

2020-TIOL-400-CESTAT-AHM

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH, AHMEDABAD
REGIONAL BENCH
COURT NO - III**

Customs Appeal No. 91 of 2011-DB

Arising out of OIA No. 429-431/2010/CUS/COMMR-A-/KDL, Dated: 29.11.2010
Passed by Commissioner (Appeals) Commissioner of Customs Kandla

**Date of Hearing: 26.09.2019
Date of Decision: 24.01.2020**

**DHARTI DARSHAN MARBLE PVT LTD
VILLAGE-TANVAN, POST-AMET
RAJSAMAND, RAJASTHAN**

Vs

**COMMISSIONER OF CUSTOMS
KANDLA CUSTOM HOUSE NEAR BALAJI TEMPLE
KANDALA, GUJARAT**

Customs Appeal No. 92 of 2011-DB

Arising out of OIA No. 429-431/2010/CUS/COMMR-A-/KDL, Dated: 29.11.2010
Passed by Commissioner (Appeals) Commissioner of Customs Kandla

**DHARTI DARSHAN MARBLE PVT LTD
VILLAGE-TANVAN, POST-AMET
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Vs

**COMMISSIONER OF CUSTOMS
KANDLA CUSTOM HOUSE NEAR BALAJI TEMPLE
KANDALA, GUJARAT**

Customs Appeal No. 93 of 2011-DB

Arising out of OIA No. 429-431/2010/CUS/COMMR-A-/KDL, Dated: 29.11.2010
Passed by Commissioner (Appeals) Commissioner of Customs Kandla

**DHARTI DARSHAN MARBLE PVT LTD
VILLAGE-TANVAN, POST-AMET
RAJSAMAND, RAJASTHAN**

Vs

**COMMISSIONER OF CUSTOMS
KANDLA CUSTOM HOUSE NEAR BALAJI TEMPLE
KANDALA, GUJARAT**

Appellant Rep by: None

Respondent Rep by: Shri S K Shukla, AR

CORAM: Ramesh Nair, Member (J)

Raju, Member (T)

Cus -

Revenue has enhanced the value of the imported Rough Marble Blocks on the ground that the floor price of USD 275 per MT CIF was fixed under Policy Circular [no. 13 \(RE- 08\)/2004-09](#) dated 30/06/2008 - demand confirmed by the original authority and upheld by Commissioner(A), therefore, appeal to CESTAT.

Held:

Tribunal in the case of Siemens Gamsha Renewable Power P Ltd. has taken a view that merely on the basis of minimum import price fixed by policy circular the same cannot be a reason for enhancement of the value, therefore, the value enhancement on the basis of policy circular taking the floor price is not sustainable - It is also observed that the Adjudicating Authority deviated from the basic objection and relied upon contemporaneous import wherein the import was made at the rate of USD 275 which incidentally is also keeping in view the policy circular - appellant were not provided the contemporaneous bills of entry, therefore, in violation of principle of natural justice, the enhancement of value on the basis of contemporaneous import cannot be allowed - order of enhancement of value is set aside - Insofar as violation of requirement of circular that if declared value is less than the floor price, i.e USD 275, the appellant is required to obtain authorization from DGFT in terms of circular no. [13 \(RE- 08\)/2004-09](#) dated 30/06/2008, as the appellant has not obtained any authorization, the appellant's goods was rightly confiscated, however, the redemption fine and penalty is reduced: CESTAT [para 4]

Appeal partly allowed

Case laws cited:

Siemens Gamsha Renewable Power P Ltd. vs CCE 2019 (365) ELT 631 (tri- Ahmd)... Para 3

HRB Boarding & Lodging P Ltd. Vs Union of India - [2015-TIOL-1500-HC-MAD-CUS...](#) Para 3

Nhava Sheva Vs Magus Estate & Hotel P Ltd. - [2007-TIOL-2349-CESTAT-MUM...](#) Para 3

FINAL ORDER NOS. A/10251-10253/2020

Per: Ramesh Nair:

The brief facts of the case are that the appellant have filed Bills of Entry for clearance of Rough Marble Blocks. The appeal wise details are as under:

Appeal No.	Bills of Entry no.	Quantity	Value of Goods	Declared Price	Redemption Fine	Penalty
C/91/2011	149834 dated 16.03.2010	202.900MTS	Rs. 23,05,953/-	USD 241.22 CIF	Rs. 2,00,000/-	Rs. 40,000/-
C/92/2011	149833 dated 16.03.2010	101.400MTS	Rs. 13,03,704/-	USD 241.22 CIF	Rs. 1,00,000/-	Rs. 20,000/-

C/93/2011	149835 dated 16.03.2010	97.900 MTS	Rs. 11,54,605/-	USD 250.31 CIF	Rs. 1,00,000/-	Rs. 20,000/-
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The appellant at the time of clearance waived the Show Cause Notice and personal hearing. The Adjudicating Authority passed the Adjudication order where the value of the goods was increased from declared price as mentioned above to USD 275 per MT CIF as per policy circular [no. 13 \(RE-08\)/2004-09](#)

dated 30/06/2008. The enhancement of the value was also decided on the basis of contemporaneous import wherein the import was made at the rate of USD 275 CIF. It was also held that since the floor price is fixed at USD 275 per MT CIF as per policy circular dated 30/06/2008 for import made below such price, i.e. at USD 241.22/250.31 per MT CIF, the appellant was required to obtain specific authorization. Therefore, non compliance of policy circular made the goods liable for confiscation. Accordingly, the Adjudicating Authority confiscated the goods with option to redeem the same on payment of redemption fine under section 125 ibid. Penalties as mentioned above were also imposed under section 112(a) of Customs Act, 1962. The value of goods was enhanced at the rate of USD 275 MT CIF under the Rule 4 of Customs (Valuation for determination of price of imported goods) Rules, 2007. Being aggrieved by the adjudication order, the appellant filed appeal before the Commissioner (Appeal) who has not interfered with the reason given by the Adjudicating Authority in the Order in Original. Accordingly, all the three appeal filed by the appellant were rejected. Therefore, the present appeals filed by the appellant.

2. None appeared on behalf of the appellant despite several dates of hearing fixed in the matter. Therefore, the appeal is taken for disposal on the basis of available records.

3. Shri S.K. Shukla, Learned Superintendent (Authorised Representative) appearing on behalf of the Revenue reiterates the findings of the impugned order. He has relied on the following judgments:

1. Siemens Gamsha Renewable Power P Ltd. vs CCE 2019 (365) ELT 631 (tri- Ahmd)

2. HRB Boarding & Lodging P Ltd. Vs Union of India 2015 (322) ELT 452 (Mad) = [2015-TIOL-1500-HC-MAD-CUS](#)

3. Nhava Sheva Vs Magus Estate & Hotel P Ltd. 2008 (222) ELT 245 (Tri- Mum.) = [2007-TIOL-2349-CESTAT-MUM](#)

4. We have heard learned Authorised Representative and perused the records. We find that the basic objection of the Revenue is that the floor price of USD 275 per MT CIF of the goods-Rough Marble was fixed under policy circular [no. 13 \(RE- 08\)/2004-09](#)

dated 30/06/2008. On that basis, the value was enhanced. In the identical issue, this Tribunal in the case of

Siemens Gamsha Renewable Power P Ltd. vs CCE 2019 (365) ELT 631 (tri- Ahmd)

has taken a view that merely on the basis of minimum import price fixed by policy circular cannot be a reason for enhancement of the value. Therefore, the value was enhanced on the basis of policy circular taking the floor price is not sustainable. It is also observed that the Adjudicating Authority deviated from the basic objection and relied upon contemporaneous import wherein the import was made at the rate of USD 275. We find that that even the price of USD275 per MT CIF is also keeping in view the policy circular. Secondly, the appellant were not provided the contemporaneous bills of entry. Therefore, if any new material was to be relied upon the appellant were to put to notice, which the Adjudicating Authority failed to do so. Therefore, in violation of principle of natural justice, the enhancement of value on the basis of contemporaneous import cannot be allowed. Therefore, we set aside the enhancement of the value. As regard the violation of requirement of circular that in case of declared value is less than the floor price, i.e USD 275, the appellant is required to obtain authorization from DGFT in terms of circular no. [13 \(RE- 08\)/2004-09](#)

dated 30/06/2008. However, the appellant have not obtained any authorization. Therefore, for violation of the condition of the circular the appellant's goods was rightly confiscated. However, considering the facts, we set aside the enhancement of the value. The redemption fine and penalty needs to be reduced. Accordingly, we reduce the redemption fine from Rs. 2 lakhs to Rs. 1 lakhs and penalty from Rs. 40,000/- to Rs. 20,000/- in case of Appeal no. C/91/2011 and redemption fine from Rs. 1,00,000 to Rs. 50,000 and penalty from Rs. 20,000/- to Rs. 10,000/- each in the case of Appeal nos. C/92/2011 and C/93/2011. The impugned order is modified to the above extent. The appeals are partly allowed in above terms.

(Pronounced in the open court on 24.01.2020)

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