CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Customs Appeal No. 86354 of 2025

(Arising out of Order-in-Original No. 287/2024-25/CC/NS-I/CAC/JNCH dated 05.02.2025 passed by the Commissioner of Customs (NS-I), JNCH, Nhava Sheva, Mumbai Zone-II].

Sampat Ostwal **…. Appellant**
Partner of Shri Parasnath Exports
Survey No.297, Nava Falia
Naroli Check Post, Naroli
Silvassa – 395 600.

Versus

Commissioner of Customs, Nhava Sheva-I **….Respondent**
Jawaharlal Nehru Custom House (JNCH),
Nhava Sheva, Taluka Uran
District Raigad,
Maharashtra – 400 707.

WITH

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Appearance:

Shri Sanjay Singhal, Advocate for the Appellants
Shri Mahesh Patil, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85717-85718/2026

Date of Hearing: 23.02.2026
Date of Decision: 08.06.2026

Per: M.M. PARTHIBAN

These appeals have been filed by M/s Shri Parasnath Exports, Silvassa ("the appellant importer", for short) and Shri Sampat Ostwal, Partner of M/s Shri Parasnath Exports (herein after, referred together as "the appellants", for short) assailing Order-in-Original No.287/ 2024-25/CC/NS-I/CAC/JNCH dated 05.02.2025 (herein after, referred to as "impugned order" for short) passed by the Commissioner of Customs (NS-I), JNCH, Nhava Sheva, Mumbai Zone-II.

2.1 The brief facts of the case are that the appellants are engaged in regular import of goods for further processing into marble blocks and slabs and for this purpose they had filed various Bills of Entry (B/E) during the disputed period commencing from 02.02.2018 to 31.03.2021, declaring the imported goods as "Rough Dolomite Blocks" and by classifying it under Customs Tariff Item (CTI) 2518 1000 of the First Schedule to the Customs Tariff Act, 1975. The appellants had also claimed the benefit of duty exemption under Notification No. 50/2017-Customs dated 30.06.2017 (Sr. No. 120) for Basic Custom Duty (BCD) in excess of 5% and Notification No. 01/2017-Integrated Tax Rate dated 28.06.2017 for IGST in excess of 5%.

2.2 An intelligence was gathered by the officers of Directorate of Revenue Intelligence, Ahmedabad Zonal Unit (DRI) indicating that the appellants importer M/s Shri Parasnath Exports was importing Rough Marble blocks classified under Custom Tariff Heading No. 2515, by mis-declaring it as 'rough dolomite block/dolomite block' and misclassifying the same under Custom Tariff Heading No.2518 1000 as well as wrongly availing the exemption from payment of BCD and IGST. Intelligence gathered further indicated that the goods declared as rough dolomite block were actually rough marble block and the same should be classified under Custom Tariff Heading No. 2515 1210 which are leviable with 40% BCD and 12% IGST. Thus, DRI had come to the conclusion that the mis-declaration of the description and the classification is being done with intention to evade the payment of higher rate of custom duty including IGST applicable on Custom Tariff Heading No. 2515 1210 in comparison to Custom Tariff Heading No. 25181000.

2.3 On further investigation by DRI, including search of the factory premises of appellants importer on 21.09.2020, freight forwarder/customs broker, number of documents were recovered and statements of persons

concerned were also recorded. On the basis of samples drawn from the similar cargo i.e., Rough Dolomite Blocks imported by other importers viz., M/s Stonex India Private Limited, New Delhi under panchanama dated 26.09.2020; M/s Monark India Private Limited, Gurgaon under panchanama dated 28.09.2020; and M/s RK Marble Private Limited, Kishangarh under panchanama dated 31.10.2020 respectively against whom simultaneously investigation was initiated by DRI, which were tested by Geological Survey of India, Western Region, Jaipur have reported that the imported goods appear to have the following characteristics viz., (i) The blocks are hard and compact in nature of white colour. (ii) The rock is essentially composed of calcite/dolomite (iii) The rock is a metamorphic rock. (iv) The specific gravity of rock is 2.68 to 2.77 (v) Stone is formed from dolomite lime stone (vi) Rock is hard and capable of taking polish and can be used as marble slab. (vii) As per the physical property based on petrography, chemical composition and specific gravity data, the sample meets the specification of marble. More precisely the rock is identified as 'Dolomitic marble'. Thus, it was concluded by DRI that the imported goods are already to be identified as 'Dolomitic Marble' and not as 'Rough Dolomitic'.

2.4 Further, on the basis of various documents submitted by the appellants exporter viz., Bill of Leading (House & Master); commercial invoice; packing list; email correspondence; export documentation received from the overseas supplier (Material Receipt Note); purchase order placed by the buyer etc. and the documents submitted by freight forwarders, customs broker and upon its scrutiny, DRI had concluded that the goods imported by the appellants were 'rough marble block' in the guise of 'dolomite block' and the same should be rightly classifiable under CTH 2515 1210 and are liable to be charged with BCD of 40% and IGST of 12%.

2.5 On completion of investigation, based on the above documents and on the basis of the test reports of samples drawn from similar goods imported by the aforesaid three importers, other documentary evidences collected by DRI, show cause notice dated 27.02.2023 was issued to the appellants seeking for the following action:

(i) the declared description of the goods as "Rough Dolomite Blocks" should not be rejected and held as "Rough Marble Blocks";

(ii) the declared classification under CTH 2518 1000 should not be rejected and re-classified under CTH 2515 1210 of the Customs Tariff Act;

(iii) the imported goods valued at Rs. 4,02,27,589/- should not be confiscated under Sections 111(m) of the Customs Act, 1962(for short, referred to as the "Act of 1962");

(iv) differential customs duty of Rs.2,03,16,943/- should not be demanded under Section 28(4) of the Act of 1962 by invoking extended period of limitation and the amount of Rs.25,00,000/- paid should not be appropriated against the aforesaid duty liability;

(v) Penalties should not be imposed on (a) appellant importer under Sections 114A, 114AA and 117 of the Act of 1962; (b) Shri Sampat Ostwal, partner of the appellant business entity under Sections 112(a), 112(b), 114A, 114AA and 117 ibid; (c) freight forwarder/customs broker M/s International Cargo Corporation, Mumbai under Sections 112(a), 112(b), 114AA ibid; (d) Shri Rupesh Jivanbhai Kataria authorized signatory of freight forwarder company under Sections 112(a), 112(b), 114AA ibid.

2.6 The learned Commissioner of Customs, as adjudicating authority after considering the submissions of the appellants importer and other persons had passed the Order-in-Original dated 05.02.2025 confirming the differential duty demand along with interest as proposed in the SCN and imposing equal amount of penalty on the appellants importer under Section 114A ibid; redemption fine of Rs.40,00,000/- under Section 125(1) ibid, penalty of Rs.4,02,00,000/- each on the appellants importer, Shri Sampat Ostwal; M/s International Cargo Corporation and Shri Rupesh Jivanbhai Kataria under Section 114AA ibid; Rs.20,00,000/- each on the Shri Sampat Ostwal under Section 112(a) ibid, M/s International Cargo Corporation and Shri Rupesh Jivanbhai Kataria under Section 112(b) ibid. Being aggrieved with the impugned order of the learned Commissioner, the appellants have filed these appears before the Tribunal.

3.1 Learned Advocate appearing for the appellants had submitted at the outset that the same issue arising out of the same investigation by DRI, with respect to one another importer was decided by the Ahmedabad bench of the Tribunal in the case of M/s NITCO Limited Vs. Commissioner of Customs, Ahmedabad vide Final Order No.12000 – 12009/2024 dated 11.06.2024 in favour of the appellants therein. Further, the said order of the Tribunal have also been accepted by the Department in review as evident from the RTI reply letter dated 12.08.2025 of the Principal Commissioner of Customs, Ahmedabad.

3.2 On the factual aspects of the case, learned Advocate submitted that in respect of imported goods covered under 7 B/Es out of total 9 B/Es viz.,

B/E Nos. 4030330 dated 11.07.2019; 4580579 dated 21.08.2019; 5108003 dated 30.09.2019; 5476867 dated 29.10.2019; 6245982 dated 26.12.2019; 6691676 dated 30.01.2020 and 7038144 dated 27.02.2020, representative samples were drawn by the Department at the time of import and were sent for chemical examination by the Deputy Chief Chemist (DYCC), Customs Revenue Control Laboratory (CRCL), JNCH. In their test reports, it had been confirmed that the imported goods are composed of carbonates of calcium and magnesium together with trace amount of iron and silicious matter having composition 'dolomite'. Therefore, he claimed that the samples of imported goods in respect of other importers cannot form the basis for classification of the goods imported by the appellants particularly when specific test reports are available for impugned goods. Since it is the prerogative of the department to test and satisfy the imported goods before its clearance, he claimed that even in two B/Es where they had not tested the goods the importer cannot be held responsible for the same. The appellants having declared the goods as per the invoice, the representative samples of imported goods have been tested and after examination/ verification under first-check basis, the imported goods were assessed to import duty as 'dolomite', the learned Advocate claimed that there is no ground for invoking suppression, mis-declaration etc. for sustaining confiscation of goods and for imposition of penalties on the appellants.

3.3 Learned Advocate also submitted that the imported goods after its import had been sold by the appellants to retailers as dolomite only, which is evidenced by retail sale GST invoices placed as part of their appeal papers, and therefore he claimed that the adjudged demands does not survive on such basis. He further submitted that the request for cross examination of the officers of the Geological Survey of India, on whose opinion of the test reports, the adjudicating authority had reclassified the goods, was not provided to them.

3.4 In support of their stand, learned Advocate had relied upon the following decisions of the judicial forum:

(i) *NITCO Limited Vs. Commissioner of Customs, Ahmedabad* - (2025) 27 Centax 151 (Tri.-Ahmd.)

(ii) *Stonex India Private Limited Vs. Commissioner of Customs, Mundra Customs* - (2024) 25 Centax 359 (Tri.-Ahmd.)

(iii) *Lewek Altair Shipping Private Limited Vs. Commissioner of Customs, Vijayawada* – 2019 (366) E.L.T. 318 (Tri.-Hyd.)

(iv) *Principal Commissioner of Customs (Import), ACC, Sahar, Mumbai Vs. Signet Chemicals Private Limited* -

Therefore, he pleaded that the issue is no more *res integra* and on such basis alone, their appeal shall be allowed.

4. On the other hand, learned Authorised Representative (AR) appearing for Revenue, reiterated the findings made by the learned Commissioner of Customs in the impugned order and stated that on the basis of the detailed investigation and findings made, the impugned order is sustainable. On the test results, he stated that since the imported goods of similar modus operandi by similar importers have been tested, these have been taken into consideration for confirmation of adjudged demands in the impugned order. Therefore, he stated that the appeals filed by the appellants may be dismissed.

5. We have heard both sides, examined the case records and the additional submissions made during the course of hearing, in the form of paper books submitted by both sides.

6. The issue involved herein is to decide the classification of goods imported by the appellants as to whether, the same merits classification under Customs Tariff Heading (CTI) 2518 1000 described as 'Rough Dolomite Blocks' as claimed by the appellants; or, is it classifiable under CTI 2515 1210 described as 'Rough Marble Blocks' as determined in the impugned order, for deciding on appropriate levy of customs duty; and to decide whether the alleged mis-declaration of description, wrongful classification and claim of exemption, and consequently ordering confiscation of goods and imposition of penalty on appellants in the impugned order is sustainable or otherwise.

7.1 In the impugned order, learned Commissioner of Customs had come to the conclusion of mis-classification and consequently confirmed all the proposals made in the SCN on the basis of following findings:

"4.11.2 In view of the above referred consistent judicial pronouncements, the importance of statements rendered under Section 108 of the Customs Act, 1962 during the case is quite imperative. I find that the statements made in the case were voluntary and are very much valid in Law and can be relied upon as having full evidentiary value.

4.12. I find that the noticee no.1 & 2 in their written submission, have requested for cross examination of the officers of DRI, officers of DYCC Laboratory and officers of Geological Survey of India. I find that Shri Sampat Ostwal, Partner

of M/s Shri Parasnath Exports and authorised signatory of the Custom House Broker admitted in their respective statements that goods imported by M/s Shri Parasnath Exports falls under CTH 2515 1210 but M/s Shri Parasnath Exports had imported the same by misclassifying the CTH by claiming the product as 'Rough Dolomite Block'…. I do not intend to allow the cross-examination mainly for the reasons that principle of natural justice ensures that both sides should have heard fairly and reasonably. A part of this principle is that if any reliance is placed on the evidence on record against a person, then that evidence on record must be placed before him for his information, to comment and criticism. Formal cross-examination is procedural justice. So long as the party charged has a fair and reasonable opportunity, to see, comment, and criticise the evidence, statement on record on which the charge has been made against him, the demands and test of natural justice are satisfied. I find that the denial of the demand for cross examination sought by the noticee will not amount to violation of principles of natural justice. In this regard, I place reliance upon the following judgements:-……

4.12.1 in view of the above judgements, I find that the denial of the demand of cross examination sought by the noticee will not amount to violation of principles of natural justice and as such is not tenable in the eye of law.

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4.17 In view of the above, I proceed to examine the contention of the Importer that the impugned goods are classifiable under CTH 2518 1000 depending on the use and manufacturing process of the impugned goods….

xxxx xxxx xxxx xxxx

4.25 I find that samples were drawn from the similar cargo i.e. 'Rough Dolomite Blocks' imported by other importers namely, M/s Stonex India Private Limited, New Delhi under panchanama dated 26.09.2020, M/s Monark India Private Limited, Gurgaon under panchanama dated 28.09.2020 and M/s RK Marble Private Limited, Kishangarh under panchanama dated 31.10.2020 respectively against whom simultaneously investigation was also initiated by DRI were subjected to testing/analysis of product.

4.26 Further I find that the Geological Survey of India, Western Region, Jaipur after testing/chemical analysis of the sample along with response of queries confirmed that "the blocks or hard and capable of taking polish and can be used as marble slab, blocks or compact in nature of white-colour; that the rock is a metamorphic rock, essentially composed of calcite/dolomite having specific gravity 2.68 to 2.77 formed from Dolomitic limestone". The Geological Survey of India, Western Region, Jaipur confirmed that "as per the physical property and based on petrography, chemical composition and the specific gravity data, the sample makes the specification of marble".

4.27 Further I find from the evidence is available in the form of Export Declaration (Customs Declaration) filed at low port by overseas supplier, Material Receipt Note issued by overseas supplier, MBL/HBL issued by Shipping Lines and Forwarder, Invoice issued by M/s Shri Parasnath Exports for supply of goods in domestic market, purchase orders placed by various buyers and statement of Customs broker, it is evident that goods imported by M/s Shri Parasnath Exports were 'Rough Marble Blocks'. Further, as per literature of the marble, editions released by Government of India, Ministry of Mines, Indian Bureau of mines, Dolomite Marble and Dolomitic Marbles was also a form of marble, it is evident that goods imported by M/s Shri Parasnath Exports were 'Rough Marble block'.

xxxx xxxx xxxx xxxx

4.30 In view of the above, considering the GRI, terms of Headings, relevant Section and Chapter notes and the evidence available on record, as discussed above, I hold that the goods imported by the importer are classifiable under CTH 2515 1210 and the Bills of Entry should be reassessed accordingly."

7.2 On perusal of case file, certain undisputed facts as highlighted by the learned Advocate for the appellants and not disputed by AR for the Revenue are summarised herein below:

(i) imported goods were initially tested for chemical analysis by the DYCC laboratory, JNCH and in respect of 7 B/Es test reports were available indicating that the imported goods were having composition of Dolomite.

(ii) imported goods were cleared by the Customs officers extending the customs duty exemption benefits, and it is only on the basis of DRI investigation, the alleged mis-declaration of goods and evasion of duty was identified.

(iii) Simultaneous investigation was conducted by DRI, Ahmedabad in respect of imports made by M/s Stonex India Private Limited, New Delhi, M/s Monark India Private Limited, Gurgaon and M/s RK Marble Private Limited, Kishangarh along with the appellants M/s Shri Parasnath Exports, Mumbai. Based on the test reports of such similar imported consignments of other importers, the classification of impugned goods in the case of appellants was decided.

(iv) Various import documents seized in the search operation of the appellants' premises have lead to the conclusion that there was mis-declaration of imported goods.

Since the above facts/documents have been relied upon in the impugned order, in support of the findings on mis-classification of goods as "Rough Dolomite Blocks' instead of correctly declaring as 'Rough Marble Blocks', it will be important for us to see whether the same can be held as valid evidences for coming to a conclusion on the appropriate classification of the goods.

8.1 Firstly in order to address the above issue of classification of imported goods, we would like to refer the relevant legal provisions contained in Section 12 of the Customs Act, 1962; the Customs Tariff Act, 1975 and rules framed thereunder for consideration of proper and appropriate classification of the subject goods under dispute.

*"**Section 12. Dutiable goods.** -*

(1) Except as otherwise provided in this Act, or any other law for the time being in force, duties of customs shall be levied at such rates as may be specified under the Customs Tariff Act, 1975 (51 of 1975), or any other law for the time being in force, on goods imported into, or exported from, India.

(2) The provisions of sub-section (1) shall apply in respect of all goods belonging to Government as they apply in respect of goods not belonging to Government."

"Section 1. Short title, extent and commencement. *-*

(1) This Act may be called the Customs Tariff Act, 1975.

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Section 2. Duties specified in the Schedules to be levied. *-*

The rates at which duties of customs shall be levied under the Customs Act, 1962 (52 of 1962), are specified in the First and Second Schedules.

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THE FIRST SCHEDULE – IMPORT TARIFF

(Refer Section 2)

THE GENERAL RULES FOR THE INTERPRETATION OF IMPORT TARIFF

Classification of goods in this Schedule shall be governed by the following principles:

1. 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:

2. (a) Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished articles has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this rule), presented unassembled or disassembled.

(b) Any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances. Any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance. The classification of goods consisting of more than one material or substance shall be according to the principles of rule 3.

3. When by application of rule 2(b) or for any other reason, goods are, prima facie, classifiable under two or more headings, classification shall be effected as follows:

(a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the

materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.

(b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to (a), shall be classified as if they consisted of the material or component which gives them their essential character, in so far as this criterion is applicable.

(c) When goods cannot be classified by reference to (a) or (b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.

4. Goods which cannot be classified in accordance with the above rules shall be classified under the heading appropriate to the goods to which they are most akin.

5. In addition to the foregoing provisions, the following rules shall apply in respect of the goods referred to therein:

(a) Camera cases, musical instrument cases, gun cases, drawing instrument cases, necklace cases and similar containers, specially shaped or fitted to contain a specific article or set of articles, suitable for long-term use and presented with the articles for which they are intended, shall be classified with such articles when of a kind normally sold therewith. This rule does not, however, apply to containers which give the whole its essential character;

(b) Subject to the provisions of (a) above, packing materials and packing containers presented with the goods therein shall be classified with the goods if they are of a kind normally used for packing such goods. However, this provision does not apply when such packing materials or packing containers are clearly suitable for repetitive use.

6. For legal purposes, the classification of goods in the sub-headings of a heading shall be determined according to the terms of those sub headings and any related sub headings Notes and, mutatis mutandis, to the above rules, on the understanding that only sub headings at the same level are comparable. For the purposes of this rule the relative Section and Chapter Notes also apply, unless the context otherwise requires.

THE GENERAL EXPLANATORY NOTES TO IMPORT TARIFF

1. Where in column (2) of this Schedule, the description of an article or group of articles under a heading is preceded by "-", the said article or group of articles shall be taken to be a sub-classification of the article or group of articles covered by the said heading. Where, however, the description of an article or group of articles is preceded by "- -", the said article or group of articles shall be taken to be a sub-classification of the immediately preceding description of the article or group of articles which has "-". where the description of an article or group of articles is preceded by "---" or "----", the said article or group of articles shall be taken to be a sub-classification of the immediately preceding description of the article or group of articles which has "-" or "--".

2. The abbreviation "%" in any column of this Schedule in relation to the rate of duty indicates that duty on the goods to which the entry relates shall be charged on the basis of the value of the goods as defined in section 14 of the Customs Act, 1962 (52 of 1962), the duty being equal to such percentage of the value as is indicated in that column.

3. In any entry, if no rate of duty is shown in column (5), the rate shown under column (4) shall be applicable.

ADDITIONAL NOTES

In this Schedule,—

(1)(a) "heading", in respect of goods, means a description in list of tariff provisions accompanied by a four-digit number and includes all sub-headings of tariff items the first four-digits of which correspond to that number;

(b) "sub-heading", in respect of goods, means a description in the list of tariff provisions accompanied by a six-digit number and includes all tariff items the first six-digits of which correspond to that number;

(c) "tariff item" means a description of goods in the list of tariff provisions accompanying eight digit number and the rate of customs duty;

(2) the list of tariff provisions is divided into Sections, Chapters and Sub-Chapters;

(3) in column (3), the standard unit of quantity is specified for each tariff item to facilitate the collection, comparison and analysis of trade statistics."

8.2 From plain reading of the above legal provisions, it transpires that in order to determine the appropriate duties of customs payable on any imported goods, one has to make an assessment of the imported goods for its correct classification under the First Schedule to Customs Tariff Act, 1975 in accordance with the provisions of the Customs Tariff Act by duly following the General Rules for Interpretation (GIR) and the General Explanatory notes (GEN) contained therein. The First Schedule to the Customs Tariff Act, 1975 specifies the various categories of imported goods in a systematic and well-considered manner, in accordance with an international scheme of classification of internationally traded goods, i.e., 'Harmonized Commodity Description and Coding System' (HS). Accordingly, goods are to be classified taking into consideration the scope of headings / sub-headings, related Section Notes, Chapter Notes and the General Rules for the Interpretation (GIR) of the First Schedule to the Customs Tariff Act, 1975. Rule 1 of the GIR provides that the classification of goods shall be determined according to the terms of the headings of the tariff and any relative Section notes or Chapter notes and thus, gives precedence to this while classifying a product. Rules 2 to 6 provide the

general guidelines for classification of goods under the appropriate sub-heading. In the event of the goods cannot be classified solely on the basis of GIR 1, and if the headings and legal notes do not otherwise require, the remaining Rules 2 to 6 may then be applied in sequential order. Further, while classifying goods, the foremost consideration is the 'statutory definition', if any, provided in the Customs Tariff Act. In the absence of any statutory definition, or any guideline provided by HS explanatory notes, the trade parlance theory is to be adopted for ascertaining as to how the goods are known in the common trade parlance for the purpose of dealing between the parties.

8.3 In the case before us, the contending classification of imported goods discussed in the impugned order are either under CTI 2515 1210 described as "Rough Marble Blocks" and confirmed as such in the impugned order; or under CTI 2518 1000 as "Rough Dolomite Blocks" as declared by the appellants, as per classification under the First Schedule to the Customs Tariff Act, 1975. The relevant entries in the respective headings of 2515 and 2518 are extracted and given below:

"SECTION V

MINERAL PRODUCTS

CHAPTER 25
Salt; sulphur; earths and stone; plastering materials, lime and cement

Notes :

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

The products of this Chapter may contain an added anti-dusting agent, provided that such addition does not render the product particularly suitable for specific use rather than for general use.

2.This Chapter does not cover :
(a) sublimed sulphur, precipitated sulphur and colloidal sulphur (heading 2802);
(b) earth colours containing 70% or more by weight of combined iron evaluated as Fe_2O_3 (heading 2821);
(c) medicaments and other products of Chapter 30;
(d) perfumery, cosmetic or toilet preparations (Chapter 33);
(e) setts, curbstones and flagstones (heading 6801); mosaic cubes or the like (heading 6802); roofing, facing or damp course slates (heading 6803);
(f) precious or semi-precious stones (heading 7102 or 7103);

(g) cultured crystals (other than optical elements) weighing not less than 2.5g each, of sodium chloride or of magnesium oxide, of heading 3824; optical elements of sodium chloride or of magnesium oxide (heading 9001);
(h) billiard chalks (heading 9504; or
(ij) writing or drawing chalks and tailors' chalks (heading 9609).

3.Any products classifiable in heading 2517 and any other heading of this Chapter are to be classified in heading 2517.

4.Heading 2530 applies, inter alia, to : vermiculite, perlite and chlorites, unexpanded; earth colours, whether or not calcined or mixed together; natural micaceous iron oxides; meerschaum (whether or not in polished pieces); amber; agglomerated meerschaum and agglomerated amber, in plates, rods, sticks or similar forms, not worked after moulding; jet; strontianite (whether or not calcined), other than strontium oxide; broken pieces of pottery, brick or concrete.

Supplementary Note :
In heading 2523, "sagol" means cement obtained by heating limestone and burnt coal in a kiln; and "ashmoh" means cement obtained by fine grinding of paddy husk, ash and hydrated lime with an additive.

Tariff Item	**Description of goods**
(1)	(2)
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 1100	*-- Crude or roughly trimmed*
2515 12	*-- Merely cut, by sawing or otherwise, into blocks or slabs of a rectangular (including square) shape*
2515 1210	*--- Blocks*
2515 1220	*--- Slabs*
2515 1290	*--- Other*
2515 20	*- Ecaussine and other calcareous monumental or building stone; alabaster :*
2515 2010	*--- Alabaster*
2515 2090	*--- Other*

And

Tariff Item	**Description of goods**
(1)	(2)
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**
2518 1000	- Dolomite not calcined or sintered
2518 2000	- Calcined or sintered dolomite

8.4 On careful perusal of the tariff entries as given above, it is clear that at the Chapter level, there is no difference of opinion in classification of the goods, among the department and the appellants. The dispute in classification therefore lies in the narrow compass of analysis of the appropriate Chapter heading and its sub-headings under which the impugned goods are covered as per the Customs Tariff and then classifying

the impugned product under the corresponding Sub-heading, Tariff Item. Now, we may closely examine the scope of the contending classification for determining correct classification of the imported goods. As the scope of goods covered under CTI 2515 1210 relates to "--- *Blocks"* under the heading "- *Marble and Travertine*" and of sub-heading 2515 10, these are marble or travertine stones, which are merely cut into blocks. Whereas, the scope of CTI 2518 1000 covers Dolomite, blocks or slabs, which are not calcined and sintered. These two entries are covering different items and the nature of imported goods have to be examined in order properly classify it under appropriate classification. In terms of the notes to the Section V/Chapter 25, there is no definition provided either for marble blocks or dolomite blocks. Therefore, in order to understand the scope of terms "marble", "dolomite", there is a need to have recourse to any other reliable definition having force equal to the one that may be prescribed in respect of goods covered under the First Schedule. In this regard, the learned adjudicating authority had relied upon the HSN Explanatory notes and other secondary source such as "Geology.com" "Indian Minerals Year Book 2013 (Part-III)" etc., and had followed three main parameters viz., HSN along with Explanatory Notes; General Interpretative Rules; and functional utility, design, shape and predominant usage. However, for composition of the product, he had relied on test report of the samples drawn from similar cargo as recorded in paragraphs 4.16 to 4.30 of the impugned order. Though there is a mention of BIS standard IS 1130-1969 for "marble" in the impugned order, this has not been used to determine the nature of imported product. Further, two specific factors such as (a) 'specific gravity' for marble and (b) chemical composition of product viz., CaCOs - mineral calcite & Calcium Magnesium Carbonate – CaMg(CO3)2 have been mentioned in determining the composition of the product for proper classification by the adjudicating authority. BIS specification under IS 1130-1969 for marble is given as below:

IS : 1130 - 1969

TABLE 1 PHYSICAL PROPERTIES OF MARBLE

(*Clause* 7.1)

Sl No.	Characteristic	Requirement	Method of Test
(1)	(2)	(3)	(4)
i)	Moisture absorption after 24 hours immersion in cold water	*Max* 0·4% by weight	IS : 1124-1957*
ii)	Hardness	*Min* 3	Mhos Scale
iii)	Specific gravity	*Min* 2·5	IS : 1122-1957†

*Method of test for water absorption of natural building stones.
†Methods of determination of specific gravity and porosity of natural building stones.

In respect of 'Dolomite', the BIS standard under IS 14296:1995 specify the composition of the product as follows:

Indian Standard

DOLOMITE FOR REFRACTORY INDUSTRY — SPECIFICATION

1 SCOPE

This standard specifies the requirement of raw dolomite for use for refractory industry.

2 REFERENCES

The following Indian Standards are necessary adjuncts to this standard:

IS No.	*Title*
1760	Methods of chemical analysis of limestone, dolomite and allied materials
(Par 2) : 1991	Determination of silica (*first revision*)
(Part 3) : 1992	Determination of iron oxide alumina calciumoxide and magnesia (*first revision*)
2109 : 1982	Methods of sampling of dolomite, limestone and other allied materials (*first revision*)
6495 : 1984	Method of tumbler test for iron oxides : lump ores, sinter and pellets (*first revision*)

3 TERMINOLOGY

3.1 Dolomite

This terms refers to the double carbonate of calcium and magnesium ($CaCo_3$, $MgCo_3$).

or

a rock containing a major portion of this mineral.

4 GRADES

There shall be two grades of raw dolomite, Grade A and Grade B.

5 CHEMICAL COMPOSITION

The chemical composition of raw dolomite when determined in accordance with relevant part of IS 1760 shall be as per Table 1.

Table 1 Chemical Composition of Raw Dolomite

Constituent	Requirements, Percent	
	Grade A	Grade B
CaO, *Min*	30	30
MgO, *Min*	21	21
SiO_2, *Max*	1.0	1.7
$Fe_2O_3 + Al_2O_3$, *Max*	1.0	1.3

6 PHYSICAL TESTS

6.1 Compactness and Crushing Strength

The dolomite shall be of Compact Texture. The method of test shall be as agreed between the supplier and the purchaser.

6.2 Tumbler Index

Tumbler index of dolomite shall not be less than 95 percent when tested in accordance with IS 6495 : 1984.

6.3 Abrasive Index

Abrasive index of dolomite shall be 6 to 8 percent when tested in accordance with IS 6495 : 1984.

6.4 Grain Size

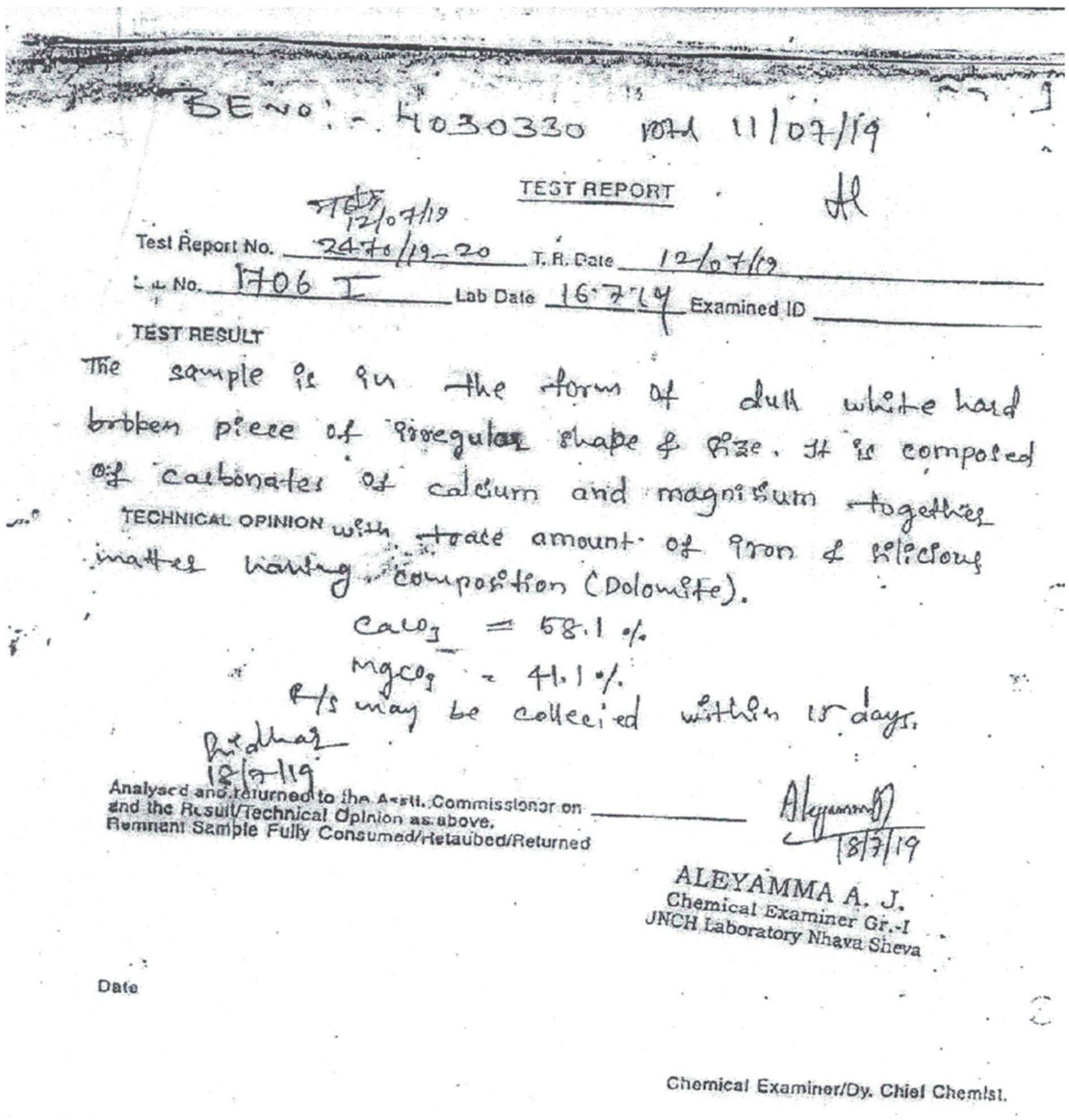
The lump size and method of test shall be as agreed to between the supplier and the purchaser.

7 SAMPLING

The method of sampling of raw dolomite shall be in accordance with IS 2109 : 1982.

8.5 Though reliance has been placed by the learned adjudicating authority on a number of documents to state that the imported goods are actually 'Rough Marble Block" and not "Rough Dolomite Block" as declared by the appellants, we would like to see the factual aspects of the case for deciding the issue of classification on merits. In this regard, we find that it is an undisputed fact that imported goods was tested by DYCC Laboratory, JNCH and the test reports have described the products as below. In the impugned order, the rest reports of samples drawn from similar cargo of other importers were alone relied upon for deciding the classification.

B/E No. 4030330 dt. 11.7.2019 & Lab Report No.2470/19-20 dt.12.7.2019



BE No. - 4030330 Dtd 11/07/19

TEST REPORT

12/07/19

Test Report No. 2470/19-20 T. R. Date 12/07/19

Lab No. 1706 I Lab Date 16.7.19 Examined ID

TEST RESULT

The sample is in the form of dull white hard broken piece of irregular shape & size. It is composed of carbonates of calcium and magnesium together with trace amount of iron & siliceous matter having composition (Dolomite).

TECHNICAL OPINION

$CaCO_3$ = 58.1 %

$MgCO_3$ = 41.1 %.

R/s may be collected within 15 days.

18/7/19

Analysed and returned to the Asstt. Commissioner on _____
and the Result/Technical Opinion as above.
Remnant Sample Fully Consumed/Retaubed/Returned

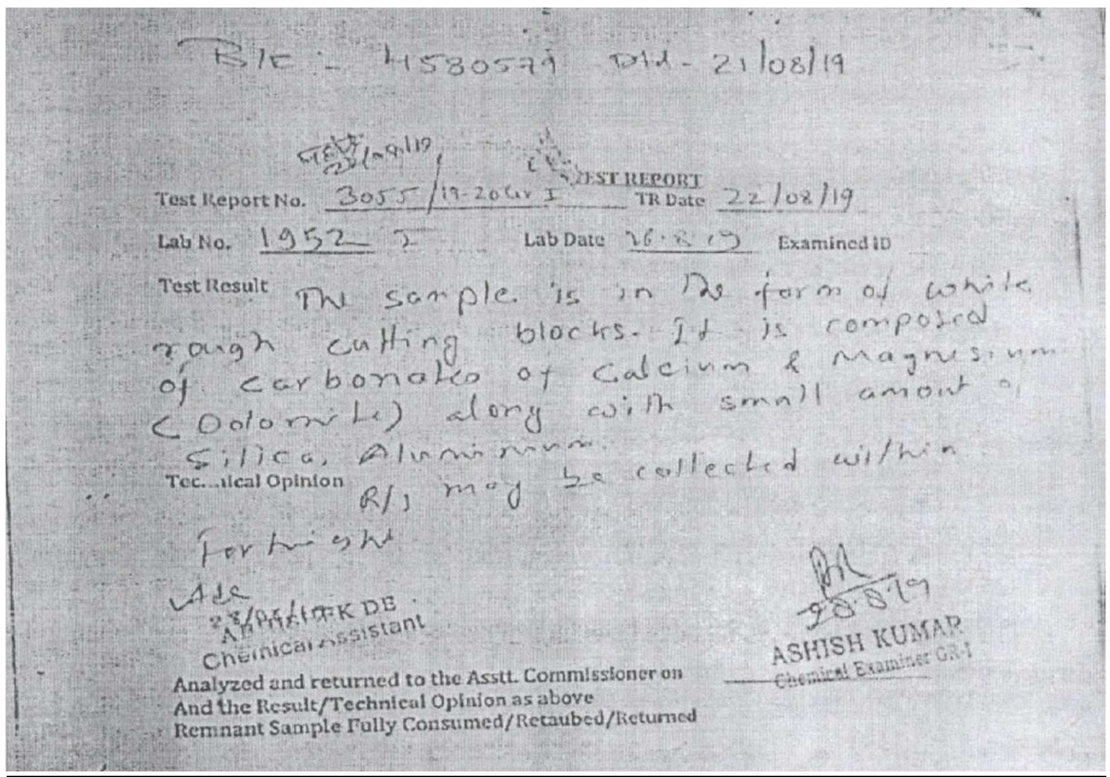
18/7/19

ALEYAMMA A. J.
Chemical Examiner Gr.-I
JNCH Laboratory Nhava Sheva

Date

Chemical Examiner/Dy. Chief Chemist.

B/E No. 4580579 dt. 21.8.2019 & Lab Report No.3055/19-20 dt.22.8.2019



B/E - 4580579 Dtd - 21/08/19

22/8/19

TEST REPORT

Test Report No. 3055/19-20 Gr I TR Date 22/08/19

Lab No. 1952 I Lab Date 26.8.19 Examined ID

Test Result The sample is in the form of white rough cutting blocks. It is composed of carbonate of Calcium & Magnesium (Dolomite) along with small amount of Silica, Aluminium.

Technical Opinion R/s may be collected within

For kindly

28/8/19

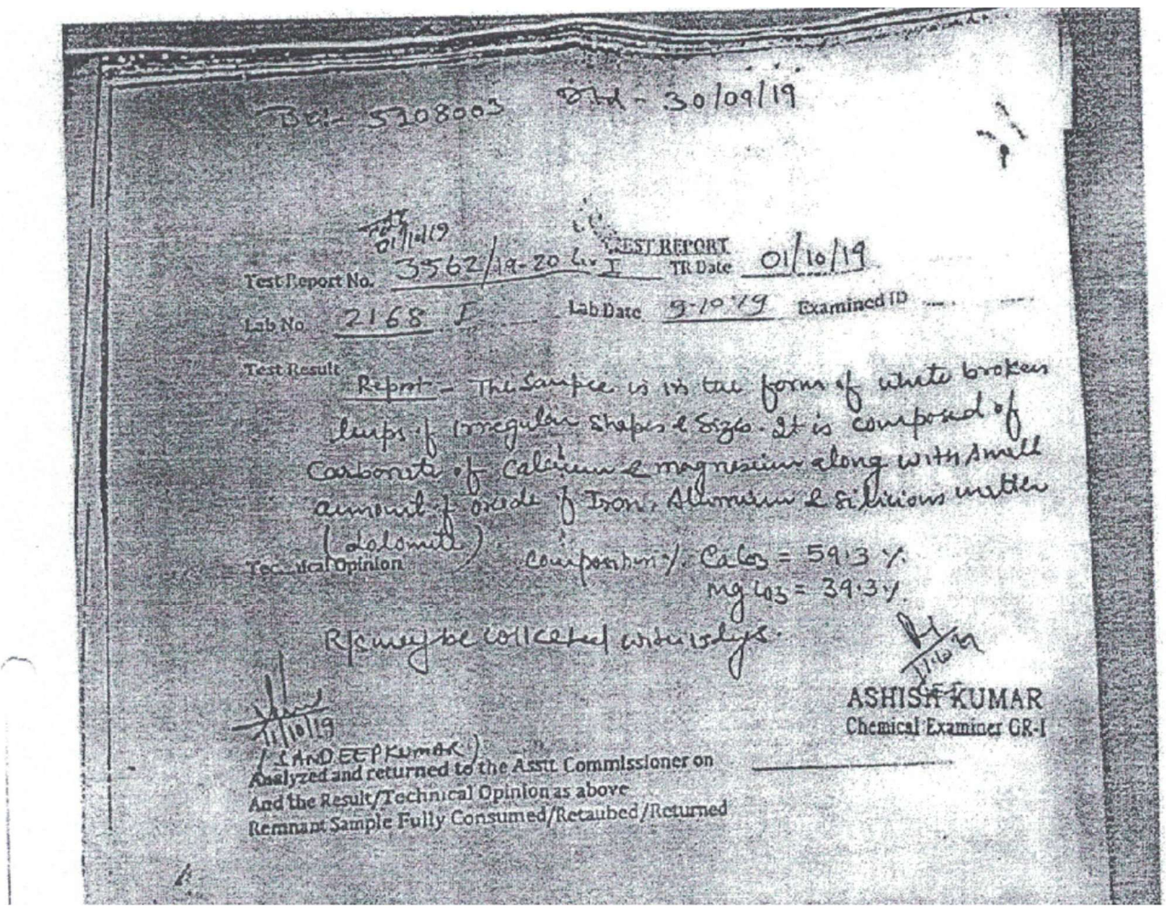
ABHISHEK DE
Chemical Assistant

28.8.19

ASHISH KUMAR
Chemical Examiner GR-I

Analyzed and returned to the Asstt. Commissioner on
And the Result/Technical Opinion as above
Remnant Sample Fully Consumed/Retaubed/Returned

B/E No. 5108003 dt. 30.9.2019 & Lab Report No.3562/19-20 dt.1.10.2019



B/E No. 5108003 dt. 30.9.2019

TEST REPORT

Test Report No. 3562/19-20 Gr I TR Date 01/10/19

Lab No. 2168 I Lab Date 1.10.19 Examined ID

Test Result

Technical Opinion

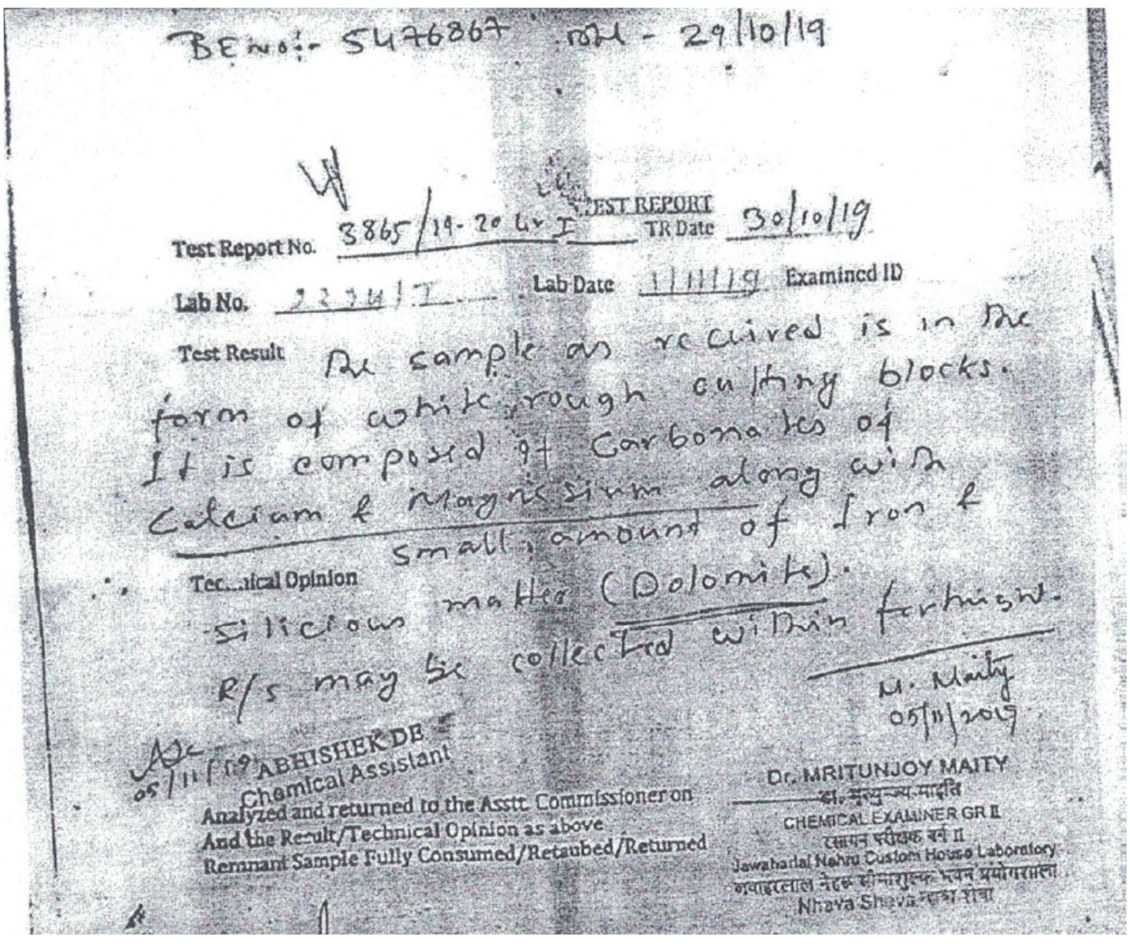
Repot – The sample is in the form of white broken lumps of irregular shapes & size. It is composed of Carbonate of Calcium & magnesium along with small amount of oxide of Iron, Aluminium & siliceous matter (dolomite). Composition :- CaCo3 = 59.3 %, Mg Co3 = 39.3 %

R/s may be collected within 15 days.

ASHISH KUMAR
Chemical Examiner GR-I

SANDEEP Kumar
Analyzed and returned to the Asstt Commissioner on
And the Result/Technical Opinion as above
Remnant Sample Fully Consumed/Retaubed/Returned

B/E No.5476867 dt. 29.10.2019&Lab Report No.3865/19-20 dt.30.10.2019



B/E No.- 5476867 dt. - 29/10/19

TEST REPORT

Test Report No. 3865/19-20 Gr I TR Date 30/10/19

Lab No. 2334/I Lab Date 1/11/19 Examined ID

Test Result

Technical Opinion

The sample as received is in the form of white rough cutting blocks. It is composed of Carbonates of Calcium & Magnesium along with small amount of Iron & Siliceous matter (Dolomite).

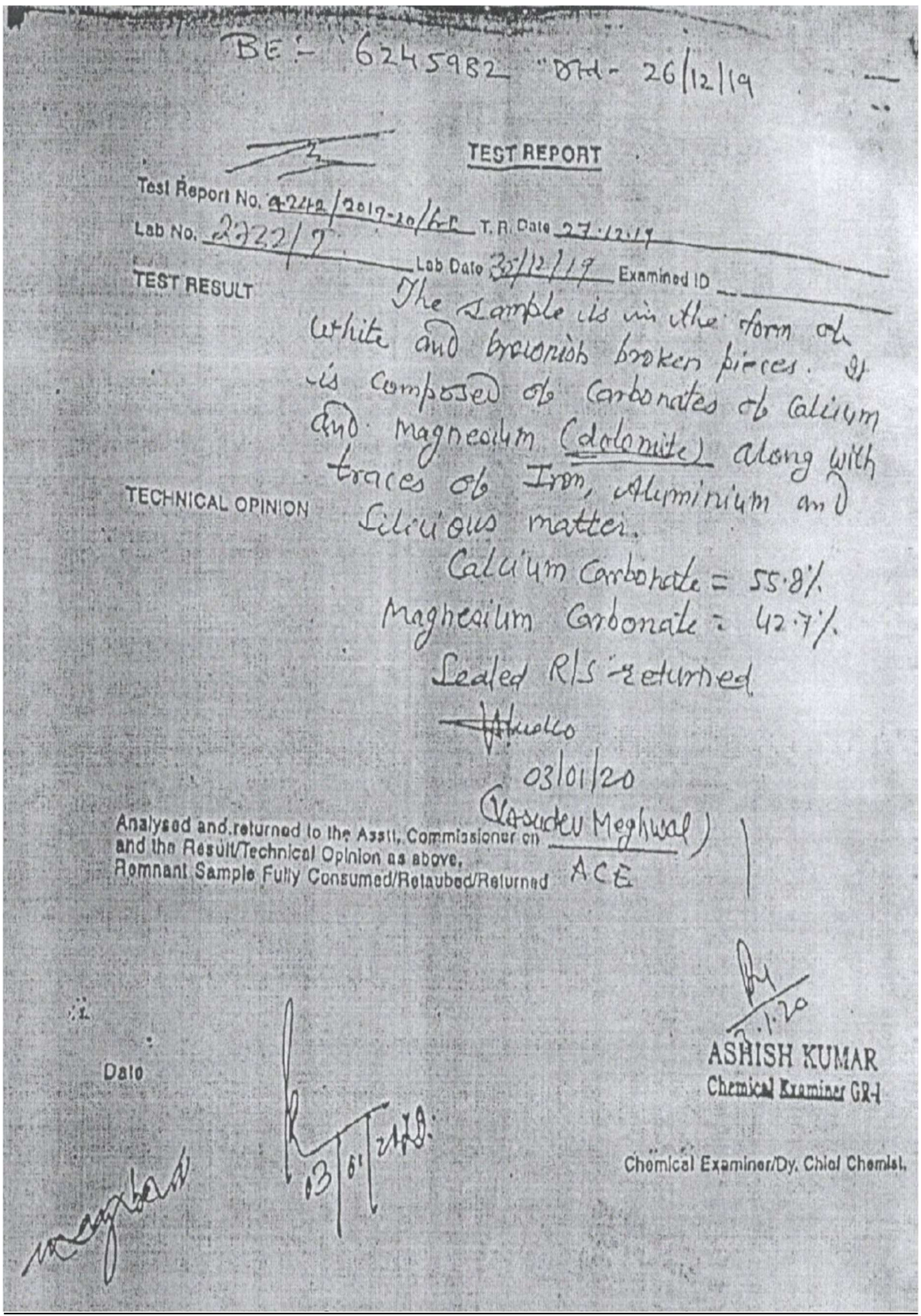
R/s may be collected within fortnight.

M. Maity
05/11/2019

Dr. MRITUNJOY MAITY
CHEMICAL EXAMINER GR II
Jawaharlal Nehru Custom House Laboratory
Nhava Sheva

05/11/19 ABHISHEK DE
Chemical Assistant
Analyzed and returned to the Asstt Commissioner on
And the Result/Technical Opinion as above
Remnant Sample Fully Consumed/Retaubed/Returned

B/E No.6245982 dt. 26.12.2019&Lab Report No.4242/19-20 dt.27.12.2019



BE:- 6245982 Dtd- 26/12/19

TEST REPORT

Test Report No. 4242/2019-20/Lab T. R. Date 27.12.19

Lab No. 2722/7 Lab Date 30/12/19 Examined ID

TEST RESULT

TECHNICAL OPINION

The sample is in the form of white and brownish broken pieces. It is composed of Carbonates of Calcium and Magnesium (Dolomite) along with traces of Iron, Aluminium and Siliceous matter.

Calcium Carbonate = 55.8%

Magnesium Carbonate = 42.7%

Sealed R/S returned

03/01/20

(Vasudev Meghwal)

ACE

Analysed and returned to the Asstt. Commissioner on and the Result/Technical Opinion as above.
Remnant Sample Fully Consumed/Retained/Returned

3.1.20

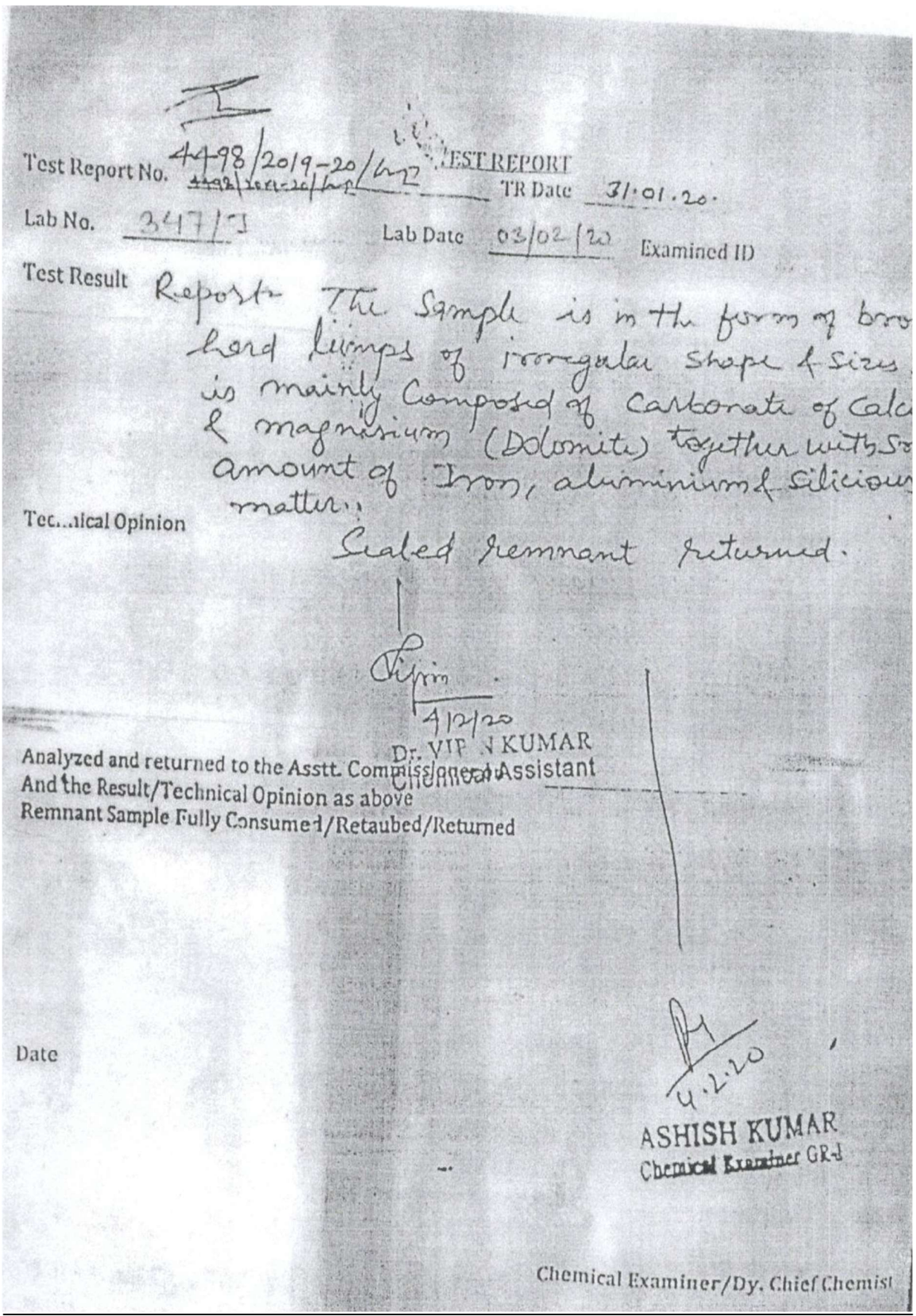
ASHISH KUMAR
Chemical Examiner GR-I

Date

03/01/2020

Chemical Examiner/Dy. Chief Chemist.

B/E No. 6691676 dt. 30.01.2020&Lab Report No.4498/19-20 dt.31.1.2020



TEST REPORT

Test Report No. 4498/2019-20/Exp TR Date 31.01.20.

Lab No. 347/J Lab Date 03/02/20 Examined ID

Test Result Report:- The Sample is in the form of brow hard lumps of irregular shape & sizes is mainly Composed of Carbonate of Calc & magnesium (Dolomite) together with So amount of Iron, aluminium & Silicious matter.

Technical Opinion Sealed Remnant returned.

4/2/20
Dr. VIPIN KUMAR
Chemical Assistant

Analyzed and returned to the Asstt. Commissioner
And the Result/Technical Opinion as above
Remnant Sample Fully Consumed/Retaubed/Returned

Date 4.2.20

ASHISH KUMAR
Chemical Examiner GR-I

Chemical Examiner/Dy. Chief Chemist

B/E No. 7038144 dt. 27.02.2020&Lab Report No.2438/19-20 dt.3.3.2020

कार्यालय उप आयुक्त, सीमा शुल्क, आई. सी. डी. तुम्ब
सर्वे. न.: ४४/१/पी.के.२, गाँव - तुम्ब, तालुका-उमरगाँव,
जिला- वलसाड, गुजरात: ३९६१५०, ई. मेल. icdtumb@gmail.com

टेस्ट मेमो नं./ आई. सी. डी. तुम्ब /I-212/19-20/1322 दिनांक: 02.03.2020

LIVE TEST

(TO BE FILLED BY THE IMPORTER / EXPORTER / CHA)

The following samples are forwarded for favour of analysis:

Group____**B/E No. 7038144 Dated 27.02.2020 Type**_____

CHA Name: - International Cargo Corporation

Suppliers Name - M/s MARBLE BROTHERS DIS TIC.LTD.-TURKEY

Name & Address of Importer - M/S SHRI PRASHANT EXPORTS
SURVEY-NO.297,NAVA
FALIA,NAROLI,CHECK POST
NAROLI SILVASSA-395600

Country of Origin - TURKEY

Description of Material - **Rough Dolomite Blocks**

FOR OFFICE USE ONLY

Test Query:

1. Whether the sample conforms to the description **Rough Dolomite Blocks.**
2. If sample is other than **Rough Dolomite Blocks** kindly specify, exact description of the sample.

04/03/2020
Superintendent
Customs ICD – Tumb

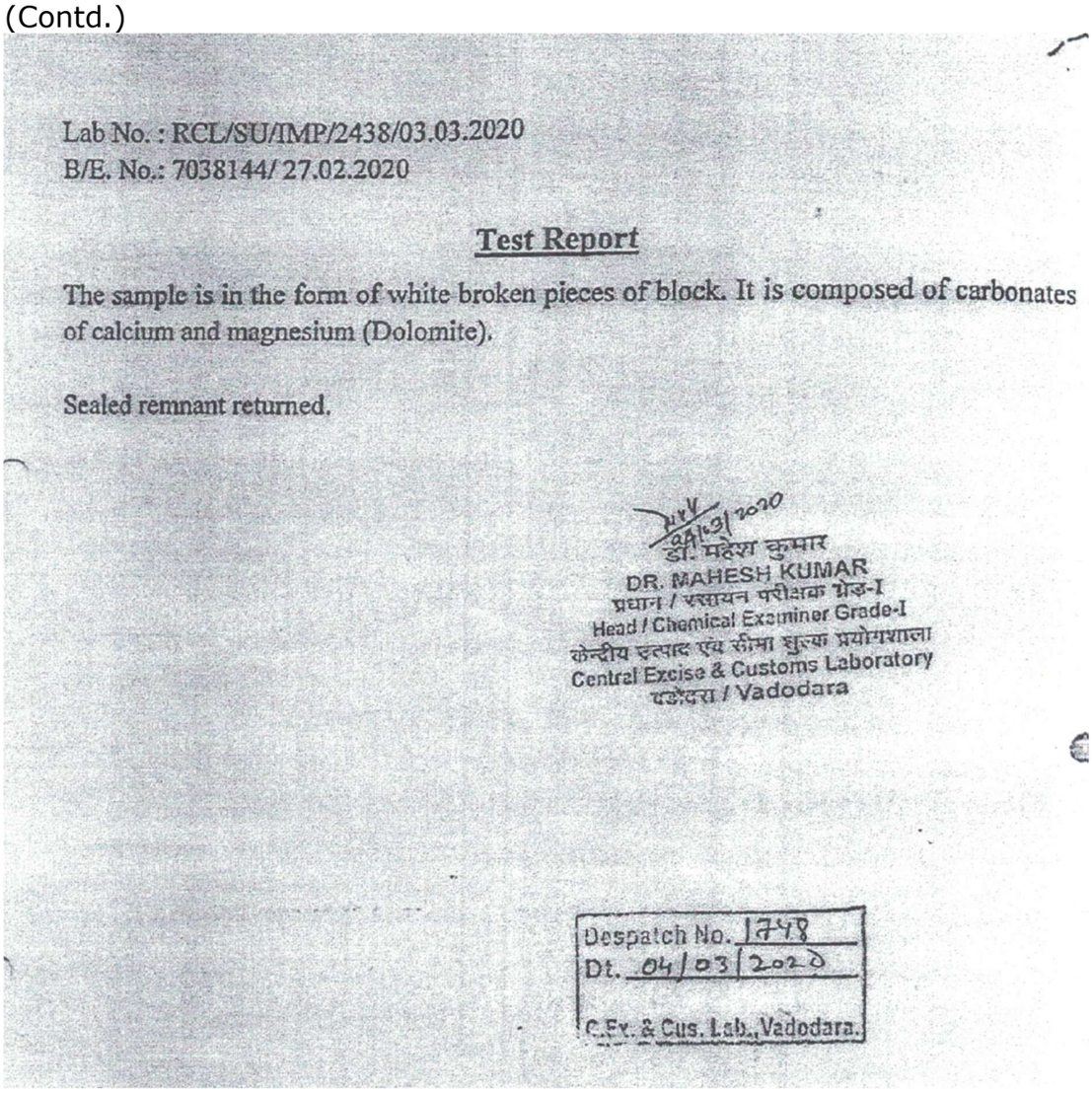
F. No. VIII/ICD Tumb/Test Memo/19-20 Dated: 02.03.2020

To
The Chief Examiner
Central Excise & Customs
3rd floor, Central Excise & Customs Building,
Ellora Park, Arkee Garba Ground,
Vadodara

ABHISHEK TRIPATHI
Superintendent
Customs, ICD Tumb

2438
DATE 03/03/2020

B/E No. 7038144 dt. 27.02.2020&Lab Report No.2438/19-20 dt.3.3.2020 (Contd.)



Lab No. : RCL/SU/IMP/2438/03.03.2020
B/E. No.: 7038144/ 27.02.2020

Test Report

The sample is in the form of white broken pieces of block. It is composed of carbonates of calcium and magnesium (Dolomite).

Sealed remnant returned.

4.3.2020
डॉ. महेश कुमार
DR. MAHESH KUMAR
प्रधान / रसायन परीक्षक ग्रेड-I
Head / Chemical Examiner Grade-I
केन्द्रीय उत्पाद एवं सीमा शुल्क प्रयोगशाला
Central Excise & Customs Laboratory
वडोदरा / Vadodara

Despatch No. 1748
Dt. 04/03/2020
C.Ex. & Cus. Lab., Vadodara.

8.6 On careful perusal of all the above seven test reports of the representative samples of imported goods, it has been categorically stated by the Chemical Examiners of CRCL, DYCC laboratory that these goods are "composed of carbonates of calcium and magnesium i.e., Dolomite." Further, in some reports the percentage composition of calcium carbonate and magnesium carbonate have also been given as CaCo3 - 58.1% & MgCo3 - 41.1% for goods covered under B/E No.4030330 dated 11.07.2019; CaCo3 - 59.3% & MgCo3 - 39.3% for goods covered under B/E No.5108003 dated 30.09.2019; and CaCo3 – 55.8% & MgCo3 - 42.7% for goods covered under B/E No.6245982 dated 26.12.2019. In the HSN explanatory notes which is relied upon in the impugned order, it has been mentioned that 'marble' is hard-calcareous stone, homogeneous and fine grained, known by presence of mineral oxides; whereas, 'dolomite' is crude or calcined and sintered comprising of magnesium and calcium oxides. The seven test reports as extracted above clearly provide the composition as carbonates of calcium and magnesium. The composition of the tested samples also confirm to the presence of CaCo3 & MgCo3 which fulfil the

BIS standards for 'dolomite'. Further, there is no data on specific gravity of the samples of imported goods and only specific gravity of similar goods of other importers were identified at 2.68 to 2.77 and are available. Thus, from the above discussions and analysis of factual matrix of the case, we find that the composition of the material, and chemical testing of other factors, the imported goods are identified in the chemical examination as 'dolomite' and not as 'marble'. Therefore, on the basis of factual details of the impugned goods, whose test reports as provided by the DYCC, CRCL Laboratory are available on record, we are of the prima facie view that the impugned order revising of the classification of impugned goods contrary to the above factual position, confirming the adjudged demands and consequent confiscation of imported goods, imposition of penalty on the appellants is not legally sustainable.

8.7 We further find that when test reports of the representative samples of the imported goods are available, the classification of the said goods cannot be decided by not considering/rejecting the same, by placing reliance on the test reports of goods belonging to some other importers. Further, it is not the case of the department that the test reports of chemical testing conducted by the department on the samples of imported goods are incorrect or forged, for ignoring such test reports of very same imported goods. In the impugned order also, no discussion of such test reports are available. Therefore, on the above factual matrix of the case, the impugned order ignoring the test reports of the imported goods for deciding the classification of such goods is not proper and justified and therefore the same is not legally sustainable.

9.1 In this regard, we further find that in the identical facts of the case arising from similar investigation conducted in respect of *NITCO Limited (supra)*, the Co-ordinate Bench of the Tribunal has held that the correct classification of the goods have been established from the test reports of the department as dolomite blocks and not as marble blocks. Accordingly, it was held that the appropriate classification of the imported goods under CTI 2518 1000 and the proceedings for duty demands, imposition of penalties were dropped. The relevant paragraphs of the said order is extracted below:

> ***"4.2** From the above detailed finding which is based on test reports of the department's own Central Excise and Customs Laboratory, Vadodara as well as independent Central Government Organization namely Geological Survey of India the Adjudicating Authority has decided that in respect of the goods imported by the assessee against 8 bills of entry out of 9 bills of entry is*

Rough Dolomite Blocks classifiable under 25181000. Revenue in the grounds of appeal heavily relied upon the email correspondences with the supplier which was contended by the Revenue that the assessee has instructed the supplier to change the description of the goods from Marble to Dolomite which shows that the goods is marble and not dolomite. In this regard, we find that consignments were cleared after conducting the chemical test by the laboratory. Moreover, from the email correspondences it does not suggest that the assessee has any mala fide intention or it has not been established that the assessee has instructed to mis-declare the goods in the supplier invoice for the reason that when in the test report it has come out that the goods are dolomite even the instruction of the assessee is absolutely correct that the correct description of the goods is dolomite and not marble. We agree with the findings of the Learned Commissioner that when the goods have been tested, the classification of goods is clearly based on the test reports and not on the basis of any oral or any other documents, therefore, even the website which was relied upon for classifying the goods as dolomite is of no help to the department. In the grounds of appeal there is no rebuttal on test reports of Central Excise and Customs Laboratory, Vadodara and also of Geological Survey of India.

4.3 *If at all had the department was not agreeing with such test reports a re-test could have been conducted but no re-test was done. Therefore, the test reports relied upon by the Adjudicating Authority are conclusive and finding. Therefore, we do not find any substance in the revenue's appeal to counter the finding of the Adjudicating Authority. Therefore, as regard the dropping of demand in both the show cause notices based on test reports and other findings, we do not find any infirmity in dropping of demand.*

4.4 *As regard the assessee's appeal whereby it was challenged the confirmation of demand in respect of Bill of Entry No. 3269532 dated 16.09.2017, the adjudicating authority has given the following finding:.*

> *"35 I further find that no Test Report is on record in respect of the sample drawn from the consignment imported by the Importer through Adani Hazira Port under Bill of Entry No. 3269532 dated 16.09.2017. Importer have also not come up with Test Report of any Government Laboratory to support their arguinent that the product imported under this Bill of Entry was 'Dolomite' only. In the case of the Eight Bills of Entry, Test Reports of various Government Laboratories viz. Dy C.C Laboratory, JNCH, Nhava Sheva, CRCL, Vadodara and Geological Survey of India, Nagpur are on record and these Technical/Expert Reports overrule the contentions raised in the Show Cause Notices, as discussed at para supra. In absence of any Test result issued by a Government Laboratory with regard to the samples of the goods imported vide Bill of Entry No. 3269532 dated 16.09.2017, I have no option other than to agree with the proposal of the Show Cause Notice dated 08.08.2022 in respect of the goods imported vide the said Bill of Entry.*
>
> *35.1 In view of the discussions in paras supra and the evidences on record, I am left with no option but to conclude that the goods imported by the Importer M/s. NITCO ltd. vide Bills of Entry covered in the two Show Cause Netices, except the Bill of Entry No. 3269532 dated 16.09.2017, are nothing but 'Dolomite Blocks' classifiable under Customs Tariff Heading No.25181000 and liable to applicable Customs Duty as per the said Customs Tariff Heading.*
>
> *35.2 In view of my above findings, out of the demand raised vide show Cause Notice F.No.VIII/10-28/Commr./O&A/2021-22 dated 08.08.2022 for Customs Duty of Rs. 1,29,15,992/- involved in the goods imported under five Bills of Entry, demand for Rs.86,72,420/-(Eighty Six Lakhs Seventy Two Thousand Four Hundred and Twenty only) involved in the four Bills of Entry (appearing at Sr.Nos. 1 to 3 and 5 of Annexure-A to the Show Cause Notice) is required be dropped and demand of differential Customs Duty of Rs. 42,43,572/- involved in the Bill of Entry No.3269532 dated 16.09.2017 (appearing at Sr.No. 4 of*

Annexure-A to the Show Cause Notice) is required to be confirmed. Further, demand raised vide Show Cause Notice No.103/2022- 23/Pr.Commr./Gr.1% IA/CAC/JNCH dated 26.04.2022 issued by the Pr. Commissioner of Customs, Gr.I/IA, JNCH, Nhava Sheva-1 from F.No.S/26- Misc-2363/2021-22 Gr.I/IA.JNCH & DRI/AZU/CI/ENQ-48/INT-11/2020 for differential Customs Duty amounting to Rs. 1,16,84,333/- (One Crore Sixteen Lakhs Eighty Four Thousand Three Hundred and Thirty Three only) involved in the four Bills of Entry are required to be dropped. M/s. International Cargo Corporation is the Customs Broker who has filed the Bills of Entry on behalf of M/s. NITCO NIT ltd. for imports under the four Bills of Entry in respect of the goods imported through Nhava Sheva Sea Port (covered under the Show Cause Notice No.103/2022-23/Pr.Commr./Gr.I& IA/CAC/JNCH dated 26.04.2022 issued by the Pr. Commissioner of Customs, Gr.1/IA, JNCH, Nhava Sheva-I/IA as well as under the Bill of Entry No.5616596 dated 09.11.2019 (shown at Sr.No.5 of Annexure-A to the Show Cause Notice F.No.VIII/10-28/Commr./O&A/2021-22 dated 08.08.2022 issued by the Commissioner of Customs, Ahmedabad). Since the Duty demand in respect of the said five Bills of Entry is required to be dropped, penal proposals against the aforementioned Customs Broker as well as Shri Rupesh Jivanbhai Katariya, Authorised Signatory M/s. International Cargo Corporation are also required to be vacated.

36. In view of the above detailed discussions on the matter of classification of the goods imported under the Nine Bills of Entry at paras supra, I find that the consequential questions pertaining to confiscation of goods and penalty on Importer and Customs Broker, as proposed in the Show Cause Notices, are to be answered in the matter of the importation done under only one Bill of Er ty i.e. No. 3269532 dated 16.09.2017."

4.5 *From the above finding, it can be seen that the demand in respect of the bill of entry dated 16.09.2017 which is subject matter of the Assessee's appeal was confirmed only on the ground that the assessee could not produce the test report. From the facts it is clear that for the goods of the bill of entry no. 3269532 dated 16.09.2017 also sample was drawn and a test was conducted but since the test report was not available with the assessee, they could not produce the same. It is the case of the revenue that the goods declared by the assessee is not correct. Therefore, the onus is on the department to bring on record the test report or other evidence, if available in the matter of classification. In this case only because the test report is not available with the assessee, burden to prove the correct classification cannot be shifted from department to assessee. It is settled law that burden to prove the classification as claimed by the revenue is on the revenue and not on the assessee. Moreover, in the facts of the present case when out of 9 consignment in respect of 8 consignments when the test reports are in favour of the assessee, it cannot be presumed that in respect of one bill of entry dated 16.09.2017, the goods is different from the goods of other 8 bills of entry. It was found that the common description was declared in respect of all 9 bills of entry and in respect of 8 bills of entry where the test reports are available, it has been established that the goods are dolomite blocks and not marble blocks. In this fact and circumstances the adjudicating authority is not correct in classifying the goods as claimed by the revenue under 25151210. As regard the principle of burden to prove in the matter of classification to be first discharged by the department, we rely upon the following judgments:-*

(a) In the case of Navin Chimanlal Sutaria v. Union of India and Others- 1981 (8) E.L.T. 913 (Bom.) the Hon'ble High Court of Bombay has passed the following order:-

7. This discussion is intended to demonstrate the futility of Mr. Advani's contention that the issue of the goods falling within Item 28 has been raised for the first time in the present petition. It is nothing of the kind. On the contrary, the approach of all the authorities was that as the goods did not attract the exemption notification, they automatically fell within Item 22(4)(a). This approach has nothing to commend itself except its untenability. Even if the

goods did not attract the benefit of the exemption notification, Item 22(4)(a) could not be automatically attracted, more so in the teeth of the petitioner's contentions that the goods fell within Item 28, in support whereof he produced an expert opinion and cited standard technical books. All this was totally ignored. If it was the department's stand that the goods fell within Item 22(4)(a), which in fact was the stand of the department as is manifest from the notice of demand dated 22nd December, 1973, the burden of proof was on the department, as observed by the Supreme Court in Deputy Commissioner of Agricultural Income-tax and Sales Tax, Quilon v. Travancore & Tea Co., (1967) 20 Sales Tax Cases 529, at page 527-

".....In all cases of taxation the burden of providing necessary ingredient laid down by law to justify taxation is upon the taxing authority.....". These observations were also followed by a Division Bench of this Court in Amar Dye Chem. Ltd. v. Union of India (1980) Cen-Cus 242D. This elementary and salutary rule of law has, in this case, been entirely ignored by the department.

(b) In the case of Heveacrumb Rubber (P) Ltd. v. Superintendent of Central Excise - 1983 (14) E.L.T. 1685 (Ker.) the Hon'ble Kerala High Court has given the following view:-

"3. It is interesting to note, that in the counter-affidavit filed by the respondents in paragraph 2, it is asserted that the products of the petitioner's factory are liable for Central Excise duty under Tariff Item 68. But in paragraph 3, it is stated that there is no adverse order passed by the respondents against the petitioner and in paragraph 7 it is repeated that Exts. P3 and P5 are still pending for consideration. This has to be taken along with the assertion made in Ext. P2 by the 1st respondent wherein it is stated in paragraph 2 that block or crump rubber produced in the petitioner's factory is liable for Central Excise duty under Tariff Item 68 of the Central Excise Tariff. The petitioner has filed detailed objections, evidenced by Exts. P3 and P5. In Ext. P3 the petitioner has also relied upon the decision of the Appellate Collector who has gone through the matter very exhaustively. It is also worthy to note that a Division Bench of this Court in O.P. No. 1770 of 1975 and connected cases directed that there will be a full-fledged enquiry in the matter after giving the petitioners a full and fair opportunity to substantiate their contentions. Notwithstanding all these, it is surprising that the respondents even without a proper investigation and adjudication as to whether the block or crump rubber produced in the petitioner's factory is liable for Central Excise duty under Tariff Item No. 68 of the Central Excise tariff have been repeatedly asking the petitioner to furnish certain details in connection therewith. If the particular item produced in the petitioner's factory is not liable for excise duty as contended by the petitioner, there is no reason why the respondent should insist the petitioner for furnishing the details. If, on the other hand, the respondents hold the view that notwithstanding the objections raised in Exts. P3 and P5, as also the decision of the Appellate Collector referred to in Ext. P3, the petitioner is liable for excise duty, the petitioner should be told so definitely with reasons therefor. A speaking order is a pre-requisite before saddling the petitioner with the liability to pay Excise Duty. The respondents have merely asserted that the block or crump rubber produced in the petitioner's factory is liable for excise duty under Tariff Item No. 68 of the Central Excise Tariff. This is not sufficient. It is for the Revenue to allege and substantiate, at least prima facie, as to why a particular item is taxable under a particular Tariff entry. The initial burden is on the Revenue to substantiate the assertion. I have come across a few cases wherein only assertions are made that a particular item will fall under a particular entry in the Tariff, without referring to any material or basis on which it is so surmised. The assessee is entitled to know and should be informed, the basis on which the Revenue proceeds to assess it, so that the opportunity given to the assessee will be real and effective and not illusory and a make believe. Without such a real opportunity being afforded, if on mere assertions, further documents and papers are obtained and assessments are made and liability saddled on the assessee making it a "fait accompli", it will be hard, unjust and improper. Steps so taken will be violative of the principles of natural justice. The assessing authority will be acting arbitrarily and not fairly. That the statutory authorities invested with power, which when exercised will effect persons with civil consequences, should act fairly, reasonably and in just manner, has been laid down repeatedly by courts. But it is regretable that such principles are given a go-bye in many cases and parties are driven to resort to this court under Article 226 of the Constitution. Notwithstanding the very

detailed objections the respondents have not cared to dispose of Exts. P3 and P5, but continued to insist that the petitioner should furnish certain details asked for. The procedure adopted is unwarranted."

(c) In the case of Tata Exports Ltd. v. Union of India and Ors.- 1985 (22) E.L.T. 732 (M.P.), the Hon'ble High Court of Madhya Pradesh have given the following finding:-

"4. The Supreme Court in Union of India v. Delhi Cloth Mills - 1977 (1) E.L.T (J 199) (S.C.) = AIR 1963 S.C. 791 has held that manufacture implies a change, but every change is not manufacture and yet every change of an article is the result of treatment, labour and manipulation. But something more is necessary and there must be transformation; a new and different article must emerge having a distinctive name, character or use. Relying on this decision, the Supreme Court in South Behar Sugar Mills v. Tata Chemicals - 1978 (2) E.L.T. (J 336) = AIR 1968 S.C. 922 further held that there must be such a transformation that a new and different article must emerge having a distinctive name, character or use. In Sandoz India Ltd. v. Union of India - 1980 (6) E.L.T. 696 a Division Bench of the Bombay High Court held that the processing of the physical form from a solid state to a liquid state by the addition of dispersing agents and water did not result in manufacture as there was no change in the chemical composition of the pigment. In Shakti Insulated Wires v. Union of India - 1982 (10) E.L.T 10, the Bombay High Court further held that it is obvious that merely because some process is carried on any article it would not necessarily amount to a manufacture of a fresh article amounting to 'manufacture' under Section 2(f) of the Act. In Coromandel Proorite v. Government of India - 1985 (20) E.L.T. 257 (Mad.) a Division Bench of the Madras High Court held that if as a result of the process, raw-materials have been transformed into a distinct and commercially new product, then alone the process can be taken to be a manufacture. In this case since the end product brought about by the process of mixture or dilution continues to have the same chemical properties as resin, there cannot be said to be any manufacturing process. Recently, the Supreme Court in Empire Industries Ltd. v. Union of India - 1985 (20) E.L.T. 179 (S.C.) reiterated that any process or processes creating a new commodity commercially known as a distinct and separate commodity having its own character, use and name would be 'manufacture'. It is settled law that in a case of taxation the burden of proving that the necessary ingredients prescribed by the taxing provision are satisfied is entirely upon the taxing authority [Sandoz India Ltd. v. Union of India (supra)]. It is, therefore, primarily for the taxing authority to satisfy the Court that formulation of pigment slurry is entirely distinct commodity having entirely distinct name, character and use as compared with the pigment itself."

(d) In the case of Collector of Central Excise v. Fertilizers and Chemicals, Travancore Ltd- 1986 (24) E.L.T. 388 (Tri.-Del) the CEGAT special Bench New Delhi has given the following view:-

"7. The Department has referred to the Fertilizer Control Order as well as the Glossary of Terms used in Fertilizer Trade and Industry (IS 1304-1980). But this has been an exercise in futility as reference to both these authorities only establishes that ammonium chloride of high technical purity as well as lower purity is fully covered in the broad specifications applicable to fertilizers. In this situation, the burden of proof that the product in question, is not a fertilizer is on the Department and they have failed to discharge this burden. In view of the definitions contained in the Fertilizer Control Order, Glossary of Terms used in the Fertilizer Trade and Industry as well as the specific wording of Notification No. 164/69, there is hardly any justification for going into the end use of the product in question. We cannot also lightly brush aside the argument that if at all there was any doubt as regards the alternative classification, then as per accepted principles, a specific tariff entry is to be preferred to the general entry and also the view favourable to the assessee will have to be accepted. We are also quite clear that the allegation of suppression of facts that is now being made in the course of arguments, is wholly untenable. This allegation is not contained in the show cause notices and in view of regular submission of classification lists, we find that there is no substance in the allegation that there has been suppression of facts by the assessee. In this view of the matter, we agree that the demands of duty would also be essentially barred by limitation. However, this issue is largely academic, in view of the fact that the goods in

question are being held to be fully covered by the exemption Notification No. 164/69."

In view of the above settled legal position, coupled with facts and circumstances of the present case we agree with the assessee that in respect of the goods covered under bill of entry No. 3269532 dated 16.09.2017 is correctly classifiable as dolomite blocks under Custom Tariff Heading No. 25181000.

***4.5** As per our above discussion and finding we are of the view that the demand of custom duty dropped by the Adjudicating Authority is correct and legal. Hence, the same is upheld. The custom duty demand in respect of bill of entry No. 3269532 dated 16.09.2017 is not legal and correct, hence, the same is set aside.*

***4.6** All other issues such as confiscation, redemption fine their against, interest and penalties which are consequential to the demand of custom duty in both appeals do not sustain. The penalties on other parties shall also not survive. As a result, the Revenue's appeals are dismissed and Assessee's appeals and other connected appeals of co-appellants are allowed."*

9.2 Further, we also find that in another case involving identical set of facts of the case arising from similar investigation in the case of *STONEX India Private Limited (supra)*, the Co-ordinate Bench of the Tribunal has upheld that the classification goods declared by the importer under CTI 2518 1000 and dropped the proceedings for duty demands invoking extended period, and for imposition of fine, penalties. The relevant paragraphs of the said order is extracted below:

***"5.6** We find that goods supplied by foreign supplier Marble Sachanas S.A. was tested by department in case of Nitco Limited Vs. Commissioner of Customs, Ahmedabad in appeal No.10277 of 2023 also and based on same parameter it was found that imported goods are dolomite in respect of imports by other importers. We have also recorded some of test reports in decision in case of Nitco Ltd. Some of test reports are extracted as under:*

xxx xxx xxx xxx

Thus, from above test reports it is evident that even department has based on parameters of CaO and MgO has concluded that goods are dolomite. In present case also CaO is ranging from 32 to 36% and MgO is ranging from 17 to 19%. Thus, in present case, goods can be considered as dolomite. In any case, appellant were bonafide in treating the goods as dolomite. In any case, it cannot be treated as case of wilful suppression or mis-declaration. In view of above extended period under section 28(4) of Customs Act is not invokable in the present case as there is no suppression or mis-statement.

***5.7** Without prejudice to above, we find that demand of customs duty of past imports under Annexure B and C to SCN is also not sustainable on the ground that goods were not tested by department in respect of past imports in respect of which demand is made in Annexure-B and C to SCN. It is settled position of law that each Bill of entry is a separate assessment and test report of one bill of entry cannot be made applicable to the goods imported under another bill of entry. Each consignment must be assessed separately, especially for natural mined rocks, where properties vary significantly.*

Further, foreign suppliers analysis reports clearly provides dolomite as 92% to 99%. Further, goods from very same foreign suppliers were tested and found as dolomite by other customs laboratories and Geological survey of India, Nagpur. Reliance is placed upon decision in case of Shalimar Paints Ltd. v. Commissioner — 2001 (134) E.L.T. 285 (Tri.-Cal) wherein Hon'ble CESTAT held has under:

> *"7. The first grievance of the appellant is that though the classification lists in question covered about 30 products, test reports relatable to only 4 products are available and there is absolutely no material against the appellant in so far as the remaining 26 products are concerned. He submits that presuming though denying that the test reports of CRCL are correct, the same can be made the basis for classifying only those products to which the test report relates. The same cannot be made applicable to the other items for which no samples were either drawn or if samples were drawn, there is no test report. For this proposition he relied upon the Tribunal's decision in the case of S.D. Kemexc Indus. v. CCE - 1995 (75) E.L.T. 377 (Tri.-Del). In the said decision assessee was manufacturing 22 different types of chemicals. The Department drew samples only from two types of chemicals. It was held that test reports can be made applicable only for the two products for which the samples were drawn and not to the rest of the products. Following the ratio of the above decision we fully agree with the contention of the ld. adv. that the test reports, if at all could be made applicable only to the 4 items in question to which it belonged to. The balance 26 products would be classified under Heading 27.15 on the basis of the declarations made by the appellant which is based upon their technical literature as well as the production records and for which the Revenue has not adduced any evidence to shift the classification to heading 32.10."*
>
> Above decision was affirmed by Hon'ble Supreme court in case of *[Commissioner* v. *Shalimar Paints Ltd.* - 2002 (145) E.L.T. A242].

5.8 *In case of Commissioner of Customs (Preventive) v. Marks Marketing P Ltd. Reported as 2017 (346) E.L.T. 144 (Tri.-Del) wherein Hon'ble CESTAT held as under:*

> "9. We find no merit in the above statement of the Revenue. Admittedly, the change in the classification of the present import of fabrics is based upon the test result by the chemical examiner whereas it is not disputed that no such test results were carried out in respect of previous imports. The law on the issue is well settled. The test reports of the samples drawn from a particular consignment cannot be applied to the previous consignments. Merely because the deponent of the statement has agreed before the Customs that the previous consignment may be of the same composition, by itself does not establish that the previous consignments were admittedly of the same composition. The expression used by the deponent is 'may be' and he himself was not sure of the same fact. The composition of the fabrics may vary or change from the consignment to consignment inasmuch as there is not much difference in the wool content of the fabrics. Revenue has not given us any reason as to why the ratio of Tribunal's decision in the case of Shalimar Paints (supra) which stands upheld by the Hon'ble Supreme Court, is not applicable to the facts of the present case.
>
> *Apart from the decision of Shalimar Paints, we note that there are number of other precedent decisions holding to the same effect."*

5.9 *We find that in the present case department has not discharged the burden of prove with regards to change of classification of goods in respect of Annexure-B and C. We have dealt with similar issue in case of NITCO Limited v. Commissioner of Customs, Ahmedabad in appeal No. 10277 of 2023 wherein we held as under:*

As regard the principle of burden to prove in the matter of classification to be first discharged by the department, we rely upon the following judgments:-

(a) In the case of Navin Chimanlal Sutaria v. Union of India and Others -1981 (8) E.L.T. 913 (Bom.) the Hon'ble High Court of Bombay has passed the following order:-

> *"7. This discussion is intended to demonstrate the futility of Mr.Advani's contention that the issue of the goods falling within Item 28 has been raised for the first time in the present petition. It is nothing of the kind. On the contrary, the approach of all the authorities was that as the goods did not attract the exemption notification, they automatically fell within Item 22(4)(a). This approach has nothing to commend itself except its untenability. Even if the goods did not attract the benefit of the exemption notification, Item 22(4)(a) could not be automatically attracted, more so in the teeth of the petitioner's contentions that the goods fell within Item 28, in support whereof he produced an expert opinion and cited standard technical books. All this was totally ignored. If it was the department's stand that the goods fell within Item 22(4)(a), which in fact was the stand of the department as is manifest from the notice of demand dated 22nd December, 1973, the burden of proof was on the department, as observed by the Supreme Court in Deputy Commissioner of Agricultural Income-tax and Sales Tax, Quilon v. Travancore & Tea Co., (1967) 20 Sales Tax Cases 529, at page 527- ".....In all cases of taxation the burden of providing necessary ingredient laid down by law to justify taxation is upon the taxing authority.....". These observations were also followed by a Division Bench of this Court in Amar Dye Chem. Ltd. v. Union of India (1980) Cen-Cus 242D. This elementary and salutary rule of law has, in this case, been entirely ignored by the department."*

(b) In the case of Heveacrumb Rubber (P) Ltd. v. Superintendent of Central Excise- 1983 (14) E.L.T. 1685 (Ker.) the Hon'ble Kerala High Court has given the following view:-

"3. It is interesting to note, that in the counter-affidavit filed by the respondents in paragraph 2, it is asserted that the products of the petitioner's factory are liable for Central Excise duty under Tariff Item 68. But in paragraph 3, it is stated that there is no adverse order passed by the respondents against the petitioner and in paragraph 7 it is repeated that Exts. P3 and P5 are still pending for consideration. This has to be taken along with the assertion made in Ext. P2 by the 1st respondent wherein it is stated in paragraph 2 that block or crump rubber produced in the petitioner's factory is liable for Central Excise duty under Tariff Item 68 of the Central Excise Tariff. The petitioner has filed detailed objections, evidenced by Exts. P3 and P5. In Ext. P3 the petitioner has also relied upon the decision of the Appellate Collector who has gone through the matter very exhaustively. It is also worthy to note that a Division Bench of this Court in O.P. No. 1770 of 1975 and connected cases directed that there will be a full-fledged enquiry in the matter after giving the petitioners a full and fair opportunity to substantiate their contentions. Notwithstanding all these, it is surprising that the respondents even without a proper investigation and adjudication as to whether the block or crump rubber produced in the petitioner's factory is liable for Central Excise duty under Tariff Item No. 68 of the Central Excise tariff have been repeatedly asking the petitioner to furnish certain details in connection therewith. If the particular item produced in the petitioner's factory is not liable for excise duty as contended by the petitioner, there is no reason why the respondent should insist the petitioner for furnishing the details. If, on the other hand, the respondents hold the view that notwithstanding the objections raised in Exts. P3 and P5, as also the decision of the Appellate Collector referred to in Ext. P3, the petitioner is liable for excise duty, the petitioner should be told so definitely with reasons therefor. A speaking order is a pre-requisite before saddling the petitioner with the liability to pay Excise Duty. The respondents have merely asserted that the block or crump rubber produced in the petitioner's factory is liable for excise duty under Tariff Item No. 68 of the Central Excise Tariff. This is not sufficient. It is for the Revenue to allege and substantiate, at least *prima facie,* as to why a particular item is taxable under a particular Tariff entry. The initial burden is on the Revenue to substantiate the assertion. I have come across a few cases wherein only assertions are made that a particular item will fall under a particular entry in the Tariff, without referring to any material or basis on which it is so surmised. The assessee is entitled to know and should be informed, the basis on which the Revenue proceeds to assess it, so that the opportunity given to the assessee will be real and effective and not illusory and a make believe. Without such a real opportunity being afforded, if on mere assertions, further documents and papers are obtained and assessments are made and liability saddled on the assessee making it a "fait accompli", it will be hard, unjust and improper. Steps so taken will be violative of the principles of natural justice. The assessing authority will be acting arbitrarily and not fairly. That the statutory authorities invested with power, which when exercised will effect persons with

civil consequences, should act fairly, reasonably and in just manner, has been laid down repeatedly by courts. But it is regretable that such principles are given a go-bye in many cases and parties are driven to resort to this court under Article 226 of the Constitution. Notwithstanding the very detailed objections the respondents have not cared to dispose of Exts. P3 and P5, but continued to insist that the petitioner should furnish certain details asked for. The procedure adopted is unwarranted."

(c) In the case of Tata Exports Ltd. v. Union of India - 1985 (22) E.L.T. 732 (M.P.), the Hon'ble High Court of Madhya Pradesh have given the following finding:-

"4. The Supreme Court in *Union of India* v. *Delhi Cloth Mills* - 1977 (1) E.L.T (J 199) (S.C.) = AIR 1963 S.C. 791 has held that manufacture implies a change, but every change is not manufacture and yet every change of an article is the result of treatment, labour and manipulation. But something more is necessary and there must be transformation; a new and different article must emerge having a distinctive name, character or use. Relying on this decision, the Supreme Court in *South Behar Sugar Mills* v. *Tata Chemicals* - 1978 (2) E.L.T. (J 336) = AIR 1968 S.C. 922 further held that there must be such a transformation that a new and different article must emerge having a distinctive name, character or use. In *Sandoz India Ltd.* v. *Union of India* - 1980 (6) E.L.T. 696 a Division Bench of the Bombay High Court held that the processing of the physical form from a solid state to a liquid state by the addition of dispersing agents and water did not result in manufacture as there was no change in the chemical composition of the pigment. In *Shakti Insulated Wires* v. *Union of India* - 1982 (10) E.L.T 10, the Bombay High Court further held that it is obvious that merely because some process is carried on any article it would not necessarily amount to a manufacture of a fresh article amounting to 'manufacture' under Section 2(*f*) of the Act. In *Coromandel Proorite* v. *Government of India* - 1985 (20) E.L.T. 257 (Mad.) a Division Bench of the Madras High Court held that if as a result of the process, raw-materials have been transformed into a distinct and commercially new product, then alone the process can be taken to be a manufacture. In this case since the end product brought about by the process of mixture or dilution continues to have the same chemical properties as resin, there cannot be said to be any manufacturing process. Recently, the Supreme Court in *Empire Industries Ltd.* v. *Union of India* - 1985 (20) E.L.T. 179 (S.C.) reiterated that any process or processes creating a new commodity commercially known as a distinct and separate commodity having its own character, use and name would be 'manufacture'. It is settled law that in a case of taxation the burden of proving that the necessary ingredients prescribed by the taxing provision are satisfied is entirely upon the taxing authority [*Sandoz India Ltd.* v. *Union of India* (*supra*)]. It is, therefore, primarily for the taxing authority to satisfy the Court that formulation of pigment slurry is entirely distinct commodity having entirely distinct name, character and use as compared with the pigment itself."

(*d*) In the case of *Collector of Central Excise* v. *Fertilizers and Chemicals, Travancore Ltd*- 1986 (24) E.L.T. 388 (Tri.-Del) the CEGAT special Bench New Delhi has given the following view:-

"7. The Department has referred to the Fertilizer Control Order as well as the Glossary of Terms used in Fertilizer Trade and Industry (IS 1304-1980). But this has been an exercise in futility as reference to both these authorities only establishes that ammonium chloride of high technical purity as well as lower purity is fully covered in the broad specifications applicable to fertilizers. In this situation, the burden of proof that the product in question, is not a fertilizer is on the Department and they have failed to discharge this burden. In view of the definitions contained in the Fertilizer Control Order, Glossary of Terms used in the Fertilizer Trade and Industry as well as the specific wording of Notification No. 164/69, there is hardly any justification for going into the end use of the product in question. We cannot also lightly brush aside the argument that if at all there was any doubt as regards the alternative classification, then as per accepted principles, a specific tariff entry is to be preferred to the general entry and also the view favourable to the assessee will have to be accepted. We are also quite clear that the allegation of suppression of facts that is now being made in the course of arguments, is wholly untenable. This allegation is not contained in the show cause notices and in view of regular submission of

classification lists, we find that there is no substance in the allegation that there has been suppression of facts by the assessee. In this view of the matter, we agree that the demands of duty would also be essentially barred by limitation. However, this issue is largely academic, in view of the fact that the goods in question are being held to be fully covered by the exemption Notification No. 164/69."

In view of the above settled legal position, coupled with facts and circumstances of the present case we agree with the assessee that in respect of the goods covered under bill of entry No. 3269532 dated 16.09.2017 is correctly classifiable as dolomite blocks under Custom Tariff Heading No. 25181000.

5.10 *In view of above we agree with the submission of appellant that a claim of the classification or claim of exemption notification cannot be treated as a mis-declaration. We find that goods are not liable for confiscation under Section 111(m) of the Customs Act, 1962, therefore redemption fine under Section 125 of the Customs Act, 1962, is not imposable. Thus penalty is not imposable under Section 114A of the Customs Act, 1962 and penalty on Mr.Sajith Kumar, import executive is also not imposable.*

5.11 *As per our above discussion and finding, the demand of customs duty as per Annexure-A1 and A2 to SCN as recorded in para 26 of impugned order is confirmed along with interest as same is not contested by appellant. Customs duty demand under Annexure B and C to SCN as recorded in para 26 of impugned order is set aside as same is beyond limitation period as extended period is not invocable in the present case. Redemption fine and penalty is not sustainable and the same is accordingly set aside. Penalty on Mr. Sajith Kumar, import executive is also not imposable."*

9.3 In the case of *Junaid Kudia Vs. Commissioner of Customs, Mumbai Import-II* – (2024) 16 Centax 503 (Tri.-Bom), this Bench of the Tribunal have set aside the order confirming the adjudged demands on the ground that various evidences in form of computer printouts, statements etc., recovered during course of investigation could not be admitted in the absence of certificate from responsible person in relation to operation of relevant laptop/computer as required by Section 138C(2) of Customs Act, 1962. The relevant paragraphs of the said order is extracted and given below:

"8. *On reading of Section 138C of the Customs Act, 1962, it is seen that the Legislature had prescribed the detailed procedure to accept the computer printouts and other electronic devices as evidences. It has been stated that any proceedings under the Act, 1962, where it is desired to give a statement in evidence of electronic devices, shall be evidences of any matter stated in the certificate. In the present case, we find that the provisions of Section 138C of the Act were not complied with to use the computer printouts as evidence. It is noted that the certificate was not prepared during the seizure of the electronic devices, as required under the law. The investigation is normally started after collecting the intelligence/information from various sources. The investigating officers procure the evidences in the nature of documents, statements, etc., to establish the truth. During the evolution of technology, the electronic devices were used as evidence. In this context, the law is framed to follow the procedure, while using the electronic devices as evidence for*

authenticity of the documents, which would be examined by the adjudicating authority during adjudication proceedings. In the instant case, it is found that the entire case proceeded on the basis of the electronic documents as evidence. But the investigating officers had not taken pain to comply with the provisions of the law to establish the truthfulness of the documents and merely proceeded on the basis of the statements. Hence, the evidence of electronic devices, as relied upon by the adjudicating authority cannot be accepted.

9. *We also find that the Hon'ble Supreme Court in the case of Anvar P.V. (supra), while dealing with Section 65B of the Evidence Act, 1872 (Parimateria to Section 138C of the Act, 1962), observed as under :*

"13. Any documentary evidence by way of an electronic record under the Evidence Act, in view of Sections 59 and 65A, can be proved only in accordance with the procedure prescribed under section 65B. Section 65B deals with the admissibility of the electronic record. The purpose of these provisions is to sanctify secondary evidence in electronic form, generated by a computer. It may be noted that the section starts with a non obstante clause. Thus, notwithstanding anything contained in the Evidence Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer shall be deemed to be a document only if the conditions mentioned under sub-section (2) are satisfied, without further proof or production of the original…….

14. Under Section 65B(4) of the Evidence Act, if it is desired to give a statement in any proceedings pertaining to an electronic record, it is permissible provided the following conditions are satisfied:
(a) There must be a certificate which identifies the electronic record containing the statement;
(b) The certificate must describe the manner in which the electronic record was produced
(c) The certificate must furnish the particulars of the device involved in the production of that record
(d) The certificate must deal with the applicable conditions mentioned under section 65B(2) of the Evidence Act; and
(e) The certificate must be signed by a person occupying a responsible official position in relation to the operation of the relevant device.

15. It is further clarified that the person need only to state in the certificate that the same is to the best of his knowledge and belief. Most importantly, such a certificate must accompany the electronic record like computer printout, compact disc (CD), video compact disc (VCD), pen drive, etc., pertaining to which a statement is sought to be given in evidence, when the same is produced in evidence. All these safeguards are taken to ensure the source and authenticity, which are the two hallmarks pertaining to electronic record sought to be used as evidence. Electronic records being more susceptible to tampering, alteration, transposition, excision, etc., without such safeguards, the whole trial based on proof of electronic records can lead to travesty of justice.
16. Only if the electronic record, is duly produced in terms of Section 65B of the Evidence Act, would the question arise as to the genuineness thereof and in that situation, resort can be made to Section 45A - opinion of Examiner of Electronic Evidence.
17. The Evidence Act does not contemplate or permit the proof of an electronic record by oral evidence if requirements under section 65B of the Evidence Act are not complied with, as the law now stands in India.
……..
22. The evidence relating to electronic record, as noted hereinbefore, being a special provision, the general law on secondary evidence under section 63 read

with Section 65 of the Evidence Act shall yield to the same. Generalia speciali bus non derogant, special law will always prevail over the general law. It appears, the Court omitted to take note of Sections 59 and 65A dealing with the admissibility of electronic record. Sections 63 and 65 have no application in the case of secondary evidence by way of electronic record; the same is wholly governed by Sections 65A and 65B. To that extent, the statement of law on admissibility of secondary evidence pertaining to electronic record, as stated by this Court in Navjot Sandhu case, does not lay down the correct legal position. It requires to be overruled and we do so. An electronic record by way of secondary evidence shall not be admitted in evidence unless the requirements under section 65B are satisfied. Thus, in the case of CD, VCD, chip, etc., the same shall be accompanied by the certificate in terms of Section 65B obtained at the time of taking the document, without which, the secondary evidence pertaining to that electronic record, is inadmissible."

10. *Upon perusal of the judgment of the Hon'ble Supreme Court in the case of Anvar P.V. (supra), we note that the Apex Court has categorically laid down the law that unless the requirement of Section 65B of the Evidence Act is satisfied, such evidence cannot be admitted in any proceedings. We note that the Section 138C of the Customs Act is parimateria to Section 65B of the Evidence Act. Consequently, the evidence in the form of computer printouts, etc., recovered during the course of investigation can be admitted in the present proceedings, only subject to the satisfaction of the sub-section (2) of Section 138C ibid. This refers to the certificate from a responsible person in relation to the operation of the relevant laptop/computer. After perusing the record of the case, we note that in respect of the electronic documents in the form of computer printouts from the seized laptops and other electronic devices, have not been accompanied by a certificate as required by Section 138C(2) ibid as above. In the absence of such certificate, in view of the unambiguous language in the judgment of the Hon'ble Supreme Court (supra), the said electronic documents cannot be relied upon by the Revenue for confirmation of differential duty on the appellant. In the present case, the main evidence on which, Revenue has sought to establish the case of undervaluation and misdeclaration of the imported goods is in the form of the computer printouts taken out from the laptops and other electronic devices in respect of which the requirement of Section 138C(2) ibid has not been satisfied. On this ground, the impugned order suffers from uncurable error and hence, is liable to be set aside.*

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13. *We also noticed that the Adjudicating authority in order to justify the under valuation, has relied upon the statements of partners of the appellant's company. However, the Appellant has objected to such reliance, as the statements were retracted. The Appellant has pleaded that retracted statements cannot be accepted as evidence for confirmation of demand. The adjudicating authority in the impugned order has chosen not to consider the retraction. We are of the view that the said approach of the adjudicating authority is incorrect. Be that as it may, we note that statements cannot be the sole reason to confirm the charge of undervaluation. We also note that in the present matter there are no evidences produced by the department that the excess amount over and above the invoice price was paid to suppliers. There is no evidence as to how the Appellant came into possession of cash alleged to be differential amount towards goods imported, nor there is any evidence of any cash being handed over to any person, representing suppliers in India. Department had failed to produce corroborative evidences regarding the*

undervaluation of imported goods. Hence, in our view, the charge of undervaluation of imported goods in the present matter is not sustainable.

14. *Further, we also find that in respect of disputed imported goods, Bills of entry were already been assessed at the time of importation of the goods and hence, further proposal to re-enhance the value, in the eventuality, when the earlier assessment orders having not been appealed against/reviewed, have attained finality and accordingly, cannot be proceeded with for rejection of the declared value. In other words, there cannot be any re-assessment of the said values, which had become final for want of appeal against the same. Our views are supported by the judgments in case CC v. Lord Shiva Overseas (supra), Malhotra Impex v. Commissioner of Customs, Ahmedabad - 2006 (203) E.L.T. 561 (Tri.-Del.) and Commissioner of Customs (Prev.), v. Paras Electronics - 2009 (246) E.L.T. 231 (Tri.-Mumbai)/2009 taxmann.com 923 (Mum. - CESTAT).*

15. *In view of our above observations and findings, we are of the opinion that the duty demand confirmed against the appellant M/s. Plastic Cottage Trading Co. and penalties imposed upon it is not sustainable. For the same reason, the penalty imposed on the co-appellants namely, Shri Junaid Kudia and Shri Zaid Kudia is also not sustainable. Therefore, the impugned order confirming the adjudged demands on the appellants is set aside and the appeals are allowed with consequential relief to the Appellants, as per law."*

Against the aforesaid order, the department filed an appeal before the Hon'ble Supreme Court of India, in Civil Appeal (Diary) No. 4161 of 2024. In the judgement delivered on 04.03.2024, the Hon'ble Supreme Court after carefully perusing the material placed on record, have held that they are not inclined to entertain the present Civil Appeals, and accordingly dismissed the same. Therefore, we are of the view that rejection of cross-examination opportunity to the appellants and deciding the classification of goods solely on the basis of various documents received by DRI, is not proper and does not stand the legal scrutiny.

10. In view of the foregoing discussions and analysis, and on the basis of the orders passed by the Co-ordinate Bench of the Tribunal in the identical facts of the case and on the basis of judgement of the Hon'ble Supreme Court quoted above, we are of the considered view that different stand cannot be taken by this Bench, on the identical factual matrix of the case arising from same investigation on similar importers, for deciding the issues differently. Therefore, we find that the impugned order dated 05.02.2025, revising the classification of imported goods under CTI 2515 1210 and confirmation of adjudged demands, confiscation of goods and imposition of penalties on the appellants does not stand the scrutiny of law.

11. In the result, the impugned order passed by the learned Commissioner of Customs is set aside and the appeals filed by the appellants are allowed in their favour, with consequential relief, if any, as per law.

(Order pronounced in open court on 08.06.2026)

(S.K. MOHANTY)
MEMBER (JUDICIAL)

(M.M. PARTHIBAN)
MEMBER (TECHNICAL)

Sinha