

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL  
WEST ZONAL BENCH, AHMEDABAD  
COURT NO. I**

**Appeal Nos. C/106-115/2011-DB**

**Arising out of Order-in-Appeal No. OIA-454-463/2010/CUS/COMMR-A-  
/KDL, Dated: 29.12.2010**

**Passed by Commissioner (Appeal) of Customs, Kandla**

**Date of Hearing: 04.03.2019**

**Date of Decision: 02.04.2019**

**M/s FLORA MARMO INDUSTRIES PVT LTD**

**Vs**

**COMMISSIONER OF CUSTOMS  
KANDLA**

**Appellant Rep by: Shri C M Sharma, Consultant**

**Respondent Rep by: Shri T K Sikdar, Assistant Commissioner AR**

**CORAM: Ramesh Nair, Member (J)**

**Raju, Member (T)**

**Cus - There are two issues to be decided - One is that whether the service of less charge demand notice was made properly in accordance with law to the assessee and if not, then whether the demand is time-barred and second, whether the assessee imported goods i.e. Polished Marble Slabs under CTH 68022190 is eligible for exemption Notfn 4/2006-CE - As regards the issue of service of less charge demand notice, as per undisputed fact that the notices were not served on assessee but the same were served to CHA of assessee - As per Section 28, the notice to be given to the person who is liable to pay the duty - Assessee is the only person who is liable to pay duty and notice should have been served on assessee - Unless otherwise, the other person, in this case the CHA, is specifically authorized for the purpose of receiving the less charge demand notice - Nothing is on record to show that assessee has specifically given authorization to the CHA for receiving the less charge demand notice - The goods were imported and cleared in the month of May 2007 to July 2007 - With these clearance, the job of CHA was over - Thereafter, the less charge demand notices were issued mentioning date 0/9/2007 - Therefore, at the time of issuing the less charge demand notice, the CHAs job of clearance of goods was clearly completed - Moreover, the CHA has not been authorized to receive the less charge demand notices - In that case, the service of less charge demand notice served on CHA is not valid service of notice to the assessee - The assessee received the less charge demand notices from their CHA M/s. Shakti Enterprises Pvt. Limited only on 23.08.2008 i.e. much after the lapse of six months time provided under Section 28 of the Customs Act, 1962 - Therefore, all the less charge demand notices are time-barred -**

Accordingly, impugned orders are set-aside and appeals are allowed on limitation without going into merit of the case: CESTAT

Appeals allowed

Case laws cited:

*CC, Cochin vs. Trivandrum Rubber Works Limited - 2002-TIOL-232-SC-CUS... Para 2*

*Principal Commissioner of Customs (Import), ICD vs. Santosh Handloom - 2016-TIOL-936-HC-DEL-CUS... Para 2*

*Classic Marble vs. CC (Import), Mumbai. 2009 (238) ELT 282 (Tri. Mum.)... Para 2*

*Franco-Indian Pharmaceuticals Pvt. Limited vs. CC, NCH, Mumbai - 2016-TIOL-1948-CESTAT-MUM... Para 2*

*CC, Mumbai vs. Airport Authority of India. 2015 (325) ELT 823 (SC)... Para 2*

*Aspinwall & Company vs. CCE, Trichy. 2001 (132) ELT 644 (Tri. Chennai)... Para 2*

*Krisons Electronics Systems Limited vs. CC, Calcutta. 1996 (87) ELT 514 (Tri.)... Para 2*

*Nirmal Products vs. CCE, Jaipur - 2010-TIOL-1573-CESTAT-DEL... Para 2*

FINAL ORDER NOS. A/10629-10638/2019

Per: Ramesh Nair:

The issues before us to be decided are as under:-

(a) Whether the appellant are eligible for exemption Notification No. 4/2006-CE dated 01.03.2006 in respect of the goods imported by them namely, Marble Slabs and whether the same is classifiable under heading 6802 21 90 from payment of Countervailing Duty (CVD) ;

(b) Whether the service of less charge demand notices sent to the CHA of the appellant is to be considered a proper service of notice to the appellant, consequently whether the less charge demand notice is time-barred or otherwise.

2. Shri C.M. Sharma, Ld. Consultant appearing on behalf of the appellant submits that the appellant have imported polished marble slabs classifying the same under CTH -68022110 accordingly, the appellant are entitled for the exemption Notification No. 4/2006-CE dated 01.03.2006 (Serial No. 2). He submits that the ambiguous words in the Notification No. 4/2006-CE, in respect of the appellant's goods, have been rectified by amending exemption entry in the Notification No. 12/2012-CE dated 17.03.2012 wherein the Customs Tariff Heading 6802 21 90 also added therefore, this amendment is clarificatory. In this regard, the Board has issued a Circular

under DOF No. 334/3/2012-TRU dated 16.03.2012 wherein as per Para 13, it was clearly clarified that the benefit of concessional rate of Rs. 30.00 per square meter is available to polished marble slabs of 68022190 under the Notification No. 4/2006-CE. Therefore, as per Circular, the appellant is entitled for the exemption. He further submits that the less charge demand notices were initially delivered to their CHA which were not forwarded to them and the same were received by the appellant at a much later date i.e. beyond six months from the date of less charge demand notices were issued. Accordingly, all the notices become time-barred. He submits that, in fact no service of notices were made by the department to the appellant. For this reason, the demand confirmed by the Revenue is also not legal and correct. In support of his submission, he placed reliance on the following judgments:-

*(a) 1999 (106) ELT 9 (SC) CC, Cochin vs. Trivandrum Rubber Works Limited = 2002-TIOL-232-SC-CUS*

*(b) 2016 (337) ELT 44 (Del.) – Principal Commissioner of Customs (Import), ICD vs. Santosh Handloom = 2016-TIOL-936-HC-DEL-CUS.*

*(c) 2009 (238) ELT 282 (Tri. Mum.) Classic Marble vs. CC (Import), Mumbai.*

*(d) 2016 (340) ELT 387 (Tri. Mumbai) – Franco-Indian Pharmaceuticals Pvt. Limited vs. CC, NCH, Mumbai = 2016-TIOL-1948-CESTAT-MUM.*

*(e) 2015 (325) ELT 823 (SC) – CC, Mumbai vs. Airport Authority of India.*

*(f) 2001 (132) ELT 644 (Tri. Chennai) – Aspinwall & Company vs. CCE, Trichy.*

*(g) 1996 (87) ELT 514 (Tri.) – Krisons Electronics Systems Limited vs. CC, Calcutta.*

*(h) 2010 (254) ELT 538 (Tri. Del.) – Nirmal Products vs. CCE, Jaipur = 2010-TIOL-1573-CESTAT-DEL.*

3. Shri T.K.Sikdar, Ld. Assistant Commissioner (AR) appearing on behalf of the Revenue reiterated the findings of the impugned order. He submits that it is clear that the marble slabs of CTH 68022190 was not exempted under Notification No. 4/2006-CE which was subsequently added only with effect from 17.03.2012 therefore, prior to this date, the goods imported by the appellant were not exempted under Notification No. 4/2006-CE. As regards the submissions of Ld. Counsel regarding service of less charge demand notice, he submits that the CHA is the agent of the appellant and therefore, the service of notice to CHA is as good as service of notice to the appellant and on that account, demand notice cannot be dropped.

4. We have carefully considered the submissions made by both the sides and perused the record. We find that there are two issues to be decided. One is that whether the service of less charge demand notice was made properly in accordance with the law to the appellant and if not, then

**whether the demand is time-barred and second, whether the appellant imported goods i.e. Polished Marble Slabs under CTH 68022190 is eligible for exemption Notification No. 4/2006-CE. As regards the issue of service of less charge demand notice, we find that as per undisputed fact that the notices were not served on appellants but the same were served to the CHA of the appellant. As per Section 28, the notice to be given to the person who is liable to pay the duty. In this case, the appellant are only person who are liable to pay the duty and the notice should have been served on the appellant. Unless otherwise, the other person, in this case the CHA, is specifically authorized for the purpose of receiving the less charge demand notice. Nothing is on record to show that the appellant has specifically given authorization to the CHA for receiving the less charge demand notice.**

**In the case of CC, Cochin vs. Trivandrum Rubber Works Limited (supra) the Hon'ble Supreme Court held that notice for short levy required to be served on the person chargeable with duty, that is, the importer. Notice addressed to the importer service on his clearing agent (CHA) on the last day before expiry of the period of limitation of six months but served on the importer himself after expiry of the limitation period. Clearing agent's duties and functions under the Customs Act ordinarily come to an end with clearance of the imported goods and their delivery to the importer/owner. Service of the notice on the clearing agent thereafter not construable as a valid service on the importer/owner. In the present case, the goods were imported and cleared in the month of May 2007 to July 2007. With these clearance, the job of CHA was over. Thereafter, the less charge demand notices were issued mentioning date that is, 0.9.2007 (0/9/2007). Therefore, at the time of issuing the less charge demand notice, the CHAs job of clearance of goods was clearly completed. Moreover, the CHA has not been authorized to receive the less charge demand notices. In that case, the service of less charge demand notice served on CHA is not valid service of notice to the appellant. The appellant received the less charge demand notices from their CHA M/s. Shakti Enterprises Pvt. Limited only on 23.08.2008 i.e. much after the lapse of six months time provided under Section 28 of the Customs Act, 1962. Therefore, all the less charge demand notices are time-barred. Accordingly impugned orders are set-aside and appeals are allowed on limitation without going into merit of the case.**

**(Order pronounced in the open court on 02.04.2019)**