

**IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL, CHENNAI**

Customs Appeal No. 40620 of 2013

(Arising out of Order in Original No. 19996/2012 dated 31.12.2012 passed by the Commissioner of Customs (Seaport - Import), Chennai)

**M/s. Akash stone Industries Ltd.
(Now Aakash Universal Ltd.)**

Appellant

Santacruz Airport Side Marble Market
Western Express Highway
Vile Parle (East), Mumbai – 400 099.

Vs.

Commissioner of customs (Import)

Respondent

Custom House
60, Rajaji Salai
Chennai- 600 001.

With

Customs Appeal No. 40621 of 2013

(Arising out of Order in Original No. 19996/2012 dated 31.12.2012 passed by the Commissioner of Customs (Seaport - Import), Chennai)

M/s. Aashiva Contractors

Appellant

Santacruz Airport Side Marble Market
Western Express Highway
Vile Parle (East), Mumbai – 400 099.

Vs.

Commissioner of customs (Import)

Respondent

Custom House, 60, Rajaji Salai
Chennai- 600 001.

And

Customs Appeal No. 40622 of 2013

(Arising out of Order in Original No. 19996/2012 dated 31.12.2012 passed by the Commissioner of Customs (Seaport - Import), Chennai)

Shri Ramawatar Babulal Jajodia

Appellant

Bungalow No. 5, Megh Malhar Complex
Gen.A.K. Vaidya Marg
Gorgaon (East), Mumbai – 400 063.

Vs.

Commissioner of customs (Import)

Respondent

Custom House
60, Rajaji Salai
Chennai- 600 001.

APPEARANCE:

Shri Stebin Mathew, Advocate for the Appellant
Shri Anoop Singh, Authorized Representative for the Respondent

CORAM

Hon'ble Shri M. Ajit Kumar, Member (Technical)
Hon'ble Shri Ajayan T.V., Member (Judicial)

FINAL ORDER NOS. 40701 to 40703/2025

Date of Hearing : 19.06.2025
Date of Decision: 04.07.2025

Per M. Ajit Kumar,

These appeals are filed against Order in Original No. 19996/2012 dated 31.12.2012 passed by the Commissioner of Customs (Seaport - Import), Chennai (impugned order).

2. Brief facts of the case are that the intelligence developed by DRI, Mumbai Zonal Unit indicated that some importers including the appellants had imported consignments of polished (honed) marble slabs through Chennai Port by wrongly classifying them under CTH 6802 2110 of Customs Tariff Act and were availing benefit of exemption Notification No. 04/2006-CE dated 01.03.2006, whereas such marble slabs were actually classifiable under CTH 6202 2190 and were chargeable to CVD @ 16%. After due process of law, the Ld. Commissioner rejected the classification adopted by the appellants and reclassified the goods under CTH 6802 2190 and denied the benefit of Notification No. 04/2006-CE dated 1.3.2006. The impugned order further demanded differential duty of Rs.58,03,339/- along with interest from M/s. Akash Stone Industries Ltd. and Rs.6,71,121/- along with interest from M/s. Aashiva Contractors and imposed penalty equal to demand under Sec. 112(a) of the Customs Act, 1962. A penalty of

Rs.6,50,000/- was imposed on Shri Ramawatar Babulal Jajodia under sec. 112(a) of the Act. Hence the present appeals.

3. The Ld. Counsel Shri Stebin Mathew appeared for the appellants and Ld. Authorized Representative Shri Anoop Singh appeared for the respondent.

3.1 Shri Stebin Mathew the Ld. Counsel for the appellant submitted that;

A) The issue of classification and eligibility to exemption under Notification No. 4/2006 (C.E.) for the impugned goods has been finally settled in favour of the Appellants vide D. O. letter dt. 16.03.2012 issued by the Jt. Secretary (T.R.U.).

B) There existed a confusion regarding the classification of the impugned goods as is evident from the Letters dated 27.03.2006 and 16.03.2012 of the Board, hence willful mis-declaration cannot be alleged nor can the extended period of limitation be invoked.

C) The fact that the Commissioner refrained from imposing the mandatory penalty as stipulated in Section 114A of the Customs Act, 1962 acknowledges the fact that the demand cannot be confirmed by invoking extended period under Section 28 of the Customs Act, 1962.

D) The confirmation of demand by invoking the extended period of limitation as provided in Section 28 is hence liable to be set aside.

E) The Ld. Commissioner has grossly erred in imposing equivalent penalty under Section 112(a) of the Customs Act, 1962 in absence of any mens rea.

The Ld. Counsel stated that it is settled position in law that in absence of any deliberate attempt to mis-declare etc. and resultant absence of

mens rea to evade customs duty, penalty cannot be imposed on the Appellants. He prayed that the impugned order may be set aside.

3.2 The Ld. Authorized Representative for the respondent has reiterated the points given in the impugned order. He further submitted that as per the Hon'ble Supreme Court's judgment in **Commissioner of Customs, Bangalore Vs Spice Telecom** [2006 (10) TMI 9 – Supreme Court], any amendment made to a notification will be available only prospectively. He hence prayed that the appeal may be rejected.

4. We have heard the parties to the dispute. We have also carefully gone through the appeal memorandum and related papers. We find that the appellant had imported consignments of polished (honed) marble slabs through Chennai Port. The impugned order has held that the goods were appropriately classifiable under CTH 62022190 and were chargeable to CVD @ 16% and that the said Notification provided exemption from CVD in excess of Rs.30/- per square meter to marble blocks and tiles falling under CTH 25121220, 25121290 and 68022110. That the benefit of Notification No. 04/2006-CE dated 01.03.2006 was wrongly availed by the importers, by willfully misstating the classification of marble slabs under CTH 68022110 whereas such marble slabs were actually classifiable under CTH 6202 2190 and were chargeable to CVD @ 16%.

5. Sl. No. 2 of Notification No. 04/2006-CE dated 01.03.2006, which is at the center of the dispute, is reproduced below for ease of reference.

S. No.	Chapter or heading or sub-heading or Tariff item of the First Schedule	Description of excisable goods	Rate (in Rs.)	Condition
2	2515 1220, 2515 1290 6802 2110	Marble slabs and tiles	Rs. 30/- per sq. mtrs.	--

From the above it is seen that the notification while mentioning the description of the excisable goods as 'marble slabs and tiles', refers to Customs Tariff Heading 6802 2110 and does not mention Customs Tariff Heading 6802 2190, leading to the confusion, which has culminated in the impugned order.

6. We find that a similar matter in the appellants own case (although not referred to by the appellant, perhaps because of it being an interim order), relating to waiver of pre-deposit has been decided by a Coordinate Bench of this Tribunal in **Akash Stone Industries Ltd. Vs. Commr. Of Cus. (Port-Import), Chennai** [2014 (302) ELT 475 (Tri.-Chennai)]. Paragraph 5 of the Tribunal's decision is reproduced:

"5. After considering the submissions by both sides, we find that Ministry's letter D.O.F. No. 334/3/2012-TRU, dated 16-3-2012, is relevant for the purpose of understanding the issues, as reproduced below :-

"13. Classification of Natural marble Slabs subjected to processes of resin filling, fibre netting and Polishing :

13.1 Marble slabs and tiles are classified under Chapter 25 or Chapter 68 of the Central Excise Tariff depending on the extent to which they have been finished. Polished marble slabs are classifiable under Heading 6802 21 90 which attracts the general effective rate of 10% ad val. Concessional excise duty of ₹ 30 per square meter is applicable to marble slabs and tiles falling under Heading Nos. 2515220, 25151290 or 6802 2110 in terms of Notification No. 4/2006-C.E., dated 1-3-2006. Representation were received by the Board that the benefit of this exemption is not being extended to polished marble slabs of Heading 68022190 as the latter does not find specific mention in the exemption entry even though covered by the description. It is pertinent to mention that the Board has examined similar issues in the past on more than one occasion and clarified that the benefit of exemption will be available to goods as long as they are covered by the description. It is clarified that the benefit of concessional rate of ₹ 30 per square metre is available to polished marble slabs of Heading 68022190 under the said notification. For the removal of doubts, however, the relevant exemption entry is being amended to specifically include CETH 6802 21 90. (Notification No. 12/2012-C.E., dated 17th March, 2012 refers)."

clearly clarified that the polished marble slabs and tiles are classifiable under C.T.H. No. 6802 2190 would be eligible for the benefit of exemption under the said notification.”

Further, a Coordinate Bench of this Tribunal in **ORIENTAL TRIMEX LTD. Vs COMMISSIONER OF CENTRAL EXCISE, NOIDA** [2018 (363) E.L.T. 398 (Tri. - Chennai)], relying on TRU’s D.O. letter/ Circular dated 16.03.2012, decided a similar matter in favour of the appellant in the said appeal, while finding that the denial of benefit of notification was unjustified. Hence as per the Boards clarification the impugned goods, even if classifiable under CTH 6802 2190 as per the impugned order, are eligible for the benefit of Notification No. 04/2006-CE dated 1.3.2006. Judicial discipline requires that we follow the judgment of a Bench of co-equal strength.

7. Even otherwise the clarification of the Board is binding on departmental authorities. The Hon’ble supreme Court in **Commissioner of Customs, Calcutta etc. etc. Vs M/s Indian Oil Corporation Ltd. & Anr.** [AIR 2004 SUPREME COURT 2799 / Appeal (civil) 2342-2362 of 2001, Dated: 17/02/2004], held;

“As per the decision of the Constitution Bench in **Collector of Central Excise, Vadodara V. Dhiren Chemical Industries** [2002 (139) E.L.T. 3 (S.C.) / AIR 2002 SUPREME COURT 453]. After this Court had construed an exemption notification in a particular manner, it said:

"We need to make it clear that, regardless of the interpretation that we have placed on the said phrase, if there are circulars which have been issued by the Central Board of Excise and Customs which place a different interpretation upon the said phrase, that interpretation will be binding upon the Revenue".

Despite the categorical language of the clarification by the Constitution Bench, the issue was again sought to be raised before a Bench of three Judges in **Central Board of Central Excise, Vadodara v. Dhiren Chemicals Industries**: 2002 (143) ELT 19 where the view of the Constitution Bench regarding the binding nature of circulars issued under Section 37B of the Central Excise Act, 1944 was reiterated after it was drawn to the attention of the Court by the Revenue that there were in fact circulars issued by the Central Board of Excise and Customs which gave a different interpretation to the phrase as interpreted by the Constitution Bench. The same view has

also been taken in **Simplex Castings Ltd. v. Commissioner of Customs, Vishakhapatnam** 2003 (5) SCC 528.

The principles laid down by all these decisions are :

- (1) Although a circular is not binding on a Court or an assessee, It is not open to the Revenue to raise the contention that is contrary to a binding circular by the Board. When a circular remains in operation, the Revenue is bound by it and cannot be allowed to plead that it is not valid nor that it is contrary to the terms of the statute.
- (2) Despite the decision of this Court, the Department cannot be permitted to take a stand contrary to the instructions issued by the Board.
- (3) A show cause notice and demand contrary to existing circulars of the Board are ab initio bad
- (4) It is not open to the Revenue to advance an argument or file an appeal contrary to the circulars.

7.1 However in **Commissioner Of Central Excise, Bolpur vs M/S. Ratan Melting & Wire Industries** [2008-TIOL-194-SC-CX-CB], a five judge Bench of the Hon'ble Supreme Court had after examining the Constitutional Bench judgment in **Collector Vs Dhiren Chemical Industries** [2002 (139) E.L.T. 3 (S.C.)], felt that the judgment was being misunderstood and that a circular which is contrary to the statutory provisions has really no existence in law. The same position was restated by the Supreme Court in **Commissioner Vs Merino Panel Product Ltd.** [2023 (383) E.L.T. 129 (S.C.)] which held that;

“27. Based on our reliance on Ratan Melting (supra) and Ahmedabad Urban Development (supra) we have no reason to doubt that if a circular has been issued contrary to statutory provisions or in defiance of the interpretation of such provisions by a judicial forum, the circular in question would be stripped of any binding force.”

7.2 Since the TRU's circular referred to above has not been issued contrary to statutory provisions or in defiance of the interpretation of such provisions by a judicial forum and is clarificatory in nature, to overcome a situation where the notification mentions the description

of the goods but has inadvertently omitted the Customs Tariff Heading, it will be binding on the department officers. Moreover, as held by the Hon'ble Apex Court in the case of **Suchitra Components Ltd. v. Commissioner** [2007 (208) E.L.T. 321 (S.C.)], held that a beneficial Circular is to applied retrospectively. The relevant portion reads as under :-

“We have heard Mr. A.R. Madhav Rao, learned counsel for the appellant and Mr. K. Radhakrishna, learned Senior Counsel for the respondent. We have perused the orders passed by the lower Authorities and also of the Tribunal. The point raised by the learned counsel for the appellant is covered by the recent judgment of this Court in Civil Appeal No. 4488 of 2005, *Commissioner of Central Excise, Bangalore v. M/s. Mysore Electricals Industries Ltd.*, reported in 2006 (204) E.L.T. 517 (S.C.). In the said Judgment, this Court held that a beneficial circular has to be applied retrospectively while oppressive circular has to be applied prospectively. Thus, when the circular is against, the assessee, they have right to claim enforcement of the same prospectively.”

(emphasis added)

8. The matter having been resolved in favour of the appellant on merits the others issues involved like that of interest, penalty etc. do not survive.

9. In the circumstances we deem it fit to set aside the impugned order and allow the appeals, and it is so ordered. The appellants are eligible for consequential relief, if any, as per law.

(Order pronounced in open court on 04.07.2025)

(AJAYAN T.V.)
Member (Judicial)

(M. AJIT KUMAR)
Member (Technical)