Circular No. 84/2003-Cus.
September 24 , 2003

F.No.438/38/2000-Cus.IV
Government of India
Ministry of Finance
(Department of Revenue)
Central Board of Excise & Customs

Subject : Marble Imports-valuation-Finalisation of Provisional Assessments-reg.

I am directed to refer to Board's Circular No. 40/2002-Cus., dated 17/7/2002, on the above-mentioned subject, wherein various issues involved in finalisation of provisional assessment cases of marble imports were clarified. In the said Circular, para 2(d) contained guidelines on valuation of marble slabs and marble blocks. Subsequently, vide Circular No.45/2002-Cus, dated 23.7.2002 , it was decided that application of the para 2(d) of said Circular should be kept in abeyance.

2. The matter has been examined by the Board. It has been decided that the valuation of marble ,i.e , rough or raw marble blocks, rough marble slabs, polished marble blocks, should be considered on merits as per the provisions of the Customs Valuation (Determination of Price of Imported Goods) Rules, 1988. Where necessary , the data available with the Directorate of Valuation could be considered for guidance.

3. Accordingly, all pending provisional assessment cases relating to marble imports may be finalised on the basis of above instructions.

4. Difficulties, if any, in implementation of above instructions, may be brought to the notice of the Board.

5. Kindly acknowledge receipt of the Circular.

6. Hindi version will follow.

D.S. Garbyal
Under Secretary to the Government of India
Phone No. 23094182

IndiaCode

Circular No. 40/2002-Cus.

17th July, 2002.

F.No.438/38/2000-Cus.IV

Government of India

Ministry of Finance

(Department of Revenue)

Central Board of Excise & Customs

Subject: Marble Imports- Finalisation of Provisional Assessments-reg.

It has been brought to the notice of the Board that a number of provisional assessment cases relating to marble imports are pending in Custom Houses for finalisation. The cases are reported to be pending for the want of decisions on the following five pending issues:

a.	Classification of marble- marble versus calcareous stone- whether the imported goods are to be treated as marble on the basis commercial parlance or on the basis of petrological composition;
b.	Missing documents;
c.	Condonation of excess quantity of imported marble;
d.	Valuation of imported marble;
e.	Applicability of principles of unjust enrichment for the purpose of refund of customs duty, if any, arising at the time of finalisation

IndiaCode

A number of references have been received from trade as well as from Custom Houses requesting the Board to clarify the above-said issues.

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

a. Marble versus calcareous stone :

In the case of M/s Akbar Badruddin Jiwani vs Collector of Customs 1990 (47) ELT 161 (SC), the Honourable Supreme Court had consciously made an exception to the general rule of giving precedence to popular/commercial meaning over the technical meaning and held that heading 25.15 of the First Schedule to the Customs Tariff Act, 1975 must be construed by its technical sense and not by applying a commercial nomenclature test. The matter was discussed in the Conference of Commissioners on Tariffs and Allied Matters held at Goa in November, 2000 and taking due note of the said judgement, it was decided that the provisional assessment cases should be finalised on the basis of test reports of the samples received from Geological Survey of India(GSI), Nagpur. The Tariff Conference had given clear directions to the field formations to decide the cases on the basis of test reports from GSI, Nagpur. The decision of the Tariff Conference was reiterated by the Board vide its letter F.No.438/38/2000-Cus.IV, dated 9.10.2001. It has been decided that the cases should be finalised on the basis of test reports from GSI, Nagpur. It has also been decided that in the event of conflicting reports from Central Revenue Control Laboratory (CRCL) and GSI, Nagpur, reliance should be placed on the report of GSI, Nagpur.

It has been reported that in a number of cases, samples were not sent to GSI, Nagpur and that these were sent to CRCL for testing. In such cases, the CRCL has not given its report on the basis of petrological composition and has stated that "goods are commercially known as marble". It has been decided that in cases where remnant samples are available, these are to be re-tested at GSI, Nagpur. In cases where remnant sample is not available after proper search which should be certified by

Commissioner himself, the report of CRCL may be accepted if nothing contrary to the report of CRCL is there on record.

b. Missing documents :

It has been brought to the notice of the Board that in a number of cases the copies of licences are not available on record. In the absence of the copies of advance licences, the nexus point cannot be verified. Likewise, in a large number of cases the examination reports show that the samples were drawn and forwarded to the Group for testing. However, there is no record to show whether the samples were actually sent for test. In some cases the letter shows that the goods were sent to GSI, Nagpur but the test reports are not available. It has been reported that in most of the cases original/duplicate copies of Bills of entry are not available on record.

The Board has taken a serious view of the matter and has desired that the Commissioner should make efforts to reconstruct the files wherever possible. In cases where test reports of GSI, Nagpur or CRCL are missing, efforts should be made to get duplicate copies of test report from the concerned laboratory. As regards cases where reconstruction is not possible, it has not been found possible to lay down any general guidelines, as facts would vary from case to case. Giving the benefit of doubt to the importers in cases where documents are missing, would be against the interests of revenue. It has, therefore, been decided that the Commissioners should decide the cases on merits considering the facts of each case.

c. Condonation of excess quantity :

It was clarified by the Board vide letter F.No.605/226/94-DBK, dated 18.5.2001, that quantity imported in excess of the quantity declared in the invoice/packing list could not be condoned at the time of the finalisation of provisional assessments and that in all such cases where excess quantity of marble was imported, penal proceedings should be initiated against the importers under the Customs Act, 1962. The said instructions were reiterated by the Board vide letter F.No.438/38/2000-Cus.IV, dated 9.10.2001. It has also been noted that the DGFT had taken wastage into consideration while issuing licences to the importers. Condonation of excess quantity at this stage would, therefore, amount to granting double benefit to the importers. Further, on the Central Excise side, there is no provision for allowing wastage while assessing duty. Taking all aspects into account, it has been decided that quantity imported in excess of the quantity declared in the invoice/packing list should not be condoned at the time of finalisation of provisional assessment cases.

d. Valuation :

It has been reported that marble has been imported at different rates at different point of time. For sometime, the marble slabs were assessed at US$15 per sq mtr. and later on it was increased to US$ 30 per sq. mtr. based on overseas enquiries. It has been decided that provisional assessments should be finalised taking US$ 30 per sq mtr. as the assessable value for marble slabs. In case, the value declared was more than US$ 30 per sq. mtr., then the higher value would be taken. It has also been noted that Mumbai Custom House had fixed the value of marble blocks @ US$ 70 PMT (FOB) for import from Iran and US$ 90 PMT (FOB) for import from Italy. It has been decided that for the past period this value should be taken as the bench mark for finalising the provisional assessments. Needless to state, if the value declared was more than the aforesaid values, then the higher value would be taken to finalise the provisional assessment.

e. Unjust enrichment :

It was clarified by the Board vide letter No.605/226/94-DBK, dated 29.8.2000, that the principles of unjust enrichment would apply, if a refund is payable consequent to finalisation of provisional assessment. The instructions were reiterated vide Board's letters F.No.438/38/2000-Cus.IV, dated 21.9.2001, and dated 9.10.2001. Subsequently, instructions have been issued vide letter F.No. 275/37/2000-CX 8A, dated 2.1.2002 regarding return of deposits made in terms of section 35F of the Central Excise Act, 1944 and section 129E of the Customs Act, 1962. It has been decided that the Board's instructions F.No.275/37/2000-CX 8A, dated 2.1.2002, would be applicable only in cases of refund of pre-deposits made on the direction of appellate authorities or court pending final decision in the appeal. It is noted that in the cases of provisional assessment relating to marble imports, the duty/deposits had been collected prior to clearance of the goods, and therefore, it is to be presumed that the importers would have passed on the incidence of duty/deposit to the buyers of the goods.

3. The pending provisional assessments cases relating to marble imports may be finalised on the basis of above instructions. The Board desires that the pending cases should be finalised by 30/9/2002.

4. Difficulties, if any, in implementation of above instructions, may be brought to the notice of the Board. Kindly acknowledge receipt of the Circular.

IndiaCode