



अपर आयुक्त का कार्यालय, सीमा शुल्क

Office of the Additional Commissioner of Customs

आई.सी.डी. - तुम्ब

Inland Container Depot (ICD) - Tumb

सर्व. न. ४४/१/पी.के.२, गाँव - 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: 15-09-2025

F. No.	:	CUS/APR/INV/485/2024-ICD-UMGN-CUS-COMMRTE-AHMEDABAD
Name and Address of the Importer & CHA	:	<p>1. M/s. Shub Stone, Plot No. 2099, W.E. Highway, Airport Side, Vile-Parle East Mumbai, Maharashtra 400099</p> <p>2. Shri Shrenik Jain, Karta of HUF Firm M/s. Shub Stone, Plot No. 2099, W.E. Highway, Airport Side, Vile-Parle East Mumbai, Maharashtra 400099.</p> <p>3. M/s. International Cargo Corporation (Customs Broker) 221, Ecstasy, 1st Floor, Business Park, City of Joy, Mulund (W), Mumbai – 400080.</p>
Show cause Notice & Date		CUS/APR/INV/485/2024-ICD-UMGN-CUS-COMMRTE-AHMEDABAD DATED 30.01.2025
Order – in – Original No.		02/LD/ADC/TUMB/2025-26
DIN		20250971MN0000222A99
Passed by	:	Lokesh Damor Additional Commissioner, Customs.
Date of Order	:	15-09-2025
Date of Issue	:	15-09-2025

(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:

- A copy of the appeal and
- 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), सीमा शुल्क, में शुल्क के 7.5% जहां शुल्क अथवा शुल्क एवं जुरमाना का विवाद है अथवा जुरमाना जहां शीर्फ जुरमाना के बारेमे विवाद है उसका भुक्तान करके अपील की जा शकती है। ऐसा न करने पर ये अपील सीमा शुल्क 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/485/2024-ICD-UMGN-CUS-COMMRTE-AHMEDABAD DATED 30.01.2025 issued by the Additional Commissioner, Customs Commissionate, Ahmedabad to Shub Stone, (IEC Code No. 0316980285), (HUF Firm), Plot No. 2099, W.E. Highway, Airport Side, Vile-Parle East Mumbai, Maharashtra 400099 & Others.

Brief facts of the case:

M/s. Shub Stone, (IEC Code No. 0316980285), (HUF Firm), Plot No. 2099, W.E. Highway, Airport Side, Vile-Parle East Mumbai, Maharashtra 400 099, (hereinafter referred to as 'M/s. Shub Stone /'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. Shub Stone have imported goods declared as: Rough Dolomite Blocks, classifying the goods under CTH 25181000 at ICD Tumb (INSAJ6) vide Bill of Entry No. 6696841 dated 31.01.2020 for which Customs Out of Charge was granted on 06.02.2020 -(RUD-01). The representative samples of the subject imported goods were forwarded vide letter dated 01.02.2020 to the Chemical Examiner, Central Excise & Customs Laboratory, Vadodara on 03.02.2020. The Chemical Examiner has sent the test reports dated 05.02.2020 stating that the sample is composed of Carbonates of Calcium & Magnesium (Dolomite) -(RUD-2).

2.1 Information was received by Customs that the subject goods imported by M/s. Shub Stone declaring as 'Rough Dolomite Block' was actually marble and the same should have been classified under CTH 25151210, however, the importer was claiming and availing classification of the product under CTH 25181000. Information also indicated that, such mis-declaration of description and classification is being done with the intention to evade payment of higher rate of Customs duties including IGST (hereinafter mentioned as Customs duty) applicable on CTH 25151210 in comparison to CTH 25181000. 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.

3.1 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)		

3.2 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.

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

TESTING OF SAMPLES:

4.1 The representative sample packed and sealed under Panchnama dated 21.08.2023 in respect of Bill of Entry No. 6696841 dated 31.01.2020 filed by M/s. Shub Stone 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 26.08.2023 alongwith test memo No. ICD-Tumb/117/23-24 dated 26.08.2023 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 27.09.2023 vide letter reference No. 71/Customs/TCS/GSI/CR/2023 dated 28.09.2023, 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".

4.2 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 भूविज्ञानिक संचयकान/ GEOLOGICAL SURVEY OF INDIA
ग्रैविटीकी 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. Subh Stone, Plot No. 2099, W.E. Highway, Airportside, Vile-Parle (East) Mumbai 400 099
IGM/ITM No.	ICD-Tumb/I-117/23-24 dtd. 26.08.2023
B.E. No.	6696841 dated 30.01.2020
DD No.	-
Received Sample no.	Rough Dolomite block (I-117, BE No. 6696841)
1. Lab test	
d) Study of Physical properties (Megascopic study)	In hand specimen, sample shows white color, fine grained, saccharoidal and fractured at places. The fracture is filled by /exhibited by calcite (pink to red color) in the stain sample (Fig. 1).
e) Petrographic study (Microscopic study)	Under the plane polarized light: Rock is fine grained, non-pleochroic, mainly composed of carbonate minerals. The carbonates are subhedral in shape and shows well developed two sets of cleavages (Fig. 2). Under the XPL: Rock is fine grained, granular and showing high order interference color in the shades of pastel pink (Fig. 3). It consists of dolomite and calcite in sub-equal proportion in the rock. Dolomite and calcite grains are subhedral to anhedral in shape and shows prominent two sets of cleavages and lamellar twinning and twinkling (Fig. 4). They show mutual boundary texture and triple junction grain contact (Fig. 5).
f) Chemical study by i) Staining test ii) Acid Test	Sample also verified with staining technique for carbonates (Method after Dickson, 1965). The rock sample mostly stained (pink to red) due to presence of calcite with unstained fragments of dolomite. Low effervescence with hydrochloric acid (HCl)
2. Composition of goods	The sample dominantly composed of dolomite with subequal calcite.
3. Density of goods	2.63 g/cm ³
3. Hardness of goods	3-3.5 (Mohs hardness scale)
4. Whether it has the characteristics of dolomite	Yes.
Name of the rock	Based on above physical, optical and limited chemical properties of rock sample interpreted as Dolomitic Marble .

This report is subject to following conditions:

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

अन्वेषक /Investigator

(Dr. Yashar Meshram)
अधीक्षण भूविज्ञानिक / Suptd. Geologist

प्रभारी अधिकारी /Officer in Charge

(Dr. Rajkumar Meshram)
निदेशक / Director

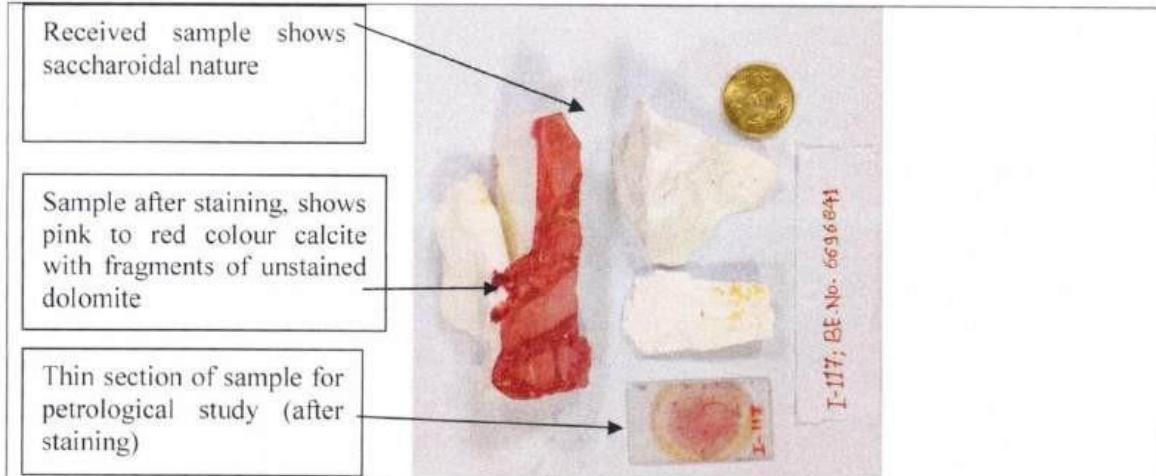


Fig.1. Hand specimen/rock piece is white color, fine grained, massive and compact in nature (Note-fracture nature is with angular clast of dolomite (unstained) within calcite (pink to red color).



Fig. 2. Photomicrograph shows granular texture and well developed two sets of cleavages in carbonates within dolomite under Plane Polarized light (PPL-5X).



Fig. 3. Photomicrograph of granular texture with high order interference color in the shades of pastel pink in carbonates within dolomite under Cross Nicol position (XPL-5X).



Fig. 4. Photomicrograph showing subhedral carbonate grains with granular texture and well developed two sets of cleavages in Dolomite under crossed Nicol position (XPL-10X).



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

अन्वेषक / Investigator

 (Dr. Tushar Meshram) 27/9/23

अधीक्षण भूवैज्ञानिक / Suptd. Geologist

प्रभारी अधिकारी / Officer in Charge

 (Dr. Rajkumar Meshram) 27/9/23

निदेशक / Director

4.3 The Geological Survey of India, Central Region, Nagpur in the above test reports has interpreted the sample in respect of the above Bills of Entry as 'Dolomitic Marble'. Further, vide letter F. No. VIII/24/ICD-Tumb/2023-24 dated 29.05.2024, addressed to the Director, TCS, Geological Survey of India, Nagpur -(RUD-06), 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 -(RUD-07), has re-iterated their reports in respect of the respective Bills of Entry and remarked that "Dolomite and Marble are compositionally (mineralogical

& chemical) similar rocks. Both are having chemical composition of (CaOMg) CO₃ with minor impurities. Dolomite is carbonate rock of sedimentary origin. On the other hand, Marble is a carbonate rock of metamorphic origin".

4.4 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?

4.5 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 to Bill of Entry No. 6696841 dated 31.01.2020 as under:

1. *For the sample BE 6696841 received from office of the Deputy Commissioner of Customs, Inland Container Depot (ICD)-Tumb – VIII/24/ICD-Tumb/2023-24 dated 26.08.2023*
2. *The rock has been identified as Dolomitic Marble (recrystallised sedimentary rock with density 2.63 to 2.83 g/cc and chemical composition Calcium carbonate with magnesium). Dolomitic Marble is metamorphic rock and can be polished and used as slabs. It meets the specifications of marble and can be categorised as Dolomitic Marble.*

4.6 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:

Query	Reply (BE No. 6696841 dated 31.01.2020)
Whether the rock is sedimentary or metamorphic in nature	Recrystallized sedimentary rock.
Specific gravity of the rock	2.63g/cm ³
Chemical composition of the rock	Calcium carbonate with magnesium
Whether the stone is formed from the re-crystallization of limestone and/or dolomitic limestone	Dolomitic Marble is a metamorphic rock is formed from the recrystallization of dolomitic limestone
Whether the rock is sufficiently hard and capable of taking polish and can be used as marble slabs	Yes
Petrographic analysis of the rock	Petrological test report submitted earlier on the sample is attached as pdf
Whether it meets the specifications 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 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.



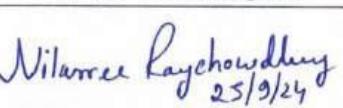
भारत सरकार /GOVERNMENT OF INDIA
 भारतीय भूवैज्ञानिक सर्वेक्षण /GEOLOGICAL SURVEY OF INDIA
 शैलीकी प्रभाग /PETROLOGY DIVISION
 मध्य क्षेत्र /CENTRAL REGION
 नागपुर /NAGPUR

IGM/ITM No.	ICD-Tumb/I-117/23-24 dtd. 26.08.2023
B.E.No.	6696841 dated 30.01.2020
DD No.	-
Received Sample no.	Rough Dolomite block (I-117, BE No. 6696841)
Query	Reply
1. Whether the rock is sedimentary or metamorphic in nature	Recrystallised sedimentary rock
2. Specific gravity of the rock	2.63 g/cm ³
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	Dolomitic marble is a metamorphic rock is formed from the recrystallization of dolomitic limestone
5. Whether the rock is sufficiently hard and capable of taking polish and capable of used as marble slabs	Yes
6. Petrographic analyses of the rock	Petrological test report submitted earlier on the sample submitted is attached as pdf
7. Whether it meets the specification of marble? If yes, which type of marble it is	Yes

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

This report submitted earlier is subject to following conditions:

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अन्वेषक / Investigator	प्रभारी अधिकारी /Officer in Charge
 Nilasree Raychowdhury (Nilasree Raychowdhury) व. भूवैज्ञानिक/ Sr. Geologist	 Dr. V.V. Sesha Sai (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. 6696841 dated 31.01.2020 by the importer is actually 'Rough Marble Blocks (Dolomitic Marble)' with specific gravity of more than 2.63g/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'.

6. Summons dated 20.12.2024 under Section 108 of the Customs Act,1962 was issued to M/s.Shub Stone requiring them to furnish certain details and documents as mentioned in the annexure to the summons and to give statement of

responsible and authorised person in connection with the imports under the above Bill of Entry. In response to the summons Shri Shrenik Jain, Karta of HUF Firm M/s. Shub Stone, appeared.

6.1 Statement of Shri Shrenik Jain, Karta of HUF Firm M/s. Shub Stone was recorded under Section 108 of the Customs Act, 1962 on 31.12.2024, wherein he inter-alia stated that:

- He is the Karta of HUF Firm M/s. Shub Stone and give the statement in response to the summons for submission of documents and statement in case of Bill of Entry No. 6696841 dated 31.01.2020;
- He has been given to understand that his statement was being recorded in connection with inquiry being conducted in connection with the import of goods under Bill of Entry No. 6696841 dated 31.01.2020 by their company M/s. Shub Stone;
- M/s. Shub Stone is engaged in import and trading of "Marble Blocks" and "Marble Slabs, Dolomite Block" and trading of Granites Slabs further selling of same in local market in different parts of India. After the importation of the Mable Block and Dolomite Blocks they send the same for job work to convert the blocks in slabs and thereafter they sell the same in local market. On being asked he stated that the inputs mainly Marble Blocks required for processing are procured by way of import from Turkey, and Italy. On being asked about the imports of Rough Marble Blocks undertaken by M/s. Shub Stone, he stated that they had regularly imported "Rough Marble Block" declaring under HSN code/CTH 2515 from various suppliers paying applicable Customs duty.
- On being asked about selling of processed marble slabs they stated that their retail customers which are in building construction line visit their factory and godown 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. As such they do not execute any written agreement with any of buyers and sell the material under sales invoice only as marble slabs. Very few quantity of marble slabs are sold as polished marble slab. The processed marble slabs are sold to for use in building floor by the persons engaged in this field. On being asked about the sales invoices they stated that as the matter is old, they do not have copy of sales invoice readily available;
- On being specifically asked about the Bill of Entry No 6696841 dated 31.01.2020, he stated that the above Bill of Entry filed by M/s. Shub Stone. and the goods imported was declared as Dolomite Blocks classifying under HSN code/CTH 2518. He further stated that the goods imported under the above Bill of Entry No. 6696841 dated 31.01.2020 were converted to slabs through job work and were cleared/sold as 'Dolomite Slab', to different Indian buyers.
- He was shown the panchnama dated 21.08.2023 drawn at the premises of ICD Tumb, Vill – Tumb, Distt. Valsad, Gujarat. 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 Bill of Entry No. 6696841 dated 31.01.2020 in the table. He perused the ICD, Tumb letter F. No. VIII/24/ICD-Tumb/2023-24 dated 26.08.2023 alongwith test memo No. ICD-Tumb/I-117/23-24 dated 26.08.2023 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 M/s. Shub Stone. vide Bill of Entry No. 6696841 dated 31.01.2020 at ICD, Tumb was sent to the Geological Survey of India, Nagpur for testing and put his dated signature on the same;

- He perused the letter reference No. 71/Customs/TCS/GSI/CR/2023 dated 28.09.2023 issued by the Director, Geological Survey of India alongwith Petrological Test Report dated 29.09.2023 issued by the Geological Survey of India, Nagpur for the above said sample and after reading and understanding the said document I put my dated signature on the same as a token of having perused the same. On being asked I explain that after Chemical Analysis/Testing of the samples of "Rough Dolomite Block" imported by M/s. Shub Stone vide Bill of Entry No. 6696841 dated 31.01.2020, the Geological Survey of India, Nagpur has provided the 'Petrological Test Report' in respect of the said sample. The Geological Survey of India, Nagpur vide said 'Petrological Test Report' has opined and concluded stating the nature or rock that "Based on above physical, optical and limited chemical properties of rock sample interpreted as Dolomite Marble".
- He perused the 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 other Bill of Entry No.3456493 dated 30.05.2019 and Bill of Entry No. 3456493 (sic 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 perused 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;
- He perused the 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 perused the e-mail correspondence dated 30.08.2024 from the Director, TCS Division, GSI, Nagpur (*e-mail id: tcs.cr@gsi.gov.in*) to ICD Tumb (*e-mail id: cusicd-tumb@gov.in*) under which response of specific queries in connection with test report were forwarded. *The document attached with this e-mail also being shown to me. I read and understand the e-mail correspondence and the attached document and put my dated signature. I find that in the attached document Sr. No.1 replied for four samples (BE 6496896 to 8704561) sent by ICD, Tumb vide letter F. No.VIII/24/ICD-Tumb/2023-24 dated 26.08.2023 which forwarded samples of four Bills of Entry No. 6496896 dated 16.01.2020 (M/s. Classic Marble); 6696841 dated 31.01.2020 (M/s. Subh Stone); 7038144 dated 27.02.2020 (Shri Parasnath Exports) and 8704561 dated 04.09.2020 (M/s. Aakash Universal Ltd.) and thus, Bill of Entry No. 6696841 dated 31.01.2020 pertains to M/s. Subh Stone is there and from the query answers it has been reported that that the rock has been identified as Dolomitic Marble (recrystallised sedimentary rock with density 2.63 g/cc³ and chemical composition Calcium carbonate with magnesium). Dolomitic Marble is metamorphic rock and can be polished and used as slabs. It meets the specifications of marble and can be categorised as Dolomitic Marble. I also understand from the footnote on the response document that Marble is the metamorphic equivalent of non-clastic sedimentary rocks i.e. limestone/dolomite. Marble can be polished and used as building material/slabs. Compositonally marble can be calcite marble (mainly Ca CO₃) or dolomitic marble (mainly Ca Mg CO₃). The specific gravity (density) varies from 2.6 to 2.8 g/cc.*

On being asked he stated that as per the above Test/Analysis Report, specific comments and response of the specific queries, the material declared as 'Rough Dolomite Blocks' and imported vide Bill of Entry No. 6696841 dated 31.01.2020 by M/s. Shub Stone are actually 'Rough Marble Block of Dolomitic nature with specific gravity of more than 2.63 and composed of Calcium carbonate with magnesium. On being asked I state that I agree with the contents of the analysis report shown to me today according to which the sample meets the specification of marbles. However, I would like to state that the sample of the goods imported under the Bill of Entry No. 6696841 dated 31.01.2020 was sent for testing at Central Excise and Customs Laboratory, Vadodara and their report dated 01.02.2020 confirming the material imported was 'Dolomite'.

- He perused 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 limestones and are distinguished from limestone by even visibly crystallized nature and non-flaggy stratification."**
- He perused 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 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. On being asked he stated that name of Marble Blocks/slabs are classified as per their genesis and chemical composition, colour, texture, origin of country, etc. Dolomite Marble and Dolomitic Marbles are also a form of marbles, which is a crystalline variety of dolomite containing magnesium carbonate as dolomite molecules in certain proportion;
- On perusal the test reports, IS 1130-1969 (Indian Standard: Specification for Marble), and the HSN notes It seems that the goods imported by my firm company declaring as 'Dolomite Block' meets the specifications of 'Marble' but it is to state that I have imported the goods in name of 'Rough Dolomite Block' only Further, to state that Test Reports also confirm the sample dominantly composed of 'Dolomite; in the imported goods" and therefore as per my understanding, I have not mis-classified the goods and consequently I have not evade duty with any mala-fide intention as it is purely issue of interpretation of subject goods.. Further, as per the test reports, appropriate duty applicable on the imported goods under the above Bill of Entry, could not be paid at the time of import which is evasion customs duty by mis-declaring "Rough Marble Block (Dolomite)" as "Dolomite Block" by mis-classifying the same under CTH 2518 instead of 2515;
- On being asked about supplier, he stated that the goods under the above Bill of Entry was supplied by M/s. Babomar Mermer San. Ve tic. Ltd., Turkey which is trader, to whom we placed order for Marble blocks. On being asked about the manufacturer of the imported goods I state that , I had visited the mining site at Turkey and after having been seen the goods, I had placed the order for 'Rouhg Dolomite Block' and therefore, I have not placed purchase order to the supplier M/s. Babomar Mermer San. Ve tic. Ltd., Turkey. On being asked I state that except the goods imported under the above Bill of Entry No. 6696841 dated 31.01.2020, we did not purchase any consignment of goods from this or any other supplier.

- On being asked about the imports of Rough Marble Blocks undertaken by M/s. Shub Stone, I state that we had regularly imported only "Rough Marble Block" earlier under HSN code/CTH 25151210 from various suppliers. On being asked about subsequent imports of Rough Marble Blocks undertaken by Ms./Shub Stone, I state that except the goods covered under Bill of Entry No. 6696841 dated 31.01.2020, I have not imported "Rough Dolomite Blocks".
- On being specifically asked that when their company was aware about the product details, nature of Marbles and its classification then why they were indulged in classification under HSN code/CTH 2518, in this regard he stated that the said classification was decided by me as the same was classified and imported by me. Further, to submit that out of total nine block of "Rough Dolomite Block" imported under said Bill of Entry No. 6696841 dated 31.01.2020, as I remember, I had sold six blocks of 'Rough Dolomite Block' as such without getting any job work for cutting into slabs and polishing and remain three block of 'Rough Dolomite Block' were sent for job work for slabbing and polishing and thereafter, I sold the Polished Dolomite Slab in local market. Further, to clarify that I have never sold the polished dolomite slabs declaring or mentioning description of goods in invoice as "Dolomite Marble Slab".
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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 10.01.2025 - (RUD-12), 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;
- 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. Shub Stone. M/s. Shub Stone, Silvasa have used services of their firm M/s. International Cargo Corporation for filing of Bills of Entry at Nhvasheva 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 (M/s. Shub Stone) using services of their firm M/s. International Cargo Corporation. 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;
- They have filled Bill of Entry No. 6696841 dated 31.01.2020, I state that we have filled the above Bill of Entry before the Customs for the goods declared as 'Rough Dolomite Blocks', classifying the goods under CTH 25181000, as per the documents and details of product given to us by respective importer on behalf of our clients M/s. Shub Stone. I further state that based on the import documents i.e. Bill of Lading, Invoice, packing list etc., discussion with the respective importer, previous import documents, we prepared checklist for classification, duty calculation etc. and after getting approval of the checklist

from importer, we uploaded the documents at e- sanchit and filled the above Bill of Entry on behalf of the importers as per their instructions and approved checklist. I further state that on receipt of documents from the importer, we check the classification of the goods in respective chapter of the Customs Tariff (Import Tariff) as per description of goods mentioned in the import documents.

- He is shown Bill of Entry No. 6696841 dated 31.01.2020 alongwith commercial invoice, packing list, etc. which were filed by us on behalf of the importer M/s. Shub Stone for clearance of the goods declared as 'Rough Dolomite Blocks' under CTH 25181000. I have perused the said Bill of Entry alongwith supporting documents. On being asked I state that we had filed various Bills of Entry on behalf of the above importer based on the documents and product details given by them. Earlier they had given documents wherein the description of goods was mentioned as 'Rough Marble Blocks', however, in case of the above Bill of Entry, the documents given to us by the respective importer were showing description as 'Rough Dolomite Blocks', therefore, we inquired with the importer about change in description and came to know from the respective importer that Rough Dolomite Block is also a separate product and the same has been classified separately in Customs Tariff. I have gone through the Customs Tariff and found that Dolomite have been mentioned in Chapter heading 2518. I further state that we filed the above Bill of Entry as per description of goods mentioned in documents and as per importer's instructions and approval of checklist, however, in order to verify the nature of imported goods, we have filed Bill of Entry seeking first check examination order and accordingly, live samples from the goods under the above Bill of Entry were drawn by the Customs officers and the said samples were tested at CRCL Laboratory, Vadodara. I further state that under the test report, the CRCL, Vadodara has confirmed that the goods under the above Bill of Entry is composed of carbonates of calcium & Magnesium (Dolomite).
- On being asked to define the goods Dolomite Blocks and its uses he stated that technically he is 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. Shub Stone he stated that both the materials are same in appearance and the goods were cleared as dolomite on the basis of the test report of live samples drawn under first check examination;
- M/s. Shub Stone is in the business of Marbles and they are regularly importing the Marble Blocks.
- He was shown the panchnama dated 21.08.2023 drawn at the premises of ICD Tumb, Vill – Tumb, Distt. Valsad, Gujarat. I read and understand the contents of the said panchnama and put my dated signature. As per the panchnama, samples of dolomite blocks were collected from godown and sealed for re-testing and detail thereof is tabulated in the panchnama. I read and understand the table of the panchnama and find the Bill of Entry No. 6696841 dated 31.01.2020 in the table. Now, I am being shown ICD, Tumb Letter F. No. VIII/24/ICD-Tumb/2023-24 dated 26.08.2024 alongwith test memo No. ICD-Tumb/I - 117/23-24 dated 26.08.2023, sent to the Geological Survey of India, Nagpur, I read the same and understand that the above sealed samples of the imported cargo i.e. 'Rough Dolomite Block' imported by the above stated respective importer vide above Bill of Entry at ICD, Tumb were sent to the Geological Survey of India, Nagpur for testing and put my dated signature on the same.
- In continuation to the above document he was shown the letter reference No. 71/Customs/TCS/GSI/CR/2023 dated 28.09.2023 issued by the Director, Geological Survey of India alongwith Petrological Test Reports dated 27.09.2023 i.r.o. Bill of Entry No. 6696841 dated 31.01.2020 issued by the Director,

Geological Survey of India for the above said samples. After reading and understanding the said document I put my dated signature on the same as a token of having perused the same. On being asked I state that after Chemical Analysis/Testing of the declared samples of "Rough Dolomite Blocks" imported by the above stated importer vide above Bill of Entry, the Geological Survey of India, Nagpur has provided the 'Petrological Test Report' in respect of the said samples. The Geological Survey of India, Nagpur vide said 'Petrological Test Report' has opined and concluded stating the nature or rock that "based on the above physical, optical and limited chemical properties of rock samples interpreted as Dolomitic Marble".

- 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. I read and understand the letter and put my dated signature. From the letter dated 29.05.2024 I understand that in two petrological test reports i.r.o. samples of Bill of Entry No.3456493 dated 30.05.2019 and Bill of Entry No. 6595700 dated 23.01.2020, having almost similar/identical Petrographic study, the samples were interpreted as 'Dolomite' and 'Marble' respectively, therefore, it was requested to the GSI, Nagpur to specifically confirm whether the samples of rock covered in the above Bill of Entry are 'Dolomite' or 'Marble'.
- 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. 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 being shown ICD Tumb letter F. No. VIII/24/ICD-Tumb/2023-24 dated 21.08.2024, addressed to the Director, TCS, Geological Survey of India, Nagpur wherein a reference of e-mail dated 16.08.2024 from ICD Tumb (*e-mail id: cusicd-tumb@gov.in*) sent to the GSI, Nagpur (*e-mail id: tcs.cr@gsi.gov.in*) is there under which specific queries in connection with the test reports of various samples were sent to the GSI, Nagpur seeking response thereon:
 1. Whether the rock is sedimentary or metamorphic in 'nature'?
 2. Specific gravity of the rock?
 3. Chemical composition of the rock?
 4. Whether the stone is formed from the re-crystallization of limestone and/or dolomitic limestone?
 5. Whether the rock is sufficiently hard and capable of taking polish and can be used as marble slabs?
 6. Petrographic analysis of the rock?
 7. Whether it meets the specifications of marble? If yes, which type of marble it is?
- He was being shown e-mail correspondence dated 30.08.2024 from the Director, TCS Division, GSI, Nagpur (*e-mail id: tcs.cr@gsi.gov.in*) to ICD Tumb (*e-mail id: cusicd-tumb@gov.in*) under which response of specific queries in connection with test report were forwarded. The document attached with this e-mail also being shown to me. He found that in the

attached document that their Bill of Entry No. 6696841 dated 31.01.2020 is there and from the query answers he understood that the rock has been identified as Marble (recrystallized sedimentary rock with density 2.63 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 categorised as Dolomitic Marble. He also understand from the footnote on the response document that Marble is the metamorphic equivalent of non-clastic sedimentary rocks i.e. limestone/dolomite. Marble can be polished and used as building material/slabs. Compositionally marble can be calcite marble (mainly Ca CO₃) or dolomitic marble (mainly Ca Mg CO₃). The specific gravity (density) varies from 2.6 to 2.8 g/cc.

- 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' imported vide above Bill of Entry by M/s. Shub Stpm are actually 'Rough Marble Block of Dolomitic nature with specific gravity of more than 2.63 g/cc and composed of Calcium carbonate with magnesium. On being asked I state that I agree that as per the contents of the analysis report shown to me today the samples meet the specification of marbles. However, I would like to state that the sample of the goods imported under the Bill of Entry No. 6696841 dated 31.01.2020 was sent for testing at Central Excise and Customs Laboratory, Vadodara on 01/03.02.2020 and their report dated 05.02.2020 confirming the material imported was 'Dolomite'.
- On being asked about *the imports of Rough Marble Blocks undertaken by M/s. Shub Stone, I state 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. Shub Stone, had earlier imported and classified the goods under CTH 2515 then why we were indulged in mis- classification under HSN code/CTH 2518, in this regard I state that the importer informed us that the goods imported under the above Bill of Entry is different from the earlier imports and therefore, classified accordingly. I further state that upon verification of Customs Tariff, we found that the declared description of goods in the import documents was covered under CTH 2518. On being asked about subsequent imports of Rough Marble Blocks undertaken by M/s. Shub Stone, I state except the above Bill of Entry the importer has not given any document having description Dolomite Block and after DRI case on different importers the importer had started declaring the imported goods as Rough Marble 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 is 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 stated 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 in the classification of the goods imported under the above Bill of Entry their role as CHA was played by them with due precautions complying with the obligations under the CBLR, 2018. He also produced copy of Instruction No. 20/2024-Customs Dated 03/09/2024,

issued by CBIC regarding implicating Customs Brokers as co-noticee in cases involving interpretative disputes.

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. Shub Stone imported the goods namely 'Rough Marble Blocks' by mis-declaring as 'Rough Dolomite Blocks' vide Bills of Entry No. 6696841 dated 31.01.2020. The importer was regularly importing Rough Marble Blocks, classifying under CTH 25151210 and paying applicable duty. The importer was engaged in this field of purchase-sell of Marble, and thus it appears that the importer was aware about different kinds of stone which can be substituted in the guise of marble blocks. Dolomite Block is one of such natural stone which attracts low rate of customs duty on import and therefore, it appears that the importer declared goods as Dolomite Blocks. Dolomite is nothing but a sub- category of marble. It appears that the importer cleared the above consignment declaring as Dolomite Blocks and classifying the goods under CTH 25181000 though, the same appears meeting the characteristics of Dolomitic marble. Therefore, it appears that as per the intelligence received, the said importer has imported rough marble blocks in guise of the rough dolomite block and it appears that the earlier test report of the subject goods has not examined the critical parameters of specific gravity and not examined the samples property to accept polish or not and therefore, it appears that the earlier test report disregarded the terminology and characteristics properties of marble stone as per ASTM 503/C503M-15 and it appears that the earlier test report without examining these properties which are vital to determine the nature of goods appears liable to be dismissed in pursuance to the detailed test report submitted by Geological Survey of India, Central Region, Nagpur, which appears has examined the critical parameters and characteristics to determine the identity of the subject goods.

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 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. 6696841 dated 31.01.2020 for which samples were tested by GSI, Central Region Nagpur and the test reports confirm that the sample meets the specification of marbles (Dolomitic Marble).

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 - (RUD-3) were subjected to Testing/analysis of product. The Geological Survey of India, Central Region, Nagpur submitted testing reports (RUD-5 to 10) 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-117/23-24 dated 26.08.2023 i.r.o. of the above Bill of Entry meets the specifications of "Dolomitic Marble". Further, the report clearly mentioned that the specific gravity of the rock is 2.63g/cm3. The test report also confirmed that the rock identified and interpreted as Dolomitic Marble by them can be polished and can be used as building material/slabs. Thus, it appears that goods imported by the importer vide the above Bill of Entry were Blocks of Marble but appears to be mis-declared as 'Rough Dolomite Blocks' with intent to evade payment of duty.

8.2 During the course of inquiry the importer was called for to produce mine test report, mineral and chemical analysis certificate from the supplier and manufacturer in respect of goods imported under the above Bill of Entry alongwith sale invoices raised by them to the buyer of the imported goods under question. However, Shri Shrenik Jain, Karta of HUF Firm M/s. Shub Stone, in his statement categorically stated that they have not obtained any mine test report, mineral and chemical analysis certificate from the supplier and manufacturer in respect of goods imported under the above Bill of Entry.

8.3 An e-mail dated 02.01.2025 was sent to M/s.Babomar Mermer San. Ve TIC. Ltd. STI, Cumhuriyet Bulvari No:82 Erboy-2, IS Merkezi K:5/502, Konak/Izmir, Turkey at their e-mail id: Info@babomar.net, the supplier of goods cleared under the above Bill of Entry of the importer, seeking their submission/clarification regarding supply of goods by them declaring 'Rough Dolomite Blocks' in the respective invoice and other documents. No reply was received therefore, reminder e-mail dated 09.01.2025 and 16.01.2025 were sent - (RUD-13). However, they have not responded.

As per the classification provided by the Government of India, Ministry of Mines, Indian Bureau of Mines vide the Indian Minerals Yearbook 2013 (Part- III : Mineral Reviews) -(RUD-14) the marbles are first classified on the basis of colour, shade and pattern and second on the basis of their genesis and chemical composition.

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

- i. Calcite Marble: It is a crystalline variety of limestone containing not more than 5% magnesium carbonate. Colour and design wise, it may vary from grey to white to any colour, and even figurative light- brown to pink.
- ii. Dolomitic Marble: It is a crystalline variety of limestone containing not less than 5% or more than 20% magnesium carbonate as dolomite molecules.
- iii. Dolomite Marble: It is a crystalline variety of dolomite containing in excess of 20% magnesium carbonate as dolomite molecules. It has variegated colours and textures. As the whiteness increases, the lustre and translucency increases to an extent that it starts resembling with onyx. The main advantage of this marble is availability of exotic colours and patterns and its low maintenance cost. Marbles of Banswara in Rajasthan and Chhota Udaipur in Gujarat belong to this category.
- iv. Siliceous Limestone: It is a limestone containing high silica with smooth appearance due to fine-grained texture. It is difficult to cut and polish this type of marble but once polished, it gives a pleasant look. It is available

in several colours and designs. The pink marble of Babarmal and Indo-Italian variety from Alwar belongs to this category.

- v. Limestone: Several varieties of limestone are being exploited and used as marble. The Oolitic limestone of UK, Black Marble of Bhainslana, Katra & Sirohi and Golden-yellow Marble of Jaisalmer belong to this category. This type requires frequent maintenance in the form of polishing as they are non- metamorphosed and hence are softer in nature.
- vi. Serpentine or Green Marble: This marble is characterised mainly by the presence of a large amount of serpentine mineral. It has various shades of green varying from parrot-green to dark-green and is known for having varying degrees of veinlet intensities of other minerals, chiefly carbonate of calcium and magnesium. Most of the green marbles from Gogunda, Rikhabdeo, Kesariyaji and Dungarpur belong to this category. This marble is mostly used for anelling. The darker variety of this marble, which is so dark-green that it looks like black, has been termed as Verde Antique.
- vii. Onyx: It is a dense crystalline form of lime carbonate deposited usually from cold water solutions. It is generally transparent to translucent and shows a characteristic variegated colour layering due to mode of deposition. Such type of marble is found in Kupwara district in Jammu and Kashmir. It is used for making decorative articles.
- viii. Travertine Marbles: It is a variety of limestone regarded as a product of chemical precipitation from hot springs. The depositional history has left exotic patterns, when this is cut into thin slabs and polished, it become translucent.

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

8.4 Shri Shrenik Jain, Karta of HUF Firm M/s. Shub Stone has stated in his statement dated 31.12.2024 that they are in business of import of “Marble Blocks” and “Marble Slabs” and selling the same in local market either without any process or by converting the blocks in slabs on job work basis. They had regularly imported only “Rough Marble Block” earlier under HSN code/CTH 25151210 from various suppliers. He has stated that Marble Blocks/slabs are classified as per their genesis and chemical composition, colour, texture, origin of country, etc. and Dolomite Marble and Dolomitic Marbles are also a form of marbles, which is a crystalline variety of dolomite. The said classification was decided by the importer company. The same appears to indicate that the goods imported by the importer under the above Bill of Entry appears liable for classification under CTH 2515210. Further the subsequent imports undertaken by the importer were declared as “Rough Marble Blocks” and classified under CTH 25151210, and paid the customs duty applicable as per classification under CTH 2515, as appeared from the import data of the importer. Sample Bills of Entry are mentioned here 6877386 dated 14/02/2020; 4131010 dated 29/05/2021; 5862148 dated 16/10/2021; 7860242 dated 14/03/2022; 2346829 dated 08/09/2022. The same appears to indicate that the goods imported by the importer under the above Bill of Entry No. 6696841 dated 31.01.2020 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.

8.5 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.)*

8.6 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').

8.7 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').*

8.8 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.

8.9 Shri Shrenik Jain, Karta of M/s. Shub Stone and Shri Rupesh Jivanbhai Katariya the G-card holder of Customs House broker have stated in their respective statements that as per the above Test/Analysis Report, specific comments and response of the specific queries, the material declared as 'Rough Dolomite Blocks' and imported vide Bill of Entry No. 6696841 dated 31.01.2020 by M/s. Shub Stone are appears to be 'Dolomitic Marble' as confirmed in the test report by the Geological Survey of India, Nagpur with specific gravity of more than 2.63 and composed of Calcium carbonate with magnesium. They agreed with the contents of the analysis report shown to them according to which the sample meets the specification of marbles. They have also stated that the goods imported by the importer declaring as 'Rough Dolomite Block' meets the specifications of 'Marble'. Shri Shrenik Jain, Karta of M/s. Shub Stone also stated that name of Marble Blocks/slabs are classified as per their genesis and chemical composition, colour, texture, origin of country, etc. and Dolomite Marble and Dolomitic Marbles are also a form of marbles, which is a crystalline variety of dolomite.

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

10. 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 'Rough Dolomite Block' and thereby appears to have mis-classified under Customs Tariff Heading 25181000 vide the Bills of Entry No. 6696841 dated 31.01.2020. Further, the Geological Survey of India, Central Region, Nagpur after testing/chemical analysis of the sample along with response of queries confirmed that the sample meets the specifications of marble and can categorized as Dolomitic Marble. Therefore, it appears that the goods are 'Rough Marble Block' imported by the importer and appears to merit classification under heading 25151210 of the CTH in terms of the above HSN Explanatory General Notes of Chapter 25 of Customs Tariff and in pursuance to the Test

Report/Chemical Analysis Reports as against the declared classification of CTH 25181000.

11. From the facts in the case, it appears that the importer was aware of the duty structure under CTH 25151210 in comparison to CTH 25181000. However, they appear to have mis-classified under CTH 25181000 with a mala-fide intention of evading Customs duty. It appears that the importer with the intent to evade payment of Custom Duty had intentionally mis-declared the goods under CTH 25181000 in the import documents by suppressing the fact that declared 'Rough Dolomite Blocks' are infact appears to be 'Rough Marble Blocks'. The above 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 appears that the facts were only known to the importer about the product and aforesaid facts came to light only subsequent to the in-depth investigation and after chemical analysis of the product which had been conducted. Therefore, it appears that the importer have deliberately contravened the above said provisions with an intention to evade payment of Customs Duty leviable and payable on the import of 'Rough Marble Blocks' as specified in the first schedule of the Customs Tariff Act, 1975. It appears that the importer had contravened the provisions of Section 46(4A) of the Customs Act, 1962 in as much as the importer while filing Bills of Entry had to ensure the accuracy and completeness of the information given therein for assessment of Customs duty, whereas in the instant case, the importer appears to have failed to fulfill this legal obligation in respect of imports of 'Rough Marble Blocks' for its correct and accurate classification. With the introduction of self-assessment & RMS under the Customs Act, faith is bestowed on the importer and the importer have been assigned with the responsibility of self- assessing goods under Section 17 of the Customs Act, 1962. It was incumbent upon the importer to self assess the duty leviable on imported goods correctly, however, it appears that the importer failed to do so by selecting wrong CTH for payment of BCD, SWS & IGST by willful mis-statement and it appears with an intent to evade correct payment of BCD, SWS & IGST and therefore, appears that they have violated the provisions laid down under Section 17(1) of the Customs Act, 1962 inasmuch it appears that they have failed to correctly self-assess the impugned goods and also appears to have willfully violated the provision of Sub Section (4) and 4(A) of Section 46 of the Custom Act, 1962.

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. 6,49,394/-** 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, re-assess the duty leviable on such goods.

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

7 [***]

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

Section 46 Entry of goods on importation. —

.....

.....

[(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. 12,85,802/-** 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 Bill of Entry No. 6696841 dated 31.01.2020. 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. 6,49,394/-**, 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. 6,49,394/-** 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. 12,85,802/-** 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 is also evident 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 Shrenik Jain, Karta of M/s. Shub Stone to willfully suppress the correct description and classification of goods with an intent to evade payment of applicable Customs Duty. Shri Shrenik Jain had full knowledge about the mis-classification of the said imported goods in as much as Shri Shrenik Jain 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 Shrenik Jain 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 Shrenik Jain 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 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 admitted by Shri Shrenik Jain, Karta of the importer. The commissions and omissions on the part of M/s. International Cargo Corporation who is Licensed Customs Broker Firm was in violation of the obligations cast on them and that the Custom Broker has not advised his client to comply with the provisions of the Customs Act, 1962 and it appears that the Customs Broker has not brought this matter to the notice of Dy. Commissioner/Asstt. Commissioner; therefore, it appears that the Customs Broker has not 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 has been discussed in para 12 above.

19. In view of the above, Show Cause Notice No. CUS/APR/INV/485/2024-ICD-UMGN-CUS-COMMRTE AHMEDABAD dated 30.01.2025, bearing DIN No. 20250171MN0000500687 issued to the importer M/s. Shub Stone, (IEC Code No. 0316980285), Plot No. 2099, W.E. Highway, Airport Side, Vile-Parle East Mumbai, Maharashtra 400099, calling upon to show cause to the Additional Commissioner of Customs, ICD, Tumb, 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. 12,85,802/- (Rs. Twelve Lakh, Eighty Five Thousand, Eight Hundred and Two 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. 6,49,394/- (Rs. Six Lakhs, Forty Nine Thousand, Three Hundred and Ninety Four Only)** as detailed in Annexure-A attached to this show cause notice should not be demanded and recovered from them under Section 28(4) of the Customs Act, 1962 alongwith applicable interest under Section 28AAibid;
- (iv) Penalty should not be imposed upon them under the provisions of Section 112(a) and 112(b) of the Customs Act, 1962;
- (v) Penalty should not be imposed upon them under the provisions of Section 114A of the Customs Act, 1962 for goods mentioned above;

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

19.1 In view of the above, Show Cause Notice No. CUS/APR/INV/485/2024-ICD-UMGN-CUS-COMMRTE AHMEDABAD dated 30.01.2025, bearing DIN No. 20250171MN0000500687 issued to Shri Shrenik Jain, Karta of M/s. Shub Stone (IEC Code No. 0316980285) Plot No. 2099, W.E. Highway, Airport Side, Vile-Parle East Mumbai, Maharashtra 400099 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.

19.2 In view of the above, Show Cause Notice No. CUS/APR/INV/485/2024-ICD-UMGN-CUS-COMMRTE AHMEDABAD dated 30.01.2025, bearing DIN No. 20250171MN0000500687 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. Shub Stone. vide their letter dated 13.03.2025 filed common rely to the Show Cause Notice issued to the importer (Noticee No.1) and Shri Shrenik Jain, Karta of HUF Firm M/s. Shub Stone (Noticee No.2) wherein they interalia stated as under:

20.1.1 That they categorically denies all allegations of misclassification, suppression, or any intention to evade duty and submitted that the Customs authorities themselves conducted a sample test at the Central Excise & Customs Laboratory, Vadodara (CRCL, Vadodara) and test results confirmed that the imported goods were "Dolomite"; that based on these findings, the goods were classified under CTH 25181000 (Rough Dolomite Blocks); that relying on this department laboratory test report, the Customs department assessed and accepted the declared classification and subsequently granted Out of Charge (OOC) clearance on 06.05.2020 which clearly demonstrates that, at the time of import, the department itself approved the classification under CTH 25181000 after due verification; that the entire import clearance process was conducted transparently, with the Noticee providing all necessary documents and classification details to the Customs authorities; that no dispute or objection was raised by the department at the time of clearance regarding classification or duty payment; that if any discrepancies existed in testing or classification, it originated at the department's end and not due to any misrepresentation or suppression of facts by the Noticee; that the Noticee acted in good faith relying on the test reports issued by the department's own laboratory, which conclusively identified the goods as Dolomite; that when the imported goods were assessed and tested by the Customs authorities, who classified them as "Rough Dolomite Blocks" under CTH 25181000, suppression of facts does not arise and therefore, the subsequent reclassification and demand for differential duty lack merit, especially when there is nothing on record to prove that there was mis-representation of facts at the relevant time;

20.1.2 That the test at the time of clearance of the imported goods was conducted by the department's own Laboratory (CRCL, Vadodara) at its own discretion and the Noticee had no role in selecting the testing methodology or parameters; that if the

department believed that the initial test report was incomplete or lacked critical parameters, it was incumbent upon them to conduct a retest from a Department approved laboratory having the facilities to assess the critical parameters before granting clearance. However, no such retesting was ordered at the relevant time; that the goods were duly cleared by the department after the first check examination sought by the Customs Broker which clearly indicates the Noticee's bonafide intention not to suppress any facts at the material time and thus, the classification was accepted at the time of import based on records provided by the Noticee as well as the physical examination of the imported goods; that the Noticee cannot be penalized for any lapses on the part of the department in conducting or interpreting laboratory tests. The onus of ensuring complete and accurate testing lay entirely with Customs authorities; that the department after a period of three years relied on a report from Geological Survey of India (GSI), Nagpur, which allegedly found the goods to be "Dolomitic Marble.", however, this report explicitly states that Dolomite and Marble are compositionally similar as both contain Calcium magnesium Carbonate (CaMgCO) with minor impurities which reinforces that the distinction between the two is not always clear-cut; that the report does not specify the exact percentage of Calcium Carbonate (CaCO₃) and Magnesium Carbonate (MgCO₃), which is a critical factor in determining whether a rock is classified as Dolomite or Marble under the Customs Tariff; that the Noticee acted in good faith in classifying the goods as "Dolomite Blocks" under CTH 25181000; that as per well-established legal principles and numerous judicial rulings, the onus of proving misclassification lies with the department; that in the instant case, the Noticee has in no way suppressed any material facts at the relevant time; that the department has relied on the report of Geological Survey of India (GSI), Nagpur which itself acknowledges that Dolomite and Marble have similar compositions as mentioned in para 10 of the subject notice; that also the department has not conducted any conclusive testing to determine the precise mineral composition (i.e., CaCO₃ and MgCO₃ content), which is crucial in classifying the goods accurately besides other physical properties; that it is a settled legal position that mere assumptions, re-examination, or retrospective objections cannot override an assessment that was duly conducted at the time of clearance.

20.1.3 That statement of Shri Shrenik Jain, Karta of HUF Firm M/s. Shub Stone (dated 31.12.2024) also reinforces that the imported goods were truthfully and correctly declared as Rough Dolomite Blocks and the classification was based on the official test report from the Central Excise & Customs Laboratory (CRCL), Vadodara, which confirmed that the goods composed of carbonates of calcium and magnesium (Dolomite) that at no point did the Noticee conceal or misrepresent any facts. The entire import process was fully transparent and all necessary documents were provided to Customs authorities at the time of clearance; that confirmation of compliance is validated by the Statement dated 10.01.2025 of Shri Rupesh Jivanbhai Katariya (G-Card holder of M/s. International Cargo Corporation, the Customs Broker) wherein he had stated that the subject goods had even undergone first check examination by the Customs officers which was done as per the request of the Customs Broker.

20.1.4 That the above actions of the Noticee further establishes that the classification of goods was not an arbitrary or unilateral decision by the Noticee but was verified, assessed, and approved by Customs authorities after proper examination and thus it confirms that there was no malafide intention to evade any customs duty payment at the relevant time; that in view of the above, it is humbly submitted that the department has not been able to establish beyond reasonable doubt that there was a misclassification or any kind of suppression with an intent to evade payment of customs duty by the Noticee; that on the contrary, the Noticee had fully cooperated with the department during the assessment and clearance of the imported goods at the relevant time and therefore, the question of reclassification and reassessment of the goods from CTH 2518 to 2515 of Customs Tariff Act 1962 does not arise at this stage; that as there was no suppression of any facts at the material time and as the goods were cleared by the Customs only after the proper officer's complete satisfaction, the extended period cannot be invoked under Section 28(4) of the Customs Act, 1962 to demand the differential duty of Rs.6,49,394/- and therefore, requested to drop the demand raised vide the subject show cause notice as the show cause notice is clearly time barred; that since the demand is time barred and as the goods are not available for confiscation, the redemption fine under Section 111(m) is not payable at this stage.

Consequently, penalties under Section 112 (a) and (b) and Section 114 and 114AA of the Customs Act. 1962 are also not imposable.

20.1.5 That several judicial decisions have reinforced the principle that an importer cannot be held liable for misclassification if the classification was based on laboratory test reports accepted by Customs at the time of clearance and relied on the following decisions

(i) Customs Appeal No. 10277 of 2023-DB in the case of M/s. Nitco Limited (Final Order No.12000-12009/ 2024 dated 11.09.2024 of CESTAT, Ahmedabad):-

(ii) Shri Ram Marble industries Vs. Commissioner of C. Ex., Bhopal' Decision of CESTAT, Pr. Bench, New Delhi-reported at [2008(26)E L.T. 128 (Tri.-Del)]

(iii) Gaurav Lubricants Industries Pvt Ltd Vs Commissioner of Customs, Ahmedabad- in the CESTAT West Zonal bench, Ahmedabad and Civil appeal filed by the department in the above matter was dismissed by the apex Court. 2024 (389) E.E.T.145 (SC)

(iv) Daxen Agritech India Pvt Ltd Vs Principal Commissioner. Customs dated 20.12.2023- Decision of CESTAT, Principal Bench, New Delhi in Customs Appeal No. 50961 of 2020

(v) Vishal G. Trivedi Vs C.C Ahmedabad in the CESTAT, WEST ZONAL BENCH, Ahmedabad.-reported at 2019(367) ELT 660 (Tri.- Ahmd.)

(vii) Hindustan Steel Ltd. v. State of Orissa (1978) (2) E.L.T (J 159) (SC) – Supreme Court

(viii) M/s. Stonex India Pvt Ltd Vs. Commissioner of Customs, Mundra (Final Order No. 12527-12528/2024 dated 25.10.2024 of CESTAT Ahmedabad)

20.1.6 That all the above rulings firmly establish that Customs cannot demand additional duty or impose penalties after clearance unless there is undeniable proof of deliberate mis-declaration or fraud; that as discussed above, there is no legal basis for the allegation of misclassification as the classification was determined through proper customs procedures and based on official test reports that the burden of proving misclassification rests with the department, which has failed to provide any conclusive evidence and Judicial precedents affirm that retrospective reclassification is not permissible unless there is clear intent to evade duty, which is absent in this case; that the alleged misclassification of the imported goods as 'Dolomite Blocks' instead of 'Dolomitic Marble only came to light nearly three years after customs clearance was granted ('out of charge'), following a re-test conducted by the Geological Survey of India (GSI), Nagpur; that it is pertinent to highlight that the Panchnama dated 21.08.2023, drawn while unsealing the samples of Dolomite Blocks lying with the department, records the presence of independent Panchas along with Shri Suresh M. Bhanushali, G Card Holder of M/s International Cargo Corporation, Mumbai, who was the Customs Broker/House Agent at ICD-Tumb, however, at no point was the Noticee informed-either by the department or by the Customs Broker-about this retesting of samples. The Karta of the Noticee firm only became aware of the retest upon the receiving the Peterological test report dated 27.09.2023 from the department on 30.04.2024. which clearly indicates that when the sealed samples were opened for retesting, neither the Noticee nor any of its authorized representatives were present-an action that directly contravenes the principles of natural justice; that moreover, the test report from the Geological Survey of India, Nagpur, acknowledges the compositional similarities between Dolomite and Marble but fails to provide the precise percentages of CaCO₃ and MgCO₃-critical parameters for classification as 'Dolomite'; that if the department had concerns about the accuracy or completeness of the initial CRCL report, a retest should have been conducted before clearance was granted, rather than reopening the case retrospectively; that the department's own delay and inaction cannot be used as grounds to invoke the extended limitation period.

20.1.7 That furthermore, since the classification and assessment of duty were finalized based on the department's own laboratory reports before granting 'out of charge' clearance, any claim of misclassification-if at all substantiated should be regarded as a genuine interpretational issue rather than an intentional attempt to evade duty and accordingly, the allegations of misclassification and duty evasion are unfounded and therefore the charges made in the subject show cause notice needs to

be dropped and therefore, the demand is not sustainable and also penalties under Section 112(a) and (b) and 114AA of the Customs Act, 1962 is not imposable; that in the present case, the goods were duly cleared after proper Customs verification and testing. Therefore, there is no legal basis for demanding customs duty by invoking the extended period for issuing the show cause notice on the grounds of suppression of facts; Furthermore, the show cause notice merely seeks to reclassify the goods under Customs Tariff Heading (CTH) 25151210 of the First Schedule to the Customs Tariff Act, 1975, in place of the declared classification under CTH 25181000, thereby attempting to reassess the relevant Bills of Entry. It is important to note that the charging paragraph of the show cause notice does not specify any particular provision that the department considers to have been violated by the Noticee. That The notice cites two legal provisions of the Customs Act, 1962, allegedly violated by the Noticee – namely, Section 17 and Section 46. However, it is submitted that the provision for reassessment under Section 17 applies only when, after verification, examination, or testing of goods, the proper officer finds that the importer's self-assessment is incorrect. In this case, the department had already conducted the necessary testing when the Bill of Entry was filed on 31.01.2020. After completing the due process of duty assessment and being fully satisfied with the classification, the proper officer cleared the goods at that time. Given these facts, it remains unclear under which specific provision the show cause notice seeks to justify the reclassification and reassessment of the goods at this stage. that the Noticee made a bona fide classification based on the available documents and the test results provided by the department's own laboratory; that there was no reason to believe that the classification was incorrect and therefore, the allegation that any act or omission on the part of the Noticee has rendered the goods liable for confiscation is entirely unfounded. Moreover, several judicial decisions have established that when the goods are not available for confiscation, the department cannot impose a redemption fine under Section 111 (m) of the Customs Act, 1962; Furthermore, as there was no suppression, fraud, or willful misstatement – along with the reasons stated above – the imposition of a penalty under Section 112(a) or Section 112(b) of the Customs Act, 1962 is legally unsustainable. Similarly, the proposed penalty under Section 114A is baseless, as there was no short levy of customs duty – neither in the Noticee's self-assessment nor in the department's final assessment. Additionally, the penalty under Section 114AA of the Customs Act, 1962 is also unwarranted, as there is no evidence on record to suggest that the Noticee provided any false declaration or incorrect material at the time of assessment. The clearance of the goods was granted only after a thorough physical examination and acceptance of the chemical test report by the department; that they placed reliance on the decision of Hon'ble GESTAT, New Delhi, Principal Bench, given vide Final order No.55653-55654/2024 dated 29.04.2024 in the case of M/s Raj Metal & Alloys, Jaipur wherein it has been noted that Section 111(m) renders goods liable to confiscation which do not correspond to the entry made in the Bill of Entry in any particular and that nothing in Section 111(m) makes goods liable to confiscation for an incorrect classification of goods or claiming an incorrect exemption notification, etc.; that the order further stated that the importer declared the value as per its transaction value and this transaction value was rejected by the officer and its value was re-determined and thus, the two deviations from the declaration of the importer in the Bill of Entry are the change in classification and re-determination of value by the officer; that simply because the officer has changed the classification and the valuation, the goods do not become liable to confiscation under section 111(m) because the goods did correspond to the declarations and only the classification and the valuation which are matters of opinion were changed by the officer; that as regards penalty under Section 112(a) and (b) of Customs Act, 1962 the above relied order states that it needs to be pointed out the section lays down that certain persons in certain circumstances will be liable to penalty. It does not say that a penalty shall be imposed; that discretion lies with the adjudicating and appellate authorities to impose penalty or not and also to decide the quantum of penalty; that as regards to penalty under Section 114AA of the Customs Act, the above order states that, neither the importer nor Shri Jain made any false or incorrect declaration, The importer only made an erroneous classification which is not a declaration or document but is its self assessment; that the aforesaid decision is squarely applicable in the present case also; that given these facts, they respectfully request the Hon'ble Authority to quash the Show Cause Notice (SCN) and drop the proceedings in the interest of justice and the Noticee reserves the right to submit an additional reply at the time of the personal hearing or before adjudication of the case.

20.2 Customs Broker M/s. International Cargo Corporation, Mumbai filed their written submission dated 20.12.2024 received by this office on 30.04.2025 wherein they interalia stated as under:

20.2.1 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/I-182/19-20 dated 01.02.2020 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/2257/03.02.2020 dated 05.02.2020 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.

20.2.2 that after a period of almost (4) 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".

20.2.3 that during the course of investigations, statement of Shri Shrenik Jain of Importer was recorded on 31.12.2024 and Statement of Shri Rupesh Jivanbhai Katariya, partner of the Customs Broker Firm M/s International Cargo Corporation

(the Noticee herein) was recorded on 10.01.2025; that Shri Rupesh Katariya , the Noticee and authorized signatory of CB in his statement dated 10.01.2025 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;

20.2.4 Further submitted that Shri Shrenik Jain 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; and stated that the classification of the goods under CTH 2518 was done by as they imported the goods as Dolomite; n

20.2.5 That the 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.

20.2.6 that they denies all the allegations in the SCN and submits that the 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 S CN that the Customs Broker was aware that the goods were actually marble blocks and not dolomite blocks cannot be sustained;

20.2.7 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 ii 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; .

20.2.8 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.

20.2.9 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.

20.2.10 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 31.01.2020 on the basis of test report issued by the Customs laboratory Viz CECL, Vadodara.

20.2.11 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)

20.2.12 that SCN proceeds against the Custom Broker with the allegations of "abetment" 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 mis- classification of goods in any manner; that Section 107 of IPC defines "abetment"; 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.

20.2.13 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),

20.2.14 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).

20.2.15 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)

20.2.16 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);

20.2.17 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 Tutticorin 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;

20.2.18 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

20.2.19 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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21. Personal Hearing: Personal Hearing was held through virtual mode on 01.07.2025 which was attended by their Tax Consultant Shri D B Zala and Shri Shrenik Jain Karta of HUF Firm, wherein he reiterated their written submission dated 21.02.2025 and 13.03.2025, they reiterated their submission made vide letter dated 21.02.2025 submitted on 30.04.2025 and further submitted that there is no suppression and mis-declaration on the part of the Noticees therefore the extended period has been wrongly invoked in the said SCN. They also submitted that the penalties should not be imposed upon them under Section 112 (s) and 112(b) as there was no suppression and misdeclaration on their part and penalty under Section 114 AA should not be imposed as it is applicable in case of exports only. They requested to set aside the SCN and take the lenient view in the matter and decide the matter on merits.

Further, Shri Girish Nadkarni, Advocate and Authorized Representative and Shri Rupesh Katariya, CHA, Partner of M/s. International Cargo Corporation appeared for personal hearing on 10.07.2025. They have requested to attend the personal hearing in person instead of video conferencing. Shri Girish Nadkarni, Advocate and Authorized Representative submitted his Vakalatnama to represent the case. They reiterated their written submission dated 21.02.2025 submitted on 30.04.2025. They also submitted that they are not liable to penalty as proposed in the SCN as they are not responsible for any misclassification of goods and also, they have not violated the provisions of regulation 10 of CBLR, 2018. They relied upon on board's instructions No. 520/01/2023-Cus-VI dated 03.09.2024 (Para-04) as well as advisory no. 02/2024 JNCH dated 23.10.2024 (Para-06) pertains to CHA/CB and relied upon the case laws as submitted in their written submission. Further, they also submitted that in an identical case, in the case of M/s. Heritage Marble Pvt. Ltd vide SCN CUS/APR/INV/440/2024-ICD-UMGN-CUSCOMMRT- Ahmedabad, the proceeding initiated for imposition of penalty under Section 112(a) and 114AA of Customs Act, 1962 , have been dropped vide OIO No.05/ SS/ DC/ ICD-TUMB I 2025-26 dated 29.04.2025 by the Deputy Commissioner of ICD Tumb and the same order has been accepted by the Commissioner of Customs, Ahmedabad vide reference letter no. CUS/APR/INV/440/2024-ICDUMGN-CUS-COMMRTE-Ahmedabad dated 02.07.2025 of Deputy Commissioner, ICD-TUMB. Copy of the same is submitted and they requested to take the same on record.

Discussion and Findings:

22. I have carefully gone through the Show Cause Notices dated 30.01.2025 and common written submission dated 21.02.2025 and 13.03.2025 filed by importer M/s. Shub Stone and its Karta of HUF Firm Shri Shernik Jain. Also gone through the submission made during the Personal Hearing held on virtual mode on 01.07.2025 attended by their Tax Consultant Shri D B Zala. I have also gone through the written submission dated 21.02.2025 and 13.03.2025 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 10.07.2025.

23. 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.12,85,802/- (Rs. Twelve Lakhs, Eighty Five Thousand, Eight Hundred and Two only)** as per as detailed in Annexure A attached to the show cause notice should be confiscated under Section 111 (m) of the Customs Act, 1962?
- (c) Whether the differential/Short paid Customs duty amounting to **Rs.6,49,394/- (Rs. Six Lakhs, Forty Nine Thousand, Three Hundred and Ninety Four Only)** as detailed in Annexure-A attached to the show cause notice should be demanded and recovered under Section 28(4) of the Customs Act, 1962 alongwith applicable interest under Section 28AA ibid?
- (d) Whether penalty should be imposed under the provisions of Section 112(a) and 112(b)?
- (e) Whether penalty should be imposed under the provisions of Section 114A and Section 114AA of the Customs Act, 1962 for goods mentioned above?
- (f) Whether penalty should be imposed under the provisions of Section 112(a), 112 (b) and Section 114AA of the Customs Act, 1962 on Shri Shrenik Jain, Karta of HUF Firm M/s. Shub Stone.?

(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?

24. The most vital question that comes up for consideration in case on hand is 34 (a) whether the goods in question are 'Rough Marble Blocks', classifiable under Customs Tariff Item No.25151210, as per Annexure-A , to the Show Cause Notice, or 'Rough Dolomite Blocks' classifiable under Customs Tariff Item No.25181000', as per the Importer;

I find that Para 23(b) to 23(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.

25.1 Customs Tariff Heading No.2515 reads as under:

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

- *Marble and travertine :*

2515 11 00 -- Crude or roughly trimmed

2515 12-- *Merely cut, by sawing or otherwise, into blocks or slabs of a rectangular (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

25.2 Customs Tariff Heading No.2518 reads as under:

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

2518 10 00 - *Dolomite not calcined or sintered.*

2518 20 00 - *Calcined or sintered dolomite.*

2518 30 00 - *Dolomite ramming mix*

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

25.3 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).

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

The heading covers crude dolomite as well as calcined and sintered dolomite. Dolomite is calcined at a temperature range of 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**)

25.5 I find that CRCL Vadodara had given their Test report vide Test Result No. RCL/SU/IMP/1467/11.10.19 as under:

B/E No. & Date	Description as per B/E	Findings returned in Test Reports
6696841 31.01.2020	dated Rough Blocks	Dolomite The sample is in the form of white broken pieces of block. It is composed of Carbonates of Calcium & Magnesium (Dolomite). % of CaO contents =31.5 by wt. %Mgo content = 21.6 % 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.VIII/24/ICD-Tumb/2023-24 dated 26.08.2023. I find that it would be worth to refer the CBEC Circular No. 40/2002-Cus., dated 11-7-2002, though it is related to 'Finalisation of Provisional Assessment of Marble Import'. However, it is aptly relevant to the present case. Relevant para is re-produced as under:

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

2. Accordingly the full Board examined the above-mentioned issues. Board's decisions are as follows :

(a) *Marble versus calcareous stone :*

In the case of M/s Akbar Badruddin Jiwani v. Collector of Customs - 1990 (47) E.L.T. 161 (S.C.), the Honourable Supreme Court had consciously made an exception to the general rule of giving precedence to popular/commercial meaning over the technical meaning and held that heading 25.15 of the First Schedule to the Customs Tariff Act, 1975 must be construed by its technical sense and not by applying a commercial nomenclature test. The matter was discussed in the Conference of Commissioners on Tariffs and Allied Matters held at Goa in November, 2000 and taking due note of the said judgment, it was decided that the provisional assessment cases should be finalised on the basis of test reports of the samples received from Geological Survey of India (GSI), Nagpur. The Tariff Conference had given clear directions to the field formations to decide the cases on the basis of test reports from GSI, Nagpur. The decision of the Tariff Conference was reiterated by the Board vide its letter F. No. 438/38/2000-Cus.-IV, dated 9-10-2001. It has been decided that the cases should be finalised on the basis of test reports from GSI, Nagpur. It has also been decided that in the event of conflicting reports from Central Revenue Control Laboratory (CRCL) and GSI, Nagpur, reliance should be placed on the report of GSI, Nagpur.

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

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

25.6 I find it is needless to re-produce the Test Report forwarded to the Geological Survey of India, Western Region, Jaipur 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. 6696841 dated 31.01.2020 by the importer is actually 'Rough Marble Blocks' with specific gravity of 2.63g/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'.

25.7 Further, as per Geology.com, 'Marble' is a metamorphic rock composed primarily of the mineral calcite (CaCO_3) and usually contains other minerals, such as clay minerals, micas, quartz, pyrite, iron oxides, and graphite whereas Dolomite is a common rock-forming mineral i.e. a calcium magnesium carbonate with a chemical composition of $\text{CaMg}(\text{CO}_3)_2$.

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

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

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

- i) **Calcite Marble:** It is a crystalline variety of limestone containing not more than 5% magnesium carbonate. Colour and design wise, it may vary from grey to white to any colour, and even figurative light- brown to pink.
- ii) **Dolomitic Marble:** It is a crystalline variety of limestone containing not less than 5% or more than 20% magnesium carbonate as dolomite molecules.
- iii) **Dolomite Marble:** It is a crystalline variety of dolomite containing in excess of 20% magnesium carbonate as dolomite molecules. It has variegated colours and textures. As the whiteness increases, the lustre and translucency increases to an extent that it starts resembling with onyx. The main advantage of this marble is availability of exotic colours and patterns and its low maintenance cost. Marbles of Banswara in Rajasthan and Chhota Udaipur in Gujarat belong to this category.

- iv) **Siliceous Limestone:** It is a limestone containing high silica with smooth appearance due to fine-grained texture. It is difficult to cut and polish this type of marble but once polished, it gives a pleasant look. It is available in several colours and designs. The pink marble of Babarmal and Indo-Italian variety from Alwar belongs to this category.
- v) **Limestone:** Several varieties of limestone are being exploited and used as marble. The Oolitic limestone of UK, Black Marble of Bhainslana, Katra & Sirohi and Golden-yellow Marble of Jaisalmer belong to this category. This type requires frequent maintenance in the form of polishing as they are non-metamorphosed and hence are softer in nature.
- vi) **Serpentine or Green Marble:** This marble is characterised mainly by the presence of a large amount of serpentine mineral. It has various shades of green varying from parrot-green to dark-green and is known for having varying degrees of veinlet intensities of other minerals, chiefly carbonate of calcium and magnesium. Most of the green marbles from Gogunda, Rikhabdeo, Kesariyaji and Dungarpur belong to this category. This marble is mostly used for anelling. The darker variety of this marble, which is so dark-green that it looks like black, has been termed as Verde Antique.
- vii) **Onyx:** It is a dense crystalline form of lime carbonate deposited usually from cold water solutions. It is generally transparent to translucent and shows a characteristic variegated colour layering due to mode of deposition. Such type of marble is found in Kupwara district in Jammu and Kashmir. It is used for making decorative articles.
- viii) **Travertine Marbles:** It is a variety of limestone regarded as a product of chemical precipitation from hot springs. The depositional history has left exotic patterns, when this is cut into thin slabs and polished, it become translucent.

Marble is a metamorphic rock that forms when limestone is subjected to the heat and pressure of metamorphism. Marble is composed primarily of the mineral calcite (CaCO_3) and usually contains other minerals, such as clay minerals, micas, quartz, pyrite, iron oxides, and graphite. Under the conditions of metamorphism, the calcite in the limestone recrystallizes to form a rock that is a mass of interlocking calcite crystals. 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.

25.11 On harmonious reading of the Customs Tariff Headings 2515 and 2518, the HSN Explanatory Notes of the said Tariff Headings, Classification provided by the Government of India, Ministry of Mines, Indian Bureau of Mines vide the Indian Minerals Yearbook 2013, Indian Standard Specification for Marble, IS:1130-1969, Para 30.6 and 30.15 of Indian Minerals Year Book 2020 (59th Edition) and Test Reports given by Geological Survey of India, Central Region, Nagpur in respect of 'Rough Dolomite Blocks' imported vide Bill of Entry No. 6696841 dated 31.01.2020 by the importer, I find that imported goods is 'Rough Dolomitic Marble' and its merit classification is Customs Tariff Item No. 25151210 and not Customs Tariff Item No. 25181000 as claimed by the importer.

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

25.13 I find that Shri Shrenik Jain, Karta of HUF Firm in his written submission dated 13.03.2025 has alleged that statement dated 31.12.2024 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 31.12.2024 of Shri Shrenik Jain 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 Shrenik Jain has not produced any evidence that

his statement dated 31.12.2024 was recorded under, threat / duress and it was tendered voluntarily and therefore, such allegation is nothing but an afterthought.

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

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

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

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

I find that in present case, Test Reports received from GSI, Nagpur were given to the importer along with Show Cause Notice and further Test Reports from GSI were perused to Shri Shrenik Jain at the time of recording of his statement on 31.12.2024.

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

“2. With regard to cross-examination of the officers of the DGFT and Customs department, I decline to accord permission for the same since the officers have discharged their statutory duties only and their statements are not relied upon in the case. In this connection, the following judicial and quasi judicial rulings may be referred, Visal Lubetech Corpn v. Additional Commissioner of Customs, Coimbatore [2016 (342) E.L.T. 201 (Mad)]; N S Mahesh v. Commissioner of

Customs Cochin [2016 (331) E.L.T. 402 (Ker)] and Jagdish Shankar Trivedi v. Commissioner of Customs Kanpur [2006 (194) E.L.T. 290 (T-Del)]."

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

26. Whether the goods valued at Rs.12,85,802/- (Rs. Twelve Lakhs, Eighty Five Thousand, Eight Hundred and Two 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?

26.1 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.

26.2 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.

26.3 I find that the importer had imported 93.804 MTS totally valued at Rs. 12,85,802/- 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

26.4 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. 6696841 dated 31.01.2020 and wrongly availed the exemption from payment of BCD under Sr.No.120 of Notification No.050/2017-Cus dated 30.06.2017 and also availed the exemption from payment of GST under Notification No.01/2017-Integrated Tax (Rate) dated 28.06.2017, therefore, the goods covered under aforesaid Bills of Entry No. 6696841 dated 31.01.2020 is liable for confiscation under Section 111(m) of Customs Act, 1962.

26.5 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...”

26.6 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).*

....
....
....”

26.7 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: -

“.

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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 93.804 MTS totally valued at Rs.14,12,579/- 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.

26.8 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.14,12,579/- as detailed in Annexure A to Show Cause Notice.

27. Whether differential/short paid Customs Duty amounting to Rs.6,49,394/- (Rs. Six Lakhs, Forty Nine Thousand, Three Hundred and Ninety Four Only) as detailed in Annexure-A, to Show Cause Notice should be demanded and recovered under Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28AA ibid?

27.1 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.6,49,394/-** 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.

27.2 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.6,49,394/-** 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.

27.3 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

28. 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. Shub Stone?

28.1 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.cbec.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.6,49,394/-** 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.

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

28.2.1 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."*

28.2.2 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 misclassification 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.

28.2.3 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*".

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

28.3.1 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. Shub Stone, 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.

29. Whether, Penalty under Section 112 and Section 114AA of the Customs Act, 1962 should be imposed on Shri Shrenik Jain, Karta of HUF Firm M/s. Shub Stone ?

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 Shrenik Jain, Karta of HUF Firm M/s. Shub Stone, to wilfully suppress the correct description and classification of goods with an intent to evade payment of applicable Customs Duty. Shri Shrenik Jain had full knowledge about the mis-classification of the said imported goods in as much as Shri Shrenik Jain 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 Shrenik Jain, Karta of HUF M/s. Shub Stone has admitted in his statement dated 31.12.2024 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 Mable Blocks, Epoxy Resin, General Resin, Fibre etc., and company have fully automated state of the art Marble Processing Plant. Further, Shri Shrenik Jain Karta of HUF Firm, on being asked categorically for the goods imported vide Bill of Entry No. 6696841 dated 31.01.2020, he stated that the goods imported under aforesaid Bill of Entry was declared as 'Dolomite Block classifying under CTH 2518

and said imported goods were processed in the plant of their company and were cleared as 'Dolomite Slab'. Thus, Shri Shrenik Jain 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 Shrenik Jain have rendered the imported goods liable for confiscation under Section 111 (m) of the Customs Act, 1962, and consequently rendered himself liable for penalty under Section 112(a)(ii) of the Customs Act, 1962.

Further, I find that Shri Shrenik Jain 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.

30. While deciding each issue as above, I have examined the judgments cited by the Advocate of Importer and Shri Shrenik Jain , Karta of HUF Importer firm M/s. Shub Stone. It needs to be appreciated that each case is based on its own facts and circumstances and my findings as above are based on the nature of offence committed by the said Importer and its General Manager Shri Shrenik Jain 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.

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

31.1 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.

31.2 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.

31.3 I find that in the present case said Customs Broker had sought First Check of the Bill of Entry No. 6696841 dated 31.01.2020. Further representative sample were also drawn to CRCL Vadodara vide Test Memo No. ICD- Tumb/I-182/19-20 dated 01.02.2020 and accordingly, CRCL Vadodara had given their Test Result vide Test Result No. RCL/SU/IMP/2257/03.02.2020 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 31.5% by wt and % of Mgo as 22.6%". 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.

31.4 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. M/s. International Cargo Corporation, Mumbai.

31.5 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*.

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

:: ORDER ::

32.1 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;

32.2 I hold the seized 85.87 Mts of declared goods viz. " Rough Dolomite Block "

imported vide Bill of Entry Nos. 6696841 dated 31.01.2020 valued at Rs. **12,85,802/- (Rs. Twelve Lakhs, Eighty Five Thousand, Eight Hundred and Two only)** liable for confiscation under Section 111 (m) of the Customs Act, 1962. However, I give M/s. Shub Stone, (IEC Code No. 0316980285), Plot No. 2099, W.E. Highway, Airport Side, Vile-Parle East Mumbai, Maharashtra 400099 the option to redeem the goods on payment of Fine of **Rs.321400/- (Rupees Three Lack Twenty one thousand and four hundred only)** under Section 125 of the Customs Act, 1962.

32.3 I confirm the demand of Differential Customs Duty amounting to **Rs.6,49,394/- (Rs. Six Lakhs, Forty Nine Thousand, Three Hundred and Ninety Four Only)** leviable on 'Rough Marble Block' imported by M/s. Shub Stone, (IEC Code No. 0316980285), Plot No. 2099, W.E. Highway, Airport Side, Vile-Parle East Mumbai, Maharashtra 400099 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.

32.4 Interest at the appropriate rate shall be charged and recovered from M/s. Shub Stone, (IEC Code No. 0316980285), Plot No. 2099, W.E. Highway, Airport Side, Vile-Parle East Mumbai, Maharashtra 400099 under Section 28AA of the Customs Act, 1962 on the duty confirmed at Para 32.3 above.

32.5 I impose penalty of **Rs.6,49,394/- (Rs. Six Lakhs, Forty Nine Thousand, Three Hundred and Ninety Four Only)**, plus penalty equal to the applicable interest under Section 28AA of the Customs Act, 1962 payable on the Duty demanded and confirmed above on M/s. Shub Stone, (IEC Code No. 0316980285), Plot No. 2099, W.E. Highway, Airport Side, Vile-Parle East Mumbai, Maharashtra 400099 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. Shub Stone, (IEC Code No. 0316980285), 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.

32.6 I impose a penalty of **Rs.321400/- (Rupees Three Lack Twenty one thousand and four hundred only)** on M/s. Shub Stone, (IEC Code No. 0316980285), Plot No. 2099, W.E. Highway, Airport Side, Vile-Parle East Mumbai, Maharashtra 400099 under Section 114AA of the Customs Act, 1962.

32.7 I impose a penalty of **Rs.64500/- (Rupees Sixty four thousand Five hundred only)** on Shri Shrenik Jain, Karta of HUF Firm of M/s. Shub Stone, (IEC Code No. 0316980285), Plot No. 2099, W.E. Highway, Airport Side, Vile-Parle East Mumbai, Maharashtra 400099 under Section 112(a)(ii) of the Customs Act, 1962.

32.8 I impose a penalty of **Rs. Rs.321400/- (Rupees Three Lack Twenty one thousand and four hundred only)** on Shri Shrenik Jain, Karta of HUF Firm of M/s. Shub Stone, (IEC Code No. 0316980285), Plot No. 2099, W.E. Highway, Airport Side, Vile-Parle East Mumbai, Maharashtra 400099 under Section 114AA of the Customs Act, 1962.

32.9 I drop 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 31 to 31.5 hereinabove.

32.10 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 31 to 31.5 hereinabove.

33 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.

34. The Show Cause Notice No. CUS/APR/INV/485/2024-ICD-UMGN-CUS-COMMRTE-AHMEDABAD dated 31.01.2025 is disposed of in above terms.

(Lokesh Damor)
Additional Commissioner

F.No. No. CUS/APR/INV/485/2024-ICD-UMGN-CUS-COMMRTE-AHMEDABAD

Date : 15.09.2025

DIN: 20250971MN0000222A99

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

To Noticees:

- (1) M/s. Shub Stone, (IEC Code No. 0316980285), Plot No. 2099, W.E. Highway, Airport Side, Vile-Parle East Mumbai, Maharashtra 400099
- (2) Shri Shrenik Jain, Karta of HUF Firm M/s. Shub Stone, (IEC Code No. 0316980285), Plot No. 2099, W.E. Highway, Airport Side, Vile-Parle East Mumbai, Maharashtra 400099.
- (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 Dy. Commissioner, ICD, Tumb, Customs Ahmedabad Commissionerate;
- (3) The Dy/Asstt. Commissioner of Customs (TRC), Ahmedabad.
- (4) The System In charge, Customs HQ, Ahmedabad for uploading on official website i.e.<http://www.ahmedabadcustoms.gov.in>
- (5) Guard File