CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH- COURT NO. I

CUSTOMS APPEAL No. 51057 of 2025

(Arising out of Order-in-Original No. udz-excus-000-com-47-2024-25 dated 28.01.2025 passed by the Commissioner of Central Excise & CGST Commissionerate, Udaipur)

Abhishek Exporters **....Appellant**
H-208, Udyog Vihar,
Sukher, Udaipur

Versus

Commissioner of Central Excise & CGST, Udaipur....Respondent
Udaipur, Rajasthan

WITH

C/51060/2025; C/51062/2025; C/51063/2025; C/51124/2025; C/51199/2025; E/51019/2025; E/51061/2025; E/51879/2025; E/51880/2025; E/51881/2025; and E/51882/2025

APPEARANCE:
Mr. B.L. Narashimhan and Shri Anurag Kapur and Mr. Ashwin Sundaram, advocates for the appellant

Mr. Ajay Jain, special counsel for the department

CORAM : HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR. K ANPAZHAKAN, MEMBER (TECHNICAL)

Date of Hearing : 14.05. 2026
Date of Decision : 18.05.2026

FINAL ORDER NOS. 50917-50928/2026

PER: K. ANPAZHAKAN

1. Customs Appeal Nos. 51199 of 2025, 51057 of 2025, 51124 of 2025, 51060 of 2025, 51062 of 2025 and 51063 of 2025 have been filed against the impugned Order-in-Original no. UDZ-EXCUS-0000-COM-47&48-2024-25 dated 28.01.2025.

1.1. Central Excise Appeal Nos. 51019 of 2025, 51061 of 2025, 51179 of 2025, 51880 of 2025, 51881 of 2025 and 51882 of 2025 have been filed

against the same Order-in-Original No. UDZ-EXCUS-0000-COM-47&48-2024-25 dated 28.01.2025.

1.2. As all these appeals have been filed against the same Order-in-Original and the issues involved in all these appeals are common, they are taken up together for decision by a common order.

2. The facts of the case are that M/s. Abhishek Exports (hereinafter referred to as the "appellant") is a 100% Export Oriented Unit (EOU) *inter alia* engaged in the manufacture and export of marbles. During the period from 2002 to August 2005 ('**disputed period**'), the Appellant imported Marble Blocks duty free, by availing the exemption provided under the Notification Nos. 53/97- Cus. dated 03.06.1997 and 52/2003-Cus. dated 31.03.2003.

2.1. The imported Marble Blocks were cut into Marble Slabs / Tiles. The said Marble Slabs / Tiles were exported as well as sold in the Domestic Tariff Area ('**DTA)** upon grant of permission by the Development Commissioner. The goods sold in the DTA were cleared upon payment of applicable Excise duty as per Notification Nos. 02/95-CE dated 04.01.1995 and 23/2003-CE dated 31.03.2003, i.e., at 50% of the import duty leviable on like goods if imported into India.

2.2. The Appellant also domestically procured Serpentine Marble Blocks, cut them into Serpentine Slabs/ Tiles and exported the same.

3. The chronology of events leading to the present appeals is tabulated below:

Date	Particulars
16.05.2005	Show Cause Notice No. V(25)15/Off/Adj-II/15/05/2596 dated 16.05.2005 issued for period2002-2005, alleging that the Marble Blocks imported duty free were converted into Marble Slabs/ Tiles and cleared in the DTA resulting in incorrect availment of Customs Notifications and Excise Notifications benefits. It was also alleged that Appellant did not follow the EXIM Policy 2002-2007 (‘**EXIM Policy**’) and Foreign Trade Policy 2004-2009 (‘**FTP**’).
08.11.2005	Show Cause Notice No.V(25)15/Off/Adj-II/116/05/85841 dated 08.11.2005 issued for

	period April 2005 to August 2005, with allegations same as above.
05.09.2005	Reply to show cause notice dated 16.05.2005, was filed *inter alia* submitting that the Appellant processed the imported Marble Blocks and cleared them into DTA upon payment of applicable excise duty and under due permission of the Development Commissioner. Hence, there was no violation of the Customs/ Excise Notification. Accordingly, it was requested to drop the proceedings initiated *vide* the show cause notice.

10.03.2006	Reply to show cause notice dated 08.11.2005, was filed on similar lines as above and requesting to drop the proceedings initiated *vide* the show cause notice.
24.04.2006	Order-in-Original No. 12-13/CE/JP-II/2006 dated 24.04.2006 (‘**Order dated 24.04.2006**’) passed by the Learned Commissioner, Jaipur, confirming the allegations in the above show cause notices.
	Appeals filed before the Hon’ble CESTAT New Delhi, against the above Order dated 24.04.2006.

17.02.2009	Decision passed by the Hon'ble CESTATNew Delhi in an identical issue in the case of ***M/s Jain Grani Marmo Pvt. Ltd. & Ors. vs. CCE, Jaipur-II, Final Order Nos. C/84-85/09 dated 17.02.2009*** (referred to elsewhere and hereinafter as 'Jain Grani'), wherein the following was *inter alia* held: a. process of cutting of Marble Blocks into slabs/ tiles did not amount to manufacture. Hence, excise duty was not payable under the Central Excise Act, 1944 ('**Excise Act**');and b. extended period of limitation under *proviso* to Section 28(1) of the Customs Act, 1962 ('**Customs Act**') was not invokable.

	Miscellaneous Application No. C/Misc./579/2009 filed by the Appellant in Customs Appeal Nos. C/489-491/2006*inter alia*on the following questions of law: a. No excise duty is payable as the process of cutting Marble Blocks into Marble Slabs/ Tiles does not amount to manufacture; and b. Excise duty paid is liable for adjustment against Customs duty demand.
10.06.2010	Decision passed by the Hon'ble CESTAT New Delhi in ***Abhishek Exports vs. Commissioner of Central Excise, Jaipur-II, Final Order Nos. C/86-88/2010 and Misc. Order No. C/81/2010 dated***

	10.06.2010 disposing of the miscellaneous application and remanding the matter for re-adjudication after considering the decision in ***Jain Grani (supra)*** and additional ground taken by the Appellant.
	The show cause notices dated 16.05.2005 and 08.11.2005 were kept in call book due to the pendency of the department's appeal against ***Jain Grani (supra)*** before the Hon'ble Supreme Court.
02.08.2023	Judgement of the Hon'ble Supreme Court *vide* ***Commissioner of Central Excise, Jaipur-II vs. Jain Grani Marmo Pvt Ltd, Civil Appeal Nos. 255-256/2010 dated***

	02.08.2023, dismissing the departmental appeal due to low tax effect.
	The show cause notices dated 16.05.2005 and 08.11.2005 were retrieved from the call book and were taken up for adjudication by Learned Commissioner, Central Excise and CGST Commissionerate, Udaipur ('Learned Commissioner, Udaipur').

23.12.2024	Written submissions filed by the Appellant pursuant to the remand proceedings *inter alia* submitting that: a. The decision in ***Jain Grani (supra)*** is binding on the lower authorities; b. The Customs and Excise Notifications have been correctly availed; and c. Excise duty demand is not sustainable since there is no manufacture.
28.01.2025	Passing of Order-in-Original No. UDZ-EXCUS-000-COM- 47 & 48-2024-25 dated 28.01.2025 *inter alia* confirming the demand of customs duty and excise duty.

3.1. The details of the impugned demands of duty and penalties contested by the appellants in these Customs Appeals and Excise Appeals are tabulated below: -

EXCISE APPEALS		
Excise Appeal Nos	Abhishek Exports 1: Appeal No: E/51061/2025 Paras Rajghariya 1:Appeal No: E/51881/2025 Prabhas Rajghariya 1: Appeal No: E/51882/2025	Abhishek Exports 2: Appeal No: E/51019/2025 Paras Rajghariya 2: Appeal No: E/51880/2025 Prabhas Rajghariya 2: Appeal No: E/51879/2025
Excise duty demand on Appellant	Rs. 96,53,506/- as per *proviso* to S.11A(1) of Central Excise Act.	Rs. 58,82,329/- as per *proviso* to S.11A(1) of Central Excise Act.
Excise Penalty on Appellant	Rs. 96,53,506/- u/s 11AC of Central Excise Act.	Rs. 58,82,329/- u/s 11AC of Central Excise Act.
Excise Penalty on Co-Appellants	Rs. 2,50,000/- under Rule 26 of Excise Rules Rs. 2,50,000/- under Rule 26 of Excise Rules	Rs. 2,50,000/- under Rule 26 of Excise Rules Rs. 2,50,000/- under Rule 26 of Excise Rules
CUSTOMS APPEALS		
Customs Appeal Nos.	Abhishek Exports 3: Appeal No: C/51199/2025 Paras Rajghariya 3: Appeal No: C/51060/2025	Abhishek Exports 4: Appeal No: C/51057/2025 Paras Rajghariya 4: Appeal No: C/51124/2025

	Prabhas Rajghariya 3: Appeal No: C/51062/2025	Prabhas Rajghariya 4: Appeal No: C/51063/2025
Customs duty demand	Rs. 2,13,87,141/- as per *proviso* to S.28(1) of Customs Act (Rs. 1,75,37,719 pertains to extended period demand).	Rs. 35,45,401/- as per *proviso* to S.28(1) of Customs Act (Rs. 10,72,637 pertains to extended period demand).
Customs penalty on Appellant	Rs. 2,13,87,141/- u/s 114A of Customs Act.	Rs. 35,45,401/- u/s 114A of Customs Act.
Customs penalty on Co-Appellants	Rs. 2,50,000/- u/s 112 of Customs Act Rs. 2,50,000/- u/s 112 of Customs Act	Rs. 2,50,000/- u/s 112 of Customs Act Rs. 2,50,000.- u/s 112 of Customs Act
Redemption fine on Appellant	Rs.50,00,000/- u/s 125 of the Customs Act.	

4. Aggrieved by the demands of Customs and Central Excise duties confirmed in the impugned Order-in-Original dated 28.01.2025, along with interest and penalties, the present appeals have been preferred before the CESTAT, New Delhi.

5. Regarding the demand of central excise duty confirmed in the impugned order, the learned Counsel appearing on behalf of the appellants submitted that they have under taken the process of cutting the marble blocks imported by them; the said process of cutting the marbles into marble slabs/tiles does not amount to 'manufacture' as defined under Section 2(f) of the Central Excise Act, 1944. As per Chapter Note 6 to Central Excise Tariff, in relation to products of CTH 2515

(marble etc) and 2516 (granite etc), the process of cutting or sawing or sizing or any other process, for converting of stone blocks into slabs or tiles shall not amount to 'manufacture' during the relevant period; A separate Chapter Note enabling the process of converting of stone blocks into slabs or tiles as amounting to 'manufacture' has been introduced in the Central Excise Tariff only in April 2006. It is argued by the appellants that since the Chapter Note was not in effect during the disputed period, the process carried out by the appellant i.e., cutting of imported marble blocks into marble slabs/tiles does not amount to 'manufacture'. Accordingly, the learned Counsel for the appellants contended that the demand of central excise duty confirmed in the impugned order is legally not sustainable.

5.1. In support of their contention, the appellants placed reliance upon the following decisions:

i. ***Jain Grani Marmo Pvt Ltd. vs. Commissioner of Central Excise, Jaipur (supra)***, wherein on similar facts and Circumstances, the Tribunal has held that the process of cutting of imported marble blocks into marble slabs/tiles does not amount to 'manufacture'.

ii. ***Aman Marble Industries Pvt. Ltd. vs. Commissioner of Central Excise, 2003 (157) E.L.T. 393 (SC),***wherein it was held that no new substance is formed on cutting of marble bocks into slabs, therefore it does not amount to manufacture;

iii. ***Rajasthan SEB vs. Associated Stone Industries, (2000) 6 SCC 141,*** wherein the court held that cutting/polishing of marbles into slabs does not amount to manufacturing of goods.

iv. ***Hindustan Granites vs. Commissioner of Central Excise, Bangalore-I, Final Order No. 20862/2025 dated 19.02.2025.***

5.2. Thus, it is the case of the appellants that the said issue is no longer *res integra* as the same stands settled by the decision of the Tribunal in the case of *Jain Grani* where the Tribunal has categorically decided that no central excise duty was payable in respect of DTA clearance of Marble Slabs/ Tiles, since the process of cutting of Marble Blocks into slabs/ tiles did not amount to 'manufacture'. It has been pointed out that the appeal filed by the department against the said case was dismissed by the Hon'ble Supreme Court in view of the low tax effect; it is submitted that since the decision of the Tribunal in *Jain Grani* was neither modified nor overruled, the learned Commissioner ought to have followed the same, in so far as it held that the excise duty was not payable as there was no 'manufacture' involved in the said process.

5.3. Relying on the decisions cited supra, the learned Counsel for the appellants submits that the demand of central excise duty confirmed in the impugned order is legally not sustainable, thus contending that the impugned order is liable to be set aside to the extent the excise duty is demanded.

6. Regarding the demand of Customs duty vide the impugned order, the learned Counsel for the appellants makes the submission that the facts of the present case are similar to the facts and circumstances of *Jain Grani* and hence the said decision is squarely applicable to the present case. He explained that in *Jain Grani*, the Tribunal has held that the condition for duty free import by a 100% EOU, as prescribed in Notification No. 52/03-Cus. has not been fulfilled in respect of imported marble blocks and, therefore, the same are not eligible for duty exemption. Since these marble blocks, after their use have not been used for the intended purpose, the appellant was held to be liable to pay custom duty; however, the customs duty demanded has been restricted to normal period of

limitation, as the Department was well aware of the activities of the appellant being a 100% EOU and no suppression of facts with intention to evade the tax established. Thus, following the ratio of the decision of the Tribunal in *Jain Grani*, the appellants submit that the demand of customs duty confirmed in the impugned order is to be restricted to the normal period of limitation and the demand confirmed in the impugned order by invoking the extended period of limitation is liable to be set aside. In view of these submissions, the learned Counsel for the appellants prayed for setting aside the demand of customs duty confirmed in the impugned order by invoking the extended period of limitation.

7. The appellants have further submitted that in *Jain Grani*, it has been categorically held that the conversion of marble blocks into marble slabs does not amount to 'manufacture' and no excise duty is payable on the clearance of marble slabs/tiles into the DTA. Therefore, it is their case that the duty already deposited by the appellant should be adjusted against the demand of customs duty, if any, confirmed for the normal period of limitation.

7.1. In support of their claim for adjustment of central excise duty paid against the customs duty liability, the appellants placed their reliance on the decision of the Tribunal in ***Nikhil Industries Pvt. Ltd. vs. Commissioner of Central Excise, 2005 (180) E.L.T. 321 (Tribunal),*** wherein it has been held that duty already paid by the EOU on the finished goods was adjustable against the duty leviable on the raw materials. They have also cited the decision of the CESTAT, Kolkata in the case of ***South Asian Petrochem Ltd vs. C.C. (Airport & Admn.) Kolkata, 2007 (219) E.L.T. 991 (Tri. -Kolkata)*** wherein it was held that duty paid in excess under one head can be adjusted against duty short paid under a different head, insofar as the duties are paid to the

Central Government; the above decision was affirmed by the Calcutta High Court in ***Commissioner vs. South Asian Petrochem Ltd, 2009 (233) E.L.T. A133 (Cal.)***

7.2. The learned Counsel for the appellant also submitted the details of excise duty paid and customs duty demanded, which have been tabulated below:

Particulars	**Amount (SCN 1)**	**Amount (SCN 2)**	**Total amount**
Excise Duty paid	16,67,691	47,62,252	64,29,943
Customs duty demanded: Total duty demanded Less: Extended period Normal period demand	2,13,87,142 (1,75,37,719) 38,49,423	35,45,401 (10,72,637) 24,72,764	63,22,187
Amount **paid in excess**			**1,07,756**

7.3. From the above table, it can be seen that out of the total customs duty demanded, if the demand pertaining to the extended period is excluded, then the balance customs duty demand pertaining to normal period of limitation amounts to Rs. 63,22,187/-. However, the appellant has paid duty at the time of DTA clearance duty to the tune of Rs. 64,29,943/-, which when adjusted against the customs duty demand, results in excess duty paid to the extent of Rs. 1,07,756/-. Thus, the appellant makes the submission in this regard that no additional amount

remains payable in the present case and the Impugned Order is liable to be set aside to this extent.

8. The learned Counsel for the appellant also contends that the extended period of limitation cannot be invoked as there was no collusion or wilful misstatement or suppression of facts established in this case. He submitted that the appellants have not suppressed any information regarding imports/ procurement and exports/ clearance from the authorities; that they have been filing ER-1 returns regularly containing all necessary details of activities undertaken by it. Further, it is pointed out that the packages/ containers for export were examined and certified by the jurisdictional central excise officers. Further, the Marble Slabs/ Tiles were cleared into DTA pursuant to obtaining permission from the Development Commissioner. Since the facts pertaining to the transactions undertaken by the Appellant were within the knowledge of the department, it is contended that the extended period of limitation cannot be invoked.

8.1. In this regard, the appellant has also drawn attention to the fact that in *Jain Grani,* it was held that extended period of limitation was not invokable since data pertaining to import and export activities of EoUs, was already available with the department. The appellants further submitted that in the case of ***Rallison Electricals Pvt Ltd vs. Principal Commissioner of Central Goods & Services Tax, Commissionerate, Alwar, Final Order No. 50752/2026 dated 21.04.2026 ,*** the Tribunal has held that extended period of limitation cannot be invoked citing suppression of facts since the assessee regularly filed ER-1 returns and nothing prevented the officers from seeking more information from the assessees. Thus, the appellants put forth the submission that the demands confirmed by invocation of the extended period are not sustainable in these cases.

8.2. Additionally, the learned Counsel for the appellants also submitted that the Bond executed by them cannot be invoked to overcome the statutory provisions governing extended period of limitation; that the Adjudicating authority has *inter alia* ordered to demand customs duty under *proviso* to Section 28(1) read with B-17 bond furnished by the appellant; it is a settled principle of law that demand can be raised for extended period only when the ingredients mentioned therein are present. In support of this view, he relied on the decision of the Tribunal in ***Commissioner of C. Ex., Pune-I vs. Emcure Pharmaceuticals Ltd, 2014 (307) E.L.T. 180 (Tri. – Mumbai)***, wherein it was held that merely because the assessee executed a B-17 bond they would not fall outside the purview of Section 11A; the above decision was affirmed by the Bombay High Court in ***Commissioner of C. Ex., Pune-I vs. Emcure Pharmaceuticals Ltd, 2016 (342) E.L.T. 172 (Bom).*** Thus, it is submitted that when the relevant facts about the activities undertaken by the appellant were within the knowledge of the department, duty cannot be demanded for extended period of limitation. It is the appellant's case on this score that relying on B-17 bond to uphold the demand irrespective of the limitation period would result in making the statutory provisions redundant. Thus, the appellant also contends that the demand for the extended period confirmed by invoking the B-17 Bond executed by the appellant is legally not sustainable.

9. Furthermore, the appellant submits that the marble blocks are not liable for confiscation and the redemption fine not imposable in this case; that provisions of Section 111(d) and 111(o) of the Customs Act are not invokable as regards the Marble Blocks in the present case inasmuch as neither their import is prohibited, nor has there been any non-observance of any condition surrounding their import. Further, it is submitted that the Marble Blocks are not liable for confiscation because they have been

converted into Marble Slabs/ Tiles and also cleared into DTA; they are no longer physically available.

9.1. In support of the contentions hereinabove, reliance is placed by the appellants on the decision of the Tribunal in ***M/s. Mahindra Aerostructures Pvt. Ltd. and M/s. Tangirala Subrahmanya Sarma, DGM vs. Commissioner of Customs, Chennai, Final Order Nos. 40472 & 40473/2025 dated 24.04.2025***, wherein it was held that for confiscation of goods, both liability and availability of the goods are necessary; that further, in the Appellant's own case in ***Abhishek Exports & Ors. vs. Commissioner of Customs, Jodhpur Headquarters, Jaipur, Final Order Nos. 50325-50334/2026 dated 09.03.2026,*** the Tribunal held that Marble Blocks were not liable for confiscation under Sections 111(d) and (o) of the Customs Act since their import was neither prohibited nor was any import condition violated. They also submit that since the marble blocks had been already used in the manufacture of Marble Slabs/ Tiles and not available, they were not liable to confiscation. It was also held that redemption fine under Section 125 of the Customs Act was not imposable since the goods therein were not confiscated. Therefore, in view of the above decisions, it is submitted that Marble Blocks are not liable for confiscation and redemption fine is not imposable.

10. Regarding the demand of customs duty confirmed in the impugned order, Shri Ajay Jain, learned Special Counsel appearing for the Revenue submits that the demand of customs duty on imported marble has already been canvassed before the Tribunal as well as High Court of Rajasthan in the *Jain Grani*. He submits that the issue regarding demand of customs duty in a case where the imported inputs have not been used for exported goods at all, has attained finality and hence the appellants are liable to pay the customs duty as demanded in the impugned Order-in-Original. Regarding restriction of the customs duty for the normal period of

limitation, the learned Special Counsel submits that though it has been contended by the appellants that the Department was aware of all of their activities namely procurement of material from domestic sources, import of marble blocks, exports made by them and the domestic clearances and the extended period cannot thus be invoked against them, the appellant have not declared the correct description of the goods in the documents filed before Customs Authorities; he submits that the appellant has declared the description of goods as 'Polished Marble slabs' in the Shipping Bills and the corresponding invoices. He states that in the ARE-1 also the description was declared as 'Polished Marble Slabs'; in ARE-3, the description was declared as 'unpolished Marble slabs'; In the Bill of Entry, the description was 'Rough Marble Blocks'; the description on the document by which the goods were cleared in DTA is not available. From these descriptions, he submits, it was not possible to find out as to whether the goods exported have been obtained from imported inputs or indigenous inputs. In view of the above factual position, it has been argued by the learned Special Counsel for the Revenue that the contention of the appellants that the demand of customs duty can be made only for the normal period is not correct and accordingly, submits that the appellants are liable to pay the customs duty as demanded in the impugned Order-in-Original.

10.1. Regarding the demand of excise duty confirmed in the impugned order, the learned Special Counsel for the Revenue relied upon the findings of the learned adjudicating authority in the impugned Order-in-Original in paragraphs 54-57, wherein the adjudicating authority has observed that DTA sale was available to the appellant only by virtue of para 6.8 of Exim Policy/ FTP and provisions made in Central Excise Act; EOU Scheme now encompasses activities such as packaging, processing and rendering services which in strict terms are not termed as

'manufacture' but a broader meaning of manufacture as given in Exim policy/ FTP is to be taken in respect of goods manufactured or produced in a 100% EOU and cleared into DTA; this interpretation should be in terms of provisions of Exim policy/ FTP and not in terms of section 2(f); there cannot be two different stands for interpretation of the word 'manufacture' for the purpose of goods manufactured/ produced in 100% EOU and for the purpose of extending benefit of Notification No. 23/2003-CE dated 31.03.2003 in respect of goods so manufactured / produced in such EOU. The learned Special counsel referred to *CCE, New Delhi vs Weston Electronic reported at 2000(116) ELT 181 (Tribunal); Oracle Info tech (P) Ltd. vs CCE, New Delhi reported at 2003 (151) ELT 656 (Tri-Delhi); Super Cassettes Industries Ltd. vs CCE reported at 1998 (104) ELT 115 (Tri-Delhi); Precision Processors (India) (P) Ltd. vs Commissioner of Customs reported at 2007 (216) ELT 233 (Tri-Kolkata)* and contended that all these decisions are in line with the Board's Circular No. 314/30/97 dated 06.05.1997 wherein it was stated that the EOU scheme covers even those activities which may not be strictly considered as manufacture under Section 2(f) of the Central Excise Act, 1944. In this context, he further submits that the Department had filed an appeal before the Supreme Court against the order of the Tribunal in *Jain Grani*; the said appeal was dismissed on 02.08.23 by the Hon'ble Supreme Court on account of low tax effect involved; however, the point of law was left open. He submitted that the case laws relied upon by the Hon'ble Tribunal in *Jain Grani* case were relating to the excise duty applicable in the DTA production and the case laws referred to by the Commissioner are relating to the broader concept of manufacture in case of EOUs. Thus, it is the contention of the Learned Special Counsel for the Revenue that the decision of the Tribunal in Jain Grani is distinguishable. Accordingly, he

argued that the demand of central excise duty confirmed in the impugned order is legally sustainable.

10.2. Regarding the claim of the appellant that the central excise duty already deposited at the time of DTA clearance of the marble slabs should be adjusted against the demand of custom duty, if any, confirmed for the normal period of limitation, the learned Special Counsel opposes the same and submits that central excise duty was paid by the appellant on domestic clearances during the period 2002-August 2005, which is the period for which show cause notices have been issued to them; however, the various judgements which the Tribunal has relied upon in *Jain Grani* to arrive at the conclusion that no excise duty was payable, pertains either to the period prior to the impugned clearances or during that period. He submits that **despite these decisions, the appellants were paying excise duty at concessional rate for their DTA clearance without any demur**. It is further submitted that as per the decision of the Supreme Court in *Mafatlal Industries*, if an assessee pays the duty based on a wrong understanding, he is still governed by the Refund provisions of the Act and therefore, any demand of Customs duty cannot be automatically adjusted against the central excise duty which was paid by them under a clear notion that they are liable to pay this duty; therefore, as far as the payment of central excise duty is concerned, they are required to go through the route of refund under Section 11B; that the same will be subjected to fulfilment of various legal requirement including the provisions of unjust enrichment. Accordingly, the learned Special Counsel submits on this issue that the case laws relied upon by the appellants in support of their claim for adjustment are distinguishable and hence the request of the appellants for adjustment of the central excise duty paid against the customs liability, if any, confirmed for the normal period of limitation cannot be accepted.

11. The submissions advanced by the learned Counsel for the appellant and the learned Special Counsel for the department have been considered.

12. From the facts of the case, it is seen that the appellant, namely, M/s. Abhishek Exports, is a 100% EOU. It had imported rough marble blocks and availed duty exemption thereon in terms of Notification No. 53/97-Cus, 52/2003-Cus and Notification Nos. 2/95-CE and 23/2003-CE. It was procuring serpentine marble slabs indigenously on which no central excise duty was leviable. During the period 2002 to August,2005, the appellant exported products produced out of indigenously procured serpentine marble. On the basis of this export performance, it sold marble manufactured out of imported marble in the DTA in terms of FTP and paid excise duty which was equal to 50% of the customs duty applicable on the like imported goods in terms of proviso to Section 3 of Central Excise Act, 1944. As per the provisions of Exim Policy and FTP, the appellant was required to first export the goods made out of the rough marble blocks, only then they were entitled to clear the marble blocks, slabs and tiles in the DTA. Since they exported slabs and tiles made out of indigenously procured serpentine marble, they were not entitled to clear the products manufactured out of imported material in DTA at concessional rate of 50% of the applicable rate. Since the marble blocks imported have not been used for the intended purpose, the appellant was held to be liable to pay custom duty.

12.1. In this regard, we find that an identical issue in the case of another EOU unit, ***M/s Jain Grani Marmo Pvt. Ltd.*** **was decided by the Tribunal vide** ***Final Order No. C/84-85/2009 (PB) dated 17.02.2009***. It was held by the Tribunal that serpentine marble and marble are not similar goods hence exemption from customs duty under notification No. 52/2003-Cus on import of marble was not available. M/s.

Jain Grani filed an **Appeal No. 126-127 /2009** before the High Court of Rajasthan. It was prayed that the order of the Tribunal relating to confirmation of Customs duty on imported inputs is liable to be set aside. The High Court by order dated 21.02.2025 decided the appeals and upheld the order of the Tribunal as far as the confirmation of Customs duty for the normal period of limitation is concerned. The Department had filed Appeal Nos. 255-256/2010 before the Supreme Court against the part of Tribunal order wherein it was held that the central excise duty was not leviable on mere slitting of marble stones. By order dated 02.08.2023, the appeals were dismissed on account of low tax effect.

12.2. From the facts of the present case and *Jain Grani* cnarrated above, it is seen that the Department has kept the present case in 'Call Book' as the issue involved in the present case are similar to the facts of *Jain Grani*. The adjudication of this case was done after disposal of the *Jain Grani* by the Supreme Court. Thus, the decision of the Tribunal in *Jain Grani, vby Final Order No. C/84-85/2009 (PB) dated 17.02.2009*, as upheld by the High Court of Rajasthan, is squarely applicable to the facts and circumstances of the present case.

Observations on Demand of Customs Duty:

13. Now, as far as the demand of customs duty on imported marble is concerned, we find that the said issue has already been been decided by the Tribunal in Jain Grani. The Relevant extracts of the order of the Tribunal dated 17.09.2009, with respect to the demand of customs duty are reproduced below for ready reference:–

> *" 3. ---The finished goods to be exported as per LOP were –"marble slabs/ tiles and Granite tiles". In December, 2003 it was expanded to include " –Serpentine slabs/ tiles, dressed Serpentine blocks and dressed marble blocks"—Thus, while their imports were*

exclusively of white marble blocks and the DTA clearances were of marble slabs/tiles and dressed marble block made out of the imported marble blocks, their exports, except for one small consignment of slabs/tiles of marble/ granite made out of indigenous marble/ granite blocks, were of dressed blocks, slabs and tiles of serpentine, made out of domestically procured serpentine blocks. ---

4.1.1 We do not agree with the contention that the marble and Serpentine Stone are similar in view of the following-

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4.1.2 Since except for the name- Green marble used for Serpentine stone, there is nothing in common between marble and Serpentine, and since the domestically procured Serpentine stone (on which there is no central excise duty) is much cheaper than the imported marble blocks (imported duty free) and thus the dressed white marble blocks and the dressed blocks, slabs and tiles made out of domestically processed serpentine stone are just not comparable in any respect, the export obligation against the duty free import of white marble blocks cannot be met either by export of dressed Serpentine block and Serpentine slabs/ tiles, made out of domestically procured Serpentine or by using the imported white marble blocks for making dressed blocks, slabs or tiles for domestic sale within the DTA quota, even if as per the LOP, the basket of finished products for export comprises of dressed marble blocks and marble slabs/ tiles as well as dressed Serpentine blocks and Serpentine slabs/ tiles. DGFTS circular dated 10.06.2002 is of no persuasive value as after reference to DGFT from the CBEC in

respect of this circular, the DGFT itself has prescribed separate input-output norms for dressed Serpentine blocks/ Serpentine slabs/ tiles in the SION. From the CBEC circular No. 12/08-Cus dated 24.07.2008 explaining the provisions of the 2004-2009 EXIM policy (para 8 of the circular), it is clear that he goods sold by an EOU into DTA must be 'similar 'to the goods exported, within the meaning of the term 'similar 'as defined in the Board's circular No. 07/2006-Cus dated 13.01.06 and in the case of a multi product 100% EOU manufacturing say, product A and B, it is not open to the unit to exclusively export the product A and keep the product B exclusively for DTA sale, unless the product A and B are similar. In fact, as per the EXIM policy 2004-2009, a 100% EOU manufacturing products A and B for export, can sell into DTA one product, say A, upto 75% of its FOB value of exports, within the overall DTA sale entitlement. The idea behind this condition is to prevent the misuse of 100% EOU scheme by duty free import of costly material for use exclusively in the manufacture of finished goods for DTA sale and meeting the export obligation by exporting the finished goods made out of domestically procured cheap material. In this case, since the export of dressed marble blocks, marble slabs & tiles made out of imported white marble blocks is almost nil, the appellant company could not sell the products made out of imported white marble blocks unit into DTA against the DTA entitlement earned by export of dressed blocks, slabs and tiles of serpentine stone and the DTA sale of the appellant company cannot be counted towards their export obligation.

4.1.3 In view of the above discussion, we hold that the condition for duty free import by a 100% EOU, as prescribed in the notification

No. 52/03-Cus has not been fulfilled in respect of imported marble blocks and, therefore, the same are not eligible for duty exemption, and since these marble blocks, after their use have not been used for the intended purpose, the same would be liable for confiscation under Section 111(o) of the Customs Act, 1962. ---"

(Emphasis supplied)

13.1. These findings have been upheld by the High Court of Rajasthan in the appeal filed by *Jain Grani*, by order dated 21.02.25. Accordingly, the appellant is not eligible for the exemption provided under the Notification Nos. 53/97- Cus. dated 03.06.1997 and 52/2003-Cus. dated 31.03.2003 and it is liable to pay the customs duty on the imported marble blocks.

13.2. The appellants have not suppressed any information regarding imports/ procurement and exports/ clearance from the authorities. They have been filing ER-1 returns regularly containing all necessary details of activities undertaken by it. Further, the packages/ containers for export were examined and certified by the jurisdictional central excise officers. Further, the Marble Slabs/ Tiles were cleared into DTA pursuant to obtaining permission from the Development Commissioner. Since the facts pertaining to the transactions undertaken by the Appellant were within the knowledge of the department, it is held that the extended period of limitation cannot be invoked. It is also pertinent to note that in *Jain Grani,* the Tribunal had, under similar circumstances, held that the company could not be accused of suppression of facts with intent to evade the payment of duty and therefore recovery of duty on imported marble blocks, would be restricted only to the normal limitation period alone. The relevant observations made by the Tribunal in this regard in *Jain Grani* are as under: -

"6. The next point of dispute is as to whether the proviso to Section 28(1) of the Customs Act is invokable for demand of customs duty on the imported marble blocks and whether the appellant company is liable for penalty under Section 114A of the Customs Act. The Commissioner has held the Appellants to be guilty of suppression of facts with intention to evade the payment of duty on the grounds that -

(a) periodical ER-2 returns filed by the Appellant company did not show the details of the clearances made for export under bond of the dressed blocks/slabs/tiles manufactured of imported marble stone and indigenously procured serpentine stone and from these returns, it could not be made out as to whether the Appellant company was exporting only the dressed blocks, slabs and tiles of the indigenously procured serpentine blocks and this could be ascertained only after surprise visit to the factory and inquiry from Shri Mukesh Modi; and

(b) the DTA invoices of the Appellant company invariably used the description - "Marble slabs" in the column of "description of the goods cleared", from which it could not be ascertained as to what kind of goods were being cleared by the Appellant.

The Appellant's contention, on the other hand, is that the Departmental officers were aware of the fact that while dressed serpentine blocks, Serpentine slabs/tiles made out of domestically procured serpentine blocks were exported and the dressed blocks, slabs and tiles made out of imported marble blocks were cleared to DTA, in view of the facts that -

(a) all exports were factory stuffed under supervision of the jurisdictional Central Excise Officers and the export documents have been certified by the central excise officers ; and

(b) the Appellants vide letter dated 29-7-03 to the Assistant Commissioner clearly mentioning that they are manufacturing marble slabs/tiles and clearing the same to DTA, had asked for correct rate of central excise duty on the DTA clearances.

6.1 The LOP issued to the Appellant company and its amendments issued by the Development Commissioner from time to time and copies of which were also endorsed to the jurisdictional Assistant Commissioner, mentioned in addition to dressed marble blocks, marble slabs and marble tiles, the dressed serpentine blocks/serpentine slabs/tiles and other slabs/tiles of other stones also, as the Appellant company's finished products for export. Since all the exports were under Central Excise supervision, the jurisdictional Central Excise Officers could not be unaware of the fact that except for one small consignment of marble slabs and granite slabs, all exports of the Appellant company were of dressed serpentine blocks/serpentine slabs/tiles. Appellant's letter dated 27-7-03 to the Assistant Commissioner indicates that the Departmental officers were also aware of DTA clearances of the marble slabs/tiles. In case of a 100% EOU, the jurisdictional range officer invariably gets intimation about the receipt of duty free imported goods or domestically procured goods and the confirms the receipt of the same in the EOU to the concerned Customs house/Central Excise range and therefore the jurisdictional central excise officer cannot be unaware of the fact that while the Appellants are importing marble blocks and domestically procuring serpentine blocks, they are exporting only the dressed serpentine blocks and serpentine slabs/tiles and cleaning dressed marble blocks and marble slabs/tiles to DTA. In view of this we hold that the Appellant company cannot be accused of suppression of facts with intent to evade the payment of duty and therefore for recovery of duty on imported marble

blocks, only the normal limitation period under Section 28(1) would be available and the penal provisions of Section 114A of the Customs Act would not be attracted. ….."

(Emphasis supplied)

13.3. Thus, by following the ratio of the decision of the Tribunal in *Jain Grani* that the demand of customs duty confirmed in the impugned order is upheld, only for the normal period of limitation and consequently, the demand confirmed in the impugned order by invoking the extended period of limitation is set aside.

13.4. On this score, we also find that the learned Adjudicating authority has *inter alia* ordered to demand Customs duty under *proviso* to Section 28(1) read with B-17 bond furnished by the Appellant. It is a settled principle of law that demand can be raised for extended period only when the ingredients mentioned therein are present. The Bond executed by the appellant cannot be invoked to demand duty for extended period. In support of this view, we rely on the decision of the Tribunal in ***Commissioner of C. Ex., Pune-I vs. Emcure Pharmaceuticals Ltd, 2014 (307) E.L.T. 180 (Tri. – Mumbai),*** wherein it was held that merely because the assessee executed a B-17 bond they would not fall outside the purview of Section 11A. The said decision was also affirmed by the Bombay High Court in ***Commissioner of C. Ex., Pune-I vs. Emcure Pharmaceuticals Ltd, 2016 (342) E.L.T. 172 (Bom).*** The relevant observations of the Tribunal, Mumbai in the aforesaid decision are reproduced below: -

"5. We have carefully considered the submissions made by both the sides. From the records it is clearly seen that the respondent had declared to the department that they would be availing the benefit of Notification

23/2003 in respect of advance DTA sales to be effected by them in terms of the permission granted by the Development Commissioner as early as in 2004 itself. Therefore, the respondent cannot be, said to have withheld any information from the department. The respondent's plea that they were entitled for the benefit of exemption under Notification 23/2003 under the belief that they were entitled for benefit of such Notification cannot be said to be a mis-declaration as held by the Hon'ble Apex Court in Northern Plastics Ltd. v. Collector of Customs & Central Excise - AIR 1998 SC 2371 = 1998 (101) E.L.T. 549 (S.C.). If the department felt that the respondent was not entitled to such exemption, they should have issued the show cause notice within the period stipulated under Section 11A. Revenue's reliance on the decision of the Tribunal in the case of Endress + Hauser Flowtec (I) Pvt. Ltd. (supra) does not come to their rescue for the reason that B-17 bonds are executed not only by the 100% EOUs but also units in the DTA. If Section 11A is applicable in respect of units in DTA who have executed B-17 bonds before the department, the same logic would apply in respect of 100% EOUs as well. Therefore, the argument that merely because the respondent has executed a B-17 bond they would fall outside the purview of Section 11A is illogical and irrational. One cannot interpret the law in such a way so as to make the provisions of law redundant."

13.4.1. Thus, we hold that when the relevant facts about the activities undertaken by the Appellant were within the knowledge of the Department, duty cannot be demanded for extended period of limitation, by invoking the B-17 bond. Thus, we restrict the demand of customs duty for the normal period of limitation.

Observations on Demand of Excise Duty:

14. Regarding the demand of central excise duty confirmed in the impugned order, we find that that the appellant, M/s. Abhishek Exports, have under taken the process of cutting the marble blocks. As per chapter Note 6 to Central Excise Tariff, in relation to products of CTH 2515 (marble etc) and 2516 (granite etc), the process of cutting or sawing or sizing or any other process, for converting of stone blocks into slabs or tiles shall not amount to 'manufacture' during the relevant period. Thus, the process of cutting the marbles into marble slabs/tiles undertaken by the appellant on the imported marble blocks does not amount to 'manufacture' as defined under Section 2(f) of the Central Excise Act, 1944. The Tribunal in *Jain Grani* has categorically held that the process of cutting, sawing or sizing under taken be the appellant does not amount to 'manufacture' and the decision has attained finality. The relevant extracts of decision dated 17.09.2009 of the Tribunal in *Jain Grani* with respect to the demand of central excise duty is as under:

> *"5. Next point of dispute is as to whether the DTA clearances of the Dressed marble blocks and marble slabs/tiles would be eligible for concessional rate of duty under notification No. 23/03-CE. In this regard, the contention of the Appellants is that since during the period of dispute, as per the Hon'ble Supreme Court's judgements in case of Aman Marble P. Ltd. vs CCE and CCE vs Fine Marble & Mineral Pvt. Ltd. and the judgement of this Tribunal in cases of Associate Stone Industries (Kotah) Ltd. vs CCE, Kotah Stones Pvt. Ltd. vs CCE and Tirupati Granite P. Ltd. vs CCE, cutting of marble blocks into slabs or tiles did not amount to manufacture, in any case, no central excise duty can be charged in respect of DTA clearances of dressed marble blocks and marble slabs/ tiles and in*

respect of these clearances, as per the provisions of the 1st proviso to para 3 of the notification No. 52/03-Cus, only the customs duty on the imported marble blocks used for production of dressed marble blocks and marble slabs/tiles can be charged. We agree with this contention of the Appellants, as we find that during the period of dispute, there was no chapter note in chapter 25 or the central excise tariff, providing that the process of cutting or sawing or sizing or polishing or any other process for converting stone blocks into slabs or tiles shall amount to manufacture and such a chapter note was introduced only w.e.f. 01.03.2006 and therefore, during the period of dispute, in view of the above-mentioned judgements of Hon'ble Supreme Court and the Tribunal, no central excise duty could be charged in respect of these DTA clearances and only customs duty in terms of 1st proviso to para 3 of the notification 52/03-Cus could be charged on the imported marble blocks used for making dressed marble blocks and marble slabs/ tiles and this duty, as discussed in the earlier in para 4.1.3 above is, in any case, chargeable. We do not agree with the Commissioner's finding that the definition of 'manufacture' in Section 2(f) of the Central Excise Act and the above-mentioned judgements of Hon'ble Supreme Court are not applicable to 100% EOU for which the term 'manufacture' as defined in Exim Policy is applicable and for this reason, the DTA clearances of dressed marble blocks and marble slabs/ tiles would attract central excise duty as-

(a) the definition of "manufacture" as given in the EXIM policy is relevant only for the purpose of duty free import of inputs and capital goods under customs notification no. 52/03-Cus and its predecessor notification and excise duty free domestic procurement

of indigenously manufactured inputs or capital goods for use in or in relation to "manufacture" (as defined in EXIM policy) of the finished goods; and

(b) the DTA clearance attract central excise duty only under the proviso to Section 3 (1) of the Central Excise Act which would be attracted only if the activity of the EOU is "manufacture" within the meaning of this term as defined under Section 2(f) of the Act and as interpreted by various judgements of Hon'ble Supreme Court."

(Emphasis supplied)

14.1. The ratio of the said decision cited supra is squarely applicable to the facts and circumstances of the present case.

14.2. The learned Special Counsel representing the Revenue tried to make a distinction between the definition of 'manufacture' available under section 2(f) of the Central Excise Act for the domestic units and the 100% EOU. He submitted that the EOU Scheme now encompasses activities such as packaging, processing and rendering services which in strict terms are not termed as 'manufacture' but a broader meaning of manufacture as given in Exim policy/ FTP is to be taken in respect of goods manufactured or produced in a 100% EOU and cleared into DTA. It is not possible to agree with the submission made by the learned Special Counsel of the Revenue. The activity of 'manufacture' does make any distinction between a unit located in the domestic tariff area and a 100% EOU.

14.3. Thus, by relying on the decision of the Tribunal in *Jain Grani*, it is held that the process of cutting the marbles into marble slabs/tiles undertaken by the appellant on the imported marble blocks in this case,

does not amount to 'manufacture' as defined under Section 2(f) of the Central Excise Act. Accordingly, we hold that no central excise duty is payable by the appellant on the clearances effected to the Domestic Tariff Area.

15. The appellants have prayed for adjustment of the central excise duty already paid by them at the time of DTA clearance of the marble slabs against the demand of custom duty, if any, confirmed for the normal period of limitation. The learned Special Counsel for the Revenue opposed the above prayer and argued that during the relevant period there were many decisions holding the view that the process of cutting marble blocks into slabs/tiles does not amount to 'manufacture' but despite these decisions, the appellants were paying excise duty at concessional rate for their DTA clearance without any demur. The learned Special Counsel cited the decision of the Supreme Court in *Mafatlal Industries* and argued that if an assessee pays the duty based on a wrong understanding, he is still governed by the Refund provisions of the Act. Accordingly, the learned Special Counsel for the Revenue has contended before us that adjustment is not permissible and the appellant has to follow the refund route only.

15.1. In this regard, the records have been perused. It is found that the issue whether cutting of marble blocks amounts to 'manufacture' or not was under dispute and the issue was pending before various forums. The appellant genuinely believed that the activity of cutting or sawing of marble blocks into slabs/tiles amounts to 'manufacture' as defined under section 2(f) of the Central Excise Act, 1944 and discharged duty liability at the time of clearance of goods to the DTA. The Department also did not objected to the central excise duty paid by the appellant on the goods cleared to the DTA. Thus the duty paid by the appellant for the clearances

made to DTA cannot be considered as duty paid on account of wrong understanding. Thus, the decision of the Supreme Court in *Mafatlal Industries* cited by the learned Special Counsel of the Revenue is not applicable to the facts and circumstances of the present case.

15.2. The appellant has relied on various decisions in support of their claim that the central excise duty paid by the during DTA clearance can be adjusted against the customs liability liable to be confirmed. In the case of ***Nikhil Industries,*** the Tribunal has held that duty already paid by the EOU on the finished goods was adjustable against the duty leviable on the raw materials. The relevant part of the said decision is reproduced below for ready reference:

"5. We have considered the submissions of both the sides. The undisputed facts are that the Appellants were granted letter of permission for manufacture and export of finished goods and they had accepted the terms and conditions and executed legal agreement also in terms of EXIM Policy. It is also not disputed that they have not exported any goods out of the raw material imported by them or by suing the capital goods procured indigenously without payment of duty. In view of these undisputed facts the Appellants are liable to discharge the duty liability, both in respect of goods imported by them and the capital goods procured by them indigenously. While discharging the Customs duty liability on the imported raw material the duty of Customs already discharged by them in respect of raw material removed in D.T.A. has to be adjusted. Similarly the duty paid by them while removing the finished goods made out of the imported raw material has to be adjusted against the Customs duty liability since the duty is now upheld in respect of entire raw material imported by them. We agree with the learned SDR that no depreciation has to be granted to the Appellants while levying the duty on the capital

goods since the same have not been used for the purpose they were procured free of duty i.e. manufacture of goods in a 100% E.O.U. for the purpose of export. We, therefore, uphold the demand of Central Excise duty. We also uphold the demand of Customs duty subject to the adjustment of duty already paid by the Appellants on the removal of raw material as such and on the removal of finished goods manufactured out of the raw material imported by them. Penalty is also imposable on the Appellants as they have not fulfilled the export obligation. However, taking into consideration the facts and circumstances of the case we reduce the penalty to Rs. 1 lakh. The appeal is disposed of in the above terms."

15.3. We find that the Tribunal in ***South Asian Petrochem Ltd*** held that duty paid in excess under one head can be adjusted against duty short paid under a different head, insofar as the duties are paid to the Central Government. The relevant part of the said decision is reproduced below for ready reference:

"2. We find that the appellants have short paid Central Excise duty to the extent of Rs. 78,51,694/- and they have made excess payment towards education cess to the extent of Rs. 1,03,52,860/-. These payments are not controverted in the impugned order. We find that in para 16 of the impugned order, the jurisdictional Commissioner says that he is not convinced that the short payment can be adjusted against the excess payment. The learned Advocate appearing for the appellants confirms that the jurisdictional Commissioner is in-charge of the appellants' export oriented unit, and both Customs & Excise work is handled by the same Commissioner. As such, we find no reason why the same authority, who is in-charge of both the Excise & Customs work relating to the appellants' Unit, cannot order an adjustment in the payments, which have already been made. After all, the amounts have

been paid to the Central Government under different heads and as explained by the learned Advocate appearing for the appellants, wrong payments were made for want of clarity regarding calculation of educational cess, which was clarified by the Board later on.

3. Considering the entire facts and circumstances of the case, we direct the jurisdictional Commissioner to make adjustment between the short payment and excess payment made by the appellants. As regards the balance amount after adjustment, the same may be considered for refund provided the appellants prefer a refund claim as required under the law."

15.4. We find that the above decision was affirmed by the Hon'ble Calcutta High Court in ***Commissioner vs. South Asian Petrochem Ltd, 2009 (233) E.L.T. A133 (Cal.).***

15.5. Thus, in view of the aforesaid, it has been held that central excise duty paid by the appellant for the DTA clearance of marble slabs can be adjusted against the customs duty liability, if any, confirmed for the normal period of limitation.

16. Regarding confiscation of marble blocks and imposition of redemption fine, it is the provisions of Section 111(d) and 111(o) of the Customs Act have to be examined. These provisions are not invokable as regards the Marble Blocks inasmuch as neither their import is prohibited, nor has there been any non-observance of any condition surrounding their import. Further, the Marble Blocks are not liable to confiscation because they have been converted into Marble Slabs/Tiles and also cleared into DTA. They are no longer physically available. In the case of ***M/s. Mahindra Aerostructures Pvt. Ltd. and M/s. Tangirala Subrahmanya Sarma, DGM vs. Commissioner of Customs, Chennai, Final Order Nos. 40472 & 40473/2025 dated 24.04.2025***, it has been held that for

confiscation of goods, both liability and availability of the goods are necessary. Further, in the own case of the appellanrt in ***Abhishek Exports & Ors. vs. Commissioner of Customs, Jodhpur Headquarters, Jaipur, Final Order Nos. 50325-50334/2026 dated 09.03.2026,*** the Tribunal held that Marble Blocks are not liable to confiscation under Sections 111(d) and (o) of the Customs Act since their import was neither prohibited nor was any import condition violated. Thus, as the marble blocks had been already used in the manufacture of Marble Slabs/Tiles and not available, the same cannot be held liable to confiscation. Therefore, the order of confiscation of the said goods is set aside. As the Marble Blocks are not liable for confiscation, redemption fine is not imposable. Thus the redemption fine imposed under Section 125 of the Customs Act is also set aside.

17. Regarding the penalties imposed on various appellants, it is seen that the relevant facts about the activities undertaken by the appellants were within the knowledge of the department. The appellants have not suppressed any information regarding imports/ procurement and exports/clearance from the authorities. They have been filing ER-1 returns regularly containing all necessary details of activities undertaken by it. Further, the packages/ containers for export were examined and certified by the jurisdictional Central Excise Officers. The Marble Slabs/Tiles were cleared into DTA pursuant to obtaining permission from the Development Commissioner. Since the facts pertaining to the transactions undertaken by the appellants were within the knowledge of the department, it is held that suppression of facts with intention to evade the tax are not established in this case. Accordingly, no penalty is imposable on the appellants. Consequently, all the penalties imposed against various appellants herein in the impugned order are set aside.

18. In view of the above findings, we pass the following order:

(I) The demand of customs duty confirmed in the impugned order, for the normal period of limitation is upheld but the demand of customs duty confirmed in the impugned order by invoking the extended period of limitation is set aside.

(II) The central excise duty confirmed in the impugned order is set aside.

(III) The central excise duty paid by the appellant for the DTA clearance of marble slabs can be adjusted against the customs duty liability, if any, confirmed for the normal period of limitation.

(IV) The order of confiscation of marble blocks as ordered in the impugned order is set aside. Consequently, the redemption fine imposed under Section 125 of the Customs Act also stands set aside.

(V) We set aside all the penalties imposed on the appellants in the impugned order.

19. The appeals filed by the appellants herein are allowed to the extent indicated.

(Order pronounced in the open court on 18.05.2026)

(JUSTICE DILIP GUPTA)
PRESIDENT

(K ANPAZHAKAN)
MEMBER (TECHNICAL)

Apoorva