

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST ZONAL BENCH : AHMEDABAD**

REGIONAL BENCH - COURT NO. 3

CUSTOMS Appeal No. 90 of 2012-DB

[Arising out of Order-in-Original/Appeal No 36-2012-CUS-COMMR-A--KDL dated 16.03.2012
passed by Commissioner of CUSTOMS-KANDLA]

Ajit Marbles Pvt Limited

.... Appellant

5, Vidya Vihar Colony, North Sundervan,
UDAIPUR, RAJASTHAN

VERSUS

Commissioner of Customs, Kandla

.... Respondent

Custom House, Near Balaji Temple,
Kandla, Gujarat

WITH

CUSTOMS Appeal No. 91 of 2012-DB

[Arising out of Order-in-Appeal No 37-2012-CUS-COMMR-A--KDL dated 16.03.2012 passed
by Commissioner of CUSTOMS-KANDLA]

Ajit Marbles Pvt Limited

.... Appellant

5, Vidya Vihar Colony, North Sundervan,
UDAIPUR, RAJASTHAN

VERSUS

Commissioner of Customs, Kandla

.... Respondent

Custom House, Near Balaji Temple,
Kandla, Gujarat

APPEARANCE :

Shri Vipul Khandar, Chartered Accountant for the Appellant
Shri Tara Prakash, Assistant Commissioner (AR) for the Revenue.

**CORAM: HON'BLE MR. RAMESH NAIR, MEMBER (JUDICIAL)
HON'BLE MR. RAJU, MEMBER (TECHNICAL)**

DATE OF HEARING : 23.11.2022

DATE OF DECISION: 28.11.2022

FINAL ORDER NO. A/11749-11750 / 2022

RAMESH NAIR :

These two appeals are directed against orders-in-appeal Nos. 36-
2012-CUS-COMMR-A-KDL and 37-2012-CUS-COMMR-A-KDL both dated
16.03.2012.

2. In the case of Appeal No. C/90/2012, the appellant have challenged imposition of redemption fine of Rs. 30,000/- under Section 125 and imposition of penalty of Rs. 15,000/- under Section 112A of the Customs Act, 1962 holding that appellant have mis-declared the quantity and value of imported Polished Granite Slabs inasmuch as the appellant have declared 465.000sqm as against the actual quantity of 520.752. Thus the quantity of 55.752 sqm has been found in excess. Consequently the value of excess quantity of Polished Granite Slabs comes to Rs. 75,265/-.

As regards the Appeal No. C/91/2012, the appellant have challenged the enhancement of value to the extent of quantity of Polished Granite Slabs found excess to the extent of 7.6 sqm. The appellant have declared the quantity as 482sqm whereas on examination, it was found 489.6sqm. On the excess quantity of 7.6sqm, the duty demand was confirmed and the value was re-determined, therefore the present appeals are filed in both the cases.

3. Shri Vipul Khandar, learned Chartered Accountant appearing on behalf of the appellant submits that, in Appeal No. C/90/2012 the Cargo was examined on the first check under the supervision of Superintendent. During examination of cargo the goods were found to be Polished Granite Slabs as per bills of entry, invoice and packing list. However, the total measurement of the cargo was found to be 520.752 sqm as against declared quantity of 465.000sqm thus, a quantity of 55.752 sqm has been found excess over and above the declared quantity. The value of the excess quantity of Polished Granite Slabs comes to Rs. 75,265/-. He submits that in view of the above facts the excess is marginal. It is practice in trade to issue invoices for only chargeable weight of a Polished Granite Slabs and the

gross measurement of the said granite slabs is shown in the invoice. The said gross measurement in the bills of entry was as per the invoice i.e. 465sqm and the value in the invoice determined on the basis of chargeable measurement. He submits that difference is only about 11.98% which is within the permissible error margin. The goods being natural mined products such marginal errors are required to be condoned and charge of mis-declaration of weight and value cannot be arrived. Since price of the slab is based on chargeable weight of a slab and cannot be varied by the difference in the measurement of the slab alleged by Company declared and ascertained measurement of the slab. Whatever may be the measurement of a slab, the value is related to the chargeable weight of that slab. Therefore, due to this minor difference, neither value can be enhanced nor redemption fine and penalty is imposable. He placed reliance on the following decisions:-

- (a) Topaim Properties Pvt. Limited vs. CC, Nhava Sheva – 2005 (192) ELT 950 (Tri. Mumbai)
- (b) Nitco Tiles Limited vs. CC (Imports) – 2008 (230) ELT 89 (Tri. Mumbai)
- (c) GM Exports vs. CCE, Bangalore – 2008 (226) ELT 571 (Tri. Bang.)
- (d) GE India Industrial Pvt. Limited vs. CC, Chennai – 2010 (252) ELT 78 (Tri. Chennai).

3. As regards the Appeal No. C/91/2012, learned Counsel submits that as per Public Notice No. 17/2010 dated 29.06.2010, relaxation was given in the case of imported Polished Granite Slabs and upto 5% excess quantity was allowed without imposition of fine and penalty. Therefore in the present case, excess quantity being 1.58% only, the value of the same should not

have been loaded in the total value. Hence duty demand is not proper. He placed reliance on the following decisions:-

(a) 2005 (179) ELT 421 (Tri. Chennai) – Indowind Energy Limited vs. CC (Sea Port-Import)

(b) 2002 (146) ELT 361 (Tri. Chennai) – Gupta Exports vs. CC, Chennai

(c) 2002 (145) ELT 543 (Tri. Chennai) – Saudagar Exports vs. CC, Chennai.

4. Shri Tara Prakash, learned Assistant Commissioner (AR) appearing on behalf of the Revenue reiterates the findings of the impugned order. He submits that there is admitted fact that excess quantity was found as compared to the declared Polished Granite Slabs. Therefore, in the case where excess quantity is within 5%, the learned Commissioner (Appeals) has not imposed any fine. However, in the case where the quantity is found more than 5%, no relaxation was given to the assessee and the value was rightly enhanced. Accordingly, in such case it amounts to mis-declaration of quantity and value of goods, therefore fine and penalty was rightly imposed.

5. We have carefully considered the submissions made by both the sides and perused the record. We find that appellant have heavily relied upon the Public Notice No. 17/2010 dated 29.06.2010 in support of their defense, which is reproduced:-

**OFFICE OF THE COMMISSIONER OF CUSTOMS CUSTOM HOUSE,
KANDLA, KUCHCHH COMMISSIONERATE**

F.No.S/20-02/2010 Appg(G)

Date: 29.06.2010

PUBLIC NOTICE NO. 17 / 2010 DATED 29.06.2010

Sub: Guidelines for Assessment and Examination of goods on weighment basis

Under the provisions of the Customs Act, 1962 regarding.

Attention of all the assessing and examining officers / staff working at Kuchchh Commissionerate, is invited towards assessment and examination of all goods whose standard unit of measurement i.e. Unit Quantity Code (UQC) is mentioned in terms of weight as per the Customs Tariff Act, 1975 as amended from time to time. For assessment of such goods, examination order shall necessarily contain verification of total gross / net weight of the goods during examination and the same shall invariably be endorsed by examining staff in the examination report of the subject goods on Bill of Entry.

2. The issue was examined on the basis of the provisions made in the Customs Appraising Manual, Chapter IV of Volume III deals with weighment for assessment purpose. As per Point 6(E) of the Manual, if the deviation in declared weight is not more than 1% or if the amount of duty involved on excess weight doesn't exceed Rs. 25/-, the declared weight may be accepted. As per Point No 10, when excess weight over the prescribed allowance is noticed, the weight and value of the consignment should be proportionately increased on the B/E and the license debited with the full rate or value, so re-determined.

3. In view of the guidelines of the Appraising Manual, following practice will be followed in this Commissionerate.

(i) In all kind of cargos, including scrap, no adjudication will be done up to 1% deviation in the actual weight than the declared weight, but the value of the Excess goods will be loaded in the total assessable value and appropriate duties will be recovered.

(ii) If the variation is above +/-1%, value shall be loaded with adjudication with appropriate redemption fine and penalty.

4. In case of Marble Slab / Blocks (polished and rough) following practice will be followed.

- (i) In case of variation upto +/- 5% in terms of weight or surface area, value shall be loaded without adjudication and proper duty will be recovered.
- (ii) If the variation is above +/- 5 %, value shall be loaded and cases adjudicated with appropriate redemption fine and penalty.
- (iii) Actual quantity of the cargo will be debited against the license issued to the Importer.

Encl: As above

(D. S. Negi),
Commissioner of Customs,
Kachchh Commissionerate,
Kandla

Copy to,

1. The Chief Commissioner of Customs, Gujarat Zone, Ahmedabad.
2. PA, to the Commissioner.
3. All Additional/Joint Commissioners of Customs, C.H.Kandla.
4. All the Deputy/Assistant Commissioner of Customs, C.H.Kandla/ Mundra.
5. The Assistant Commissioner of Customs, Customs Division, Bhuj.
6. All Groups/ Sections, Customs, Kandla.
7. The Gujarat Chamber of Commerce & Industries, Ahmedabad..
8. The Gandhidham Chamber of Commerce & Industries, Gandhidham.
9. The Kandla Custom House Agents' Association, Gandhidham.
10. The Mundra Custom House Agents' Association, Mundra.
11. The Kandla Port Steamship Agents' Association, Gandhidham.
12. The Mundra Port Steamship Agents' Association, Mundra.
13. The Container Freight Station Association of Mundra, Bharat CFS Zone- , Mundra.
14. The Chairman, Kandla Port Trust, Gandhidham.
15. Notice Board / Guard File.

As per above Public Notice in Para-4, it is absolutely clear that even if variation is up to 5% or more than 5%, value of the excess weight has to be added in the bills of entry and duty shall be recovered. In case of variation is above 5% not only value shall be added but the same will be adjudicated with redemption fine and penalty. Therefore, both the impugned orders were passed in accordance with the Public Notice 17/2010 dated

29.06.2010. The judgments relied upon by the appellant are on different facts therefore same are not applicable in the present case.

6. As per our above discussion and findings, we do not find any infirmity in the impugned orders hence the same are upheld and appeals are dismissed.

(Pronounced in the open court on 28.11.2022)

(Ramesh Nair)
Member (Judicial)

(Raju)
Member (Technical)

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