CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. III

Customs Appeal No. 87660 of 2016

(Arising out of Order-in-Appeal No. MUM-CUSTM-SXP-118/2016-17 dated 21.10.2016 passed by the Commissioner of Customs (Appeals), Mumbai-I)

Gamco International **.....Appellant**
Quarry Road, Pathanwadi,
Malad (E), Mumbai 400 097

Versus

Commissioner of Customs, Mumbai Export-I **.....Respondent**
New Custom House, Ballard Estate, Mumbai 400 001.

APPEARANCE:

Ms. Kiran Doiphode, Advocate for the Appellant
Shri C.S. Vinod, Authorised Representative for the Respondent

CORAM: **HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT**
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

Date of Hearing: 16.04.2026
Date of Decision: 27.04.2026

FINAL ORDER NO. 85580/2026

PER: P. ANJANI KUMAR

M/s. Gamco International[1] has assailed the order-in-appeal dated 21.10.2016 passed by the Commissioner of Customs (Appeals), Mumbai Zone-I.

2. Briefly stated, the facts of the case are that the appellant has filed a Bill of Entry No. 1343 dated 04.09.1996 for clearance of 925 SQM Raw/Rough Marble slabs of Italia origin having a total declared value of Rs.10,06,378/- and sought clearance under two advance licences, both dated 15.09.1995. On the basis of the first check conducted, Revenue was of the opinion that the goods were misdeclared with respect to quality and quantity. Samples were drawn and sent to Geological Survey of India, Nagpur[2] for testing, who by report dated 06.05.1998 reported that the sample was of Crystalline Limestone (of IBM specification) and it does not

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1. **the appellant**
2. **GSI**

show any evidence of metamorphic recrystallization and thus not a marble.

3. A show cause notice dated 21.07.1998, along with addendum dated 29.06.2001, was issued to the appellant seeking to confiscate 925 sq.mtrs. of declared quantity of goods imported and 204.25 sq.mtrs. of goods found in excess, and seeking to impose fines and penalties. Order-in-original dated 19.06.2008 was issued confiscating 925 sq.mtrs. of goods, imposing redemption fine of Rs.2,52,000/- and penalty of Rs.25,000/- on the importer.

4. On an appeal filed by Revenue and the appellant, the Commissioner (Appeals) passed a common order-in-appeal dated 10.02.2009 upholding the orders-in-original impugned before him. On an appeal filed by the appellant, this Bench vide final order dated 20.11.2009 remanded the matter back to the original authority to finalise the demands along with provisional assessments. Accordingly, the order-in-original in remand was passed on 30.01.2015 wherein (i) 925 sq.mtrs. of goods imported vide Bill of Entry No. 1343 dated 04.09.1996 at a declared value of Rs.10,06,378/- were confiscated; a fine of Rs.2,00,000/- in lieu of confiscation was imposed; (ii) 204.25 sq.mtrs. imported goods found in excess were confiscated; however, a fine of Rs.20,000/- in lieu of confiscation was imposed; (iii) Benefit of Notification No.203/92 was denied; (iv) Penalty of Rs.20,000/- was imposed on 925 sq.mtrs. of imported goods; (v) Penalty of Rs.5,000/- was imposed on the excess import of 204.25 sq.mtrs. On an appeal filed by the appellant, the Commissioner (Appeals) vide the impugned order upheld the order-in-original.

5. Ms. Kiran Doiphode, learned counsel for the appellant submits that as per Oxford dictionary, marble is limestone in crystalline or granular state and capable of taking polish used in sculpture and as per Cambridge Dictionary, marble means a type of very hard rock which has patterns of

lines going through it, feels cold and becomes smooth and shining when cut and polished. She submits that the GSI report has not tested the goods as per the parameters. She further submits that as per HSN section V Chapter 25.15, marble is a hard calcareous stone, homogenous and fine grained often crystalline and either opaque or translucent. This heading covers other similar hard calcareous monumental or building stones provided that apparent gravity is 2.5 or more. She would submit that it was mandatory for GSI to carry testing as per this parameter. However, the impugned report states merely that the goods are not marble without elaborating whether the goods have undergone changes. As per the Tribunal judgment in the case of **Just Marble vs. Commissioner of Customs, Jaipur**[3], the GSI report is not conclusive. She would further submit that the Tribunal in the case of **Stone Man Marble Industries & Ors vs. Commissioner of Customs, Jaipur**[4] held that chapter sub-heading 2515 20 claimed by the department will be applicable only when it is established that the imported goods fall under the category of ecaussine and other calcareous monumental or building stone, alabaster. She submits that in the instant case, GSI has not further tested to rule out the definition of marble.

6. Learned counsel further submits that as the issue involves interpretation of tariff and classification and there is no misdeclaration of description or value, no question fine and penalty arises. She would submit that the Tribunal in the case of **Mahalakshmi Tiles & Marbles Co. Pvt. Ltd. vs. Commissioner of Customs, Mumbai**[5] held that there are departmental instructions to allow excess weight upto 25% in respect of marble due to uneven nature of rough marble slabs. In the instant case, the excess weight upto 204.325 sq.mtrs. is within the limit. She

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3. 2009 (237) ELT 376 (Tri-Del)
4. Customs Appeal Nos. 819-820 of 2005
5. 2001 (137) ELT 191 (Tri-Mumbai)

submits that the Tribunal in the case of **Topaim Properties Pvt. Ltd. vs. Commissioner of Customs, Nhava Sheva**[6] held that when there is no misdeclaration of weight, penalty cannot be imposed.

7. Shri C.S. Vinod, learned authorised representative for the Revenue reiterates the findings of the impugned order and submits that there was a clear misdeclaration of weight and nature of the goods. Hence the same were rightly held to be liable for confiscation. He relies on the ratio of the Hon'ble Supreme Court decision in the case of **Akbar Badruddin Jiwani** vs. **Collector of Customs**[7] and submits that classification is to be made on scientific or technical definition. He submits that since the advance licence was item-specific for "marble", the impugned order correctly rejects the same for limestone.

8. Heard both sides and perused the records of the case.

9. We find that Revenue relies on the report of the Certificate given by GSI who reported as under:

"Serial No.	:	19 B.E. No. IGM/2292/62 Container No. Nil
P.R. No.	:	2796/19/98
Specific gravity	:	2.693
Colour	:	Pink with white veins
Petrographic Features	:	Micritic limestone with thick patches of coarse crystalline mosaic of carbonate.
Rock Name	:	It is a crystalline LIMESTONE (cf. IBM specification). It does not show any evidence of metamorphic recrystallisation and thus is NOT A MARBLE."

10. We find that learned counsel for the appellant seeks to rely on the definition given in Oxford dictionary and Cambridge dictionary. We find

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6. 2005 (192) ELT 950 (Tri.-Mumbai)
7. 1990 (47) ELT 161 (SC)

that the same is not acceptable in preference to the technical opinion by GSI which is a professional body. We find that the report is categorical in stating that the impugned goods are not marble as declared. That being so, the submission of the learned counsel for the appellant that the department has failed to establish that the goods are limestone without further examination and analysis is not acceptable.

11. We find that objection has been raised by the appellant during the adjudication proceedings and the original authority has observed as under:

> "15:13 Now I discuss the record of cross examination of the scientists of GSI. I find that in reply to Q. No. 40, 45, 53 and 54 reproduced below, Dr. Pal of GSI was transparent in clarifying what constituted and what did not constitute re-crystallization, what observations can be made to conclude the onset of metamorphosis:-
>
> "Q.40 You have just mentioned that if crystals are formed again, it is re-crystallisation. When Micrite crystals are transformed into Sparrycalcite Crystal, is it not a case where crystals are formed again?
>
> Ans. Micrite itself may grow into Sperrycalcite. That's why we do not call it re-crystallization"
>
> "Q.45 What observation would lead one to the conclusion that there has been recrystallization?
>
> Ans. In similar rocks, we see triple point junction of crystals (mostly coarse and euhedral) and also the grains showing typical metamorphic twinning. This is an exclusive feature to say about metamorphic re-crystallization".
>
> "Q.53 What observations in the sample would lead one to the conclusion that there has been an onset of metamorphism and end of diagenesis?
>
> Ans. To my earlier answer, I have referred to the term triple point, junction, etc. If we get these features, we say that rock undergoes metamorphosis.
>
> "Q.54 Would any observations apart from triple point, junction, indicate the onset of metamorphism?
>
> Ans. The presence of polliation, schitosity, lineation, etc., are also features of metamorphism."

15.14 The importer has tried to bring out that when there is extreme diagenesis, the boundary between diagenesis and metamorphism gets blurred and there could be a possibility of a low-grade metamorphism. Here I find that the importer had chosen to selectively quote replies to some of the questions answered by the Senior Geologist during the Cross Examination to counter the Test Report and to try to prove their point that the metamorphism might have taken place thus, converting limestone into marble. I observe that ignoring the reply of Shri S.K.Tripathy to Question No.47 and Shri Taraknath Pal to Question No. 52 which are contrary to their contention and proved that the presence of diagenesis which is present in the imported goods itself rules out the possibility of presence of "metamorphosis". These questions and replies read as follows:-

"Q47. Would it be correct to say that for textural changes are observed with extreme diagenesis, diagenesis has graded into metamorphism?

Ans. We can observe only one stage as the product if there is diagenesis, extreme diagenesis, then we call it extreme diagenesis. If it is metamorphosed, then we call it metamorphism is there."

"Q52. How would you identify the level at which diagenesis ends and metamorphism begins?

Ans. In a same rock, both diagenesis and metamorphism cannot be present. So from a particular rock we cannot say when diagenesis ends and metamorphism begins"

15.15 Apart from what I observe from the submissions of the importer as discussed above with regard to replies given by the scientists of GSI, I also find that the importer has even chosen to mis-represent the facts by wrongly quoting the reply of the Senior Geologist during the Cross Examination. I find that Dr. Pal in reply to Q.No. 60 had clearly stated that whether the metamorphosis has taken place can be clearly seen by the experts on observing the sample under a microscope. Even when the defense has tried to put words in the mouth of the Senior Gemologist by asking leading questions like Q. 61 and 62, as reproduced below, the categorical reply of Dr. Pal was that since no metamorphosis has taken place in the sample consignment, therefore, the terminology of the

shape of metamorphic crystal can't be used here (ie., usage of the suffix "blastic") and that he preferred to call Sparrycrystals as "Ediomorphic" rather than "Edioblastic". Thus, the senior gemologist clearly ruled out the possibility of formation of marble from the limestone, ie, clearly brought out that the goods imported in the consignment were "limestone" (beyond doubt), and not "marble" as declared by the importer in their import documents. Thus, no amount of confusion creation or persuasion caused by the importer's advocate could change the stand of the expert Senior Gemologists who stuck to their report and justified it through discussion of the theoretical facts related to the matter also. The said three Question & Answers are reproduced below:-

"Q.60 Is the examination of the site of formation not required to determine whether metamorphism has taken place?

Ans. Whether metamorphism is there, it can be easily seen under a microscope. For that from which site the sample has been taken is not important."

"Q61 Would you say that the crystals observed in this sample were edioblastic, hypedioblastic or xenoblastic?

Ans. These three terms represent the shape of the crystal in a metamorphic rock. Since Sparrycalcite is not formed in a metamorphic condition, the terminology for the same crystals may not be used."

"Q.62 So, according to you, Sparry calcite crystals are not edioblastic?

Ans. Yes, I would like to prefer the term "Ediomorphic" rather than "Edioblastic" in this case."

15.16 The Geological Survey of India, Nagpur, a highly reputed and globally recognized Institution, stated in its Test Report that the product was a LIMESTONE. Since there was no metamorphic re-crystallization and thus, the product was not a Marble. This was a categorical statement of facts, I find that during the Cross Examination of two experts from this prestigious institute, Dr. Taraknath Pal and Shri S.K. Tripathy, a large number of irrelevant questions were asked to confuse the two Senior Geologists, even tried to put words in their mouth in his attempt to prove his contention. However, it was of no avail. I have also

examined the submissions made by the importer, relying upon extracts from the Text Book. Here again I would like to reiterate the observations made by me earlier in the discussion, ie., that the extracts only show what is possible or what can happen; in contrast, there is the product and an authentic report from a prestigious institute given by the experts in the relevant field which states, what the imported goods are, ie., limestone. On the contrary, the importer has not submitted any concrete evidence to counter the allegations made by the investigating agency in the Show Cause Notice, ie, they could neither establish that the Test Reports were not reliable nor that the investigation failed to sustain the charges.

15.17 It is pertinent to mention here that the above findings are also supported by the fact that the Indian Standards Specification (ISS) for "Marble", viz., IS:1130-1969 defines "marble" as follows:-

Para 0.2:

"Marbles are metamorphic rocks capable of taking polish, formed from the recrystallization of limestones or dolomitic limestones and are distinguished from limestone by even visibly crystallined nature and non-flaggy stratification."

Para 0.7 of the said Specification provides that:

"The Sectional Committee responsible for the preparation of this standard has taken into consideration the views of producers, consumers and technologists and has related the standard to the manufacturing and trade practices followed in the country in this field."

The very fact that the above definition of marble is given by Indian Standards Specification, which has taken into consideration the views of producers, consumers and technologists, and has related the standard to the manufacturing and trade practices followed in this field, in addition to the fact that this definition itself includes how "marble" is distinguished from "limestone" by even visibly crystallined nature and non-flaggy stratification, goes against the importer's line, of argument that import consignment of "limestone" would be covered as "marble" under the VABAL licence produced by them.”

12. Learned counsel for the appellant seeks to rely on the decisions in **Just Marble** and **Stone Man Marble Industries**. The facts of the cases are different from the present case. We find that in the case of **Stone Man Marble Industries**, this Bench has decided on the basis of the report which indicated the impugned goods therein to be crystalline limestone of the marble. We find that in the impugned case, the report is categorical to state that the impugned goods are limestone and not marble. We also find that in the case of **Just Marble** also, this Bench has observed as follows based on the non-categorical report of the GSI:

> "6. In the present case also the report of the GSI does not give clear finding in support of the claim by the Department. The first report of Mines and Geology Department, Rajasthan contained conflicting views based on differing criteria. In 3 cases, after recording that the imported goods can be considered as limestone, the same was opined to be commercially usable as marble. The decision of the Hon'ble Supreme Court in the case of *Akbar Badruddin Jiwani* (supra) lays down the guidelines/yardstick based on which limestone can be held as having reached the stage of marble. We have already held that limestone after metamorphosis can be considered as marble if, they satisfy certain physical properties like capability or polish. The report of GSI merely confirms that the imported goods are calcium stone without elaborating as to whether they have undergone the changes to treat them as marble or not. The purpose of remand by the Tribunal was to consider this aspect. The test report, in our opinion is not conclusive, in this respect. Further, the pre-requisite for classifying the goods under Tariff Sub-heading 2515.20 as claimed by the Department is that the imported goods should fall under the category of Ecaussine and other calcareous monumental or building stone, alabaster. This aspect is also not been specifically forthcoming in the report of the GSI."

13. In view of the above, the contention of the learned counsel for the appellant cannot be accepted as the report of GSI is categorical and

indicates clear-cut misdeclaration of the nature of the goods. First check of the consignment also indicated import of excess quantity than declared.

14. The appellant has, therefore, committed misdeclaration as far as the nature of the goods and quantity are concerned. Therefore, confiscation and consequent imposition of redemption fine are justified. The impugned order is also justified in rejecting the claim for exemption under Notification No. 203/92 as the imported goods are held to be other than marble which are not permitted to be imported under the advance licence scheme which is operationalized by the above notification. In view of the clear misdeclaration by the appellant, imposition of penalty is also justified.

15. There is, therefore, no reason to interfere with impugned order.

16. Accordingly, we uphold the impugned order and dismiss the appeal.

(Order pronounced on **27.04.2026**)

(JUSTICE DILIP GUPTA)
PRESIDENT

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

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