by the Additional Commissioner, Customs (Prev.), Jaipur in favour of M/s. Array Stone Hub Pvt. Ltd., (IEC No. 1306015057), 356-357, Shashtri Nagar, Dada Bari, Kota (Rajasthan) is not applicable in this case as the mentioned Description of the Goods Exported in the impugned OIO and the mentioned Description of the Goods to be Exported in the impugned Show Cause Notice are not the same.

12. From the material facts available with me in the matter, I come to the conclusion that, Shri Lal Chand Yadav, though there was no difference between the description of goods declared by them in the shipping bills filed for the period upto 2018-19 under CTH 2516 and for the subsequent period, the same had been classified under 6801/6802 without any valid supporting documents / Grounds in their Support with an intend to claim Duty Drawback on Export for which they are not eligible to claim.

13. Since Shri Lal Chand Yadav, shoulder all the responsibility for said mis-declaration of the Goods under Export. Under the circumstances, considering the lenient view in the matter, I refrain from imposing Penalty on the Co-Noticees.

14. Accordingly, I pass the following order :-

ORDER

1. I, order rejection of CTH 6801 / 6802 of the Export Goods as Declared by M/s Array Stone Hub (P.) Ltd., Kota, in the declared classification of the subject goods covered under the Shipping Bills as detailed in Annexure-B and Annexure S of the Show Cause Notice under the provisions of the Customs Act, 1962 with all the consequential benefits available under the claimed CTH by the Exporter in respect of the Shipping Bills as listed in said Annexures.
2. I, order to re-assess be the Export Goods as declared by the Exporter, under CTH / HEADING 25162000 of the Customs Tariff in respect of the Shipping Bills as detailed in

Annexure-B and Annexure S of the Show Cause Notice, under the provisions of Section 17 of the Customs Act, 1962.

3. The consignments were of Mis-Declaration of the Goods with an intend to claim undue Export Promotion Benefit; hence, I, order confiscation of the Goods Exporter / to be Exported covered under Shipping Bills having Value at Rs.68,64,81,940/- as detailed in Annexure-B and (Value of Rs.6,93,80,354/- in Annexure S) Annexure S of the Show Cause Notice, (having total Value at Rs.75,58,62,294/-) as per the provisions of the Section 113 (i) of the Customs Act, 1962. However, I give an option to redeem the goods on payment of **₹ 7,75,000/- (Rupees Seven Lac Seventy Five Thousand Only)** under Section 125 of the Customs Act, 1962.
4. I order to denial of the drawback amount of **Rs. 68,66,930/-** claimed in respect of Shipping Bills as mentioned in Annexure B (Table IV of the SCN) and **Rs. 6,93,804/-** claimed in respect of Shipping Bills as mentioned in Annexure S; out of these an amount of **Rs. 4,81,621/-** Sanctioned to them by Competent Authority out of these an amount of **Rs.3,79,344/-** were disbursed / credited to the Exporter Account, which they paid during investigation, as detailed in Annexure-C of the Show Cause Notice, to be 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. Further, I hereby order to appropriate an amount of Rs. **3,79,344/-** paid by the Exporter towards Duty Drawback received in their Account, against the Demand.
5. I hereby ordered to recover Interest at the applicable rate from the Exporter in respect of an amount disbursed / credit to the Exporter Account as per the provisions of the Customs Act, 1962. Further, I order to appropriate an amount of Rs. **Rs.52,212/-**, deposited by the Exporter during Investigation, against the Interest Liability to be worked out.
6. I impose penalty of ₹ 2,25,000/- (Rupees Two Lac Twenty Five Thousand Only) on M/s Array as per the provisions of Section 114(iii) of the Customs Act, 1962.
7. I impose penalty of ₹ 2,25,000/- (Rupees Two Lac Twenty Five Thousand Only) on Mr. Lal Chand Yadav, Director of M/s Array as per the provisions of Section 114(iii) of the Customs Act, 1962.
8. I impose penalty of ₹ 75,000/- (Rupees Seventy Five Thousand Only) on M/s Array as per the provisions of Section 114AA of the Customs Act, 1962.
9. I impose penalty of ₹ 75,000/- (Rupees Seventy Five Thousand Only) on Mr. Lal Chand Yadav, Director of M/s Array as per the provisions of Section 114AA of the Customs Act, 1962.
10. I refrain from imposing any penalty on M/s. SSS Sai Forwarders Pvt. Ltd., M/s Universal Cargo Movers, M/s Shree Ambica Commercial Co., M/s IHA Logistics and Shri Dhiraj Satyapal Sharma.

This order is issued without prejudice to any other action which may be required to be taken against any person as per the provision of the Customs Act, 1962 or any other law for the time being in force.

Received
Copies of Notices
04/07/23
Auth. Signature
M/s. SSS Sai
Pvt. Ltd.

रघुवंश कुमार / **Raghuvansh Kumar**
अपर आयुक्त, / Additional Commissioner
सीमा शुल्क सदन, मुंद्रा / Custom House, Mundra

BY Registered/Speed Post

1. **M/s. Array Stone Hub Pvt. Ltd.,
356-357, Shastri Nagar, Dada Bari, Kota (Rajasthan)-324001**
2. **Shri Lal Chand Yadav,
Director, M/s. Array Stone Hub Pvt. Ltd.,
356-357, Shastri Nagar, Dada Bari, Kota (Rajasthan)-324001**
3. **M/s Shree Ambica Commercial Company,
Tenament 4, Plot No- 283-284,
Ward 8/A, Subhash Nagar, Gandhidham, Kutch-370201**
4. **M/s IHA Logistics,
Tenament 4, Plot No- 283-284, Ward 8/A,
Subhash Nagar, Gandhidham, Kutch-370201**
5. **Shri Dhiraj Satyapal Sharma,
Tenament 4, Plot No- 283-284, Ward 8/A,
Subhash Nagar, Gandhidham, Kutch-370201**
6. **M/s. \$\$\$ Sai Forwarders Pvt. Ltd.,
A-303, Classique Centre, Plot No. 26, Mahal Industrial Estate,
Off Mahakali Cave Road, Andheri (E), Mumbai-400093
[Regd. Office A/403, Golden Sand CHS, SVP Nagar,
Mhada, Four Banglow, Andheri (W), Mumbai]**
7. **M/s Universal Cargo Movers,
1st Floor Golden Times, Shop No. F-10, Centre Spine,
Vidhyadhar Nagar, Jaipur, Rajasthan-302039**

Copy to:

- 1) The Deputy Commissioner of Customs (RRA), Custom House, Mundra
- 2) The Deputy Commissioner of Customs (Export), Custom House, Mundra
- 3) The Deputy Commissioner of Customs (TRC), Custom House, Mundra
- 4) The Deputy Commissioner of Customs (Drawback), Custom House, Mundra
- 5) The Deputy Commissioner of Customs, EDI, Custom House, Mundra
- 6) Guard File

