

Appeal Numbers C/11880-11881,12043,11371-11372,11386-11390,11412-11415./2015. C/11278-11279,11211,11222,11259,11212,11149,11210,10379-10383,10720,10740,10871-10872,10783-10784,10964,11044,11070,11107-11109,10495-10497,11155/2016.

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Zonal Bench
 2nd Floor, Bahumali Building, Nr Girdharnagar Bridge, Asarwa
Ahmedabad 380 004

Sr No	Appeals No	Arising out of	Date	Passed by	Appellant(s)	Respondent(s)
1	C/11278/2016	OIA-MUN-CUSTOM-000-APP-390-394-15-16	15/03/2016	Commissioner (Appeals) of Customs, Ahmedabad	Arihant Tiles And Marbles P Ltd	C.C.-Mundra
2	C/11279/2016	OIA-MUN-CUSTOM-000-APP-390-394-15-16	15/03/2016	Commissioner (Appeals) of Customs, Ahmedabad	Arihant Tiles And Marbles P Ltd	C.C.-Mundra
3	C/11211/2016	OIA-MUN-CUSTOM-000-APP-390-394-15-16	15/03/2016	Commissioner (Appeals) of Customs, Ahmedabad	Arihant Tiles And Marbles P Ltd	C.C.-Mundra
4	C/11222/2016	OIA-MUN-CUSTOM-000-APP-390-394-15-16	15/03/2016	Commissioner (Appeals) of Customs, Ahmedabad	Arihant Tiles And Marbles P Ltd	C.C.-Mundra
5	C/11259/2016	OIA-MUN-CUSTOM-000-APP-390-394-15-16	15/03/2016	Commissioner (Appeals) of Customs, Ahmedabad	Arihant Tiles And Marbles P Ltd	C.C.-Mundra
6	C/11212/2016	OIA-MUN-CUSTOM-000-APP-335-350-15-16	25/02/2016	Commissioner (Appeals) of Customs, Ahmedabad	Arihant Tiles And Marbles P Ltd	C.C.-Mundra
7	C/11149/2016	OIA-MUN-CUSTOM-000-APP-335-350-15-16	25/02/2016	Commissioner (Appeals) of Customs, Ahmedabad	Arihant Tiles And Marbles P Ltd	C.C.-Mundra
8	C/11210/2016	OIA-MUN-CUSTOM-000-APP-335-350-15-16	25/02/2016	Commissioner (Appeals) of Customs, Ahmedabad	Arihant Tiles And Marbles P Ltd	C.C.-Mundra
9	C/10379/2016	OIA-MUN-CUSTOM-000-APP-299-306-15-16	28/01/2016	Commissioner (Appeals) of Customs, Ahmedabad	Arihant Tiles And Marbles P Ltd	C.C.-Mundra
10	C/10380/2016	OIA-MUN-CUSTOM-000-APP-299-306-15-16	28/01/2016	Commissioner (Appeals) of Customs, Ahmedabad	Arihant Tiles And Marbles P Ltd	C.C.-Mundra
11	C/10381/2016	OIA-MUN-CUSTOM-000-APP-299-306-15-16	28/01/2016	Commissioner (Appeals) of Customs, Ahmedabad	Arihant Tiles And Marbles P Ltd	C.C.-Mundra
12	C/10382/2016	OIA-MUN-CUSTOM-000-APP-299-306-15-16	28/01/2016	Commissioner (Appeals) of Customs, Ahmedabad	Arihant Tiles And Marbles P Ltd	C.C.-Mundra
13	C/10383/2016	OIA-MUN-CUSTOM-000-APP-299-306-15-16	28/01/2016	Commissioner (Appeals) of Customs, Ahmedabad	Arihant Tiles And Marbles P Ltd	C.C.-Mundra
14	C/10720/2016	OIA-MUN-CUSTOM-000-APP-335-350-15-16	25/02/2016	Commissioner (Appeals) of Customs, Ahmedabad	Arihant Tiles And Marbles P Ltd	C.C.-Mundra
15	C/10740/2016	OIA-MUN-CUSTOM-000-APP-335-350-15-16	25/02/2016	Commissioner (Appeals) of Customs, Ahmedabad	Arihant Tiles And Marbles P Ltd	C.C.-Mundra
16	C/10871/2016	OIA-MUN-CUSTOM-000-APP-335-350-15-16	25/02/2016	Commissioner (Appeals) of Customs, Ahmedabad	Arihant Tiles & Marbles P Ltd	C.C.-Mundra
17	C/10872/2016	OIA-MUN-CUSTOM-000-APP-335-350-15-16	25/02/2016	Commissioner (Appeals) of Customs, Ahmedabad	Arihant Tiles & Marbles P Ltd	C.C.-Mundra
18	C/10783/2016	OIA-MUN-CUSTOM-000-APP-335-350-15-16	25/02/2016	Commissioner (Appeals) of Customs, Ahmedabad	Arihant Tiles & Marbles P Ltd	C.C.-Mundra
19	C/10784/2016	OIA-MUN-CUSTOM-000-APP-335-350-15-16	25/02/2016	Commissioner (Appeals) of Customs, Ahmedabad	Arihant Tiles & Marbles P Ltd	C.C.-Mundra

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20	C/10964/2016	OIA-MUN-CUSTOM-000-APP-335-350-15-16	25/02/2016	Commissioner (Appeals) of Customs, Ahmedabad	Arihant Tiles & Marbles P Ltd	C.C.-Mundra
21	C/11044/2016	OIA-MUN-CUSTOM-000-APP-335-350-15-16	25/02/2016	Commissioner (Appeals) of Customs, Ahmedabad	Arihant Tiles & Marbles P Ltd	C.C.-Mundra
22	C/11070/2016	OIA-MUN-CUSTOM-000-APP-335-350-15-16	25/02/2016	Commissioner (Appeals) of Customs, Ahmedabad	Arihant Tiles & Marbles P Ltd	C.C.-Mundra
23	C/11107/2016	OIA-MUN-CUSTOM-000-APP-335-350-15-16	25/02/2016	Commissioner (Appeals) of Customs, Ahmedabad	Arihant Tiles & Marbles P Ltd	C.C.-Mundra
24	C/11108/2016	OIA-MUN-CUSTOM-000-APP-335-350-15-16	25/02/2016	Commissioner (Appeals) of Customs, Ahmedabad	Arihant Tiles & Marbles P Ltd	C.C.-Mundra
25	C/11109/2016	OIA-MUN-CUSTOM-000-APP-335-350-15-16	25/02/2016	Commissioner (Appeals) of Customs, Ahmedabad	Arihant Tiles & Marbles P Ltd	C.C.-Mundra
26	C/10495/2016	OIA-MUN-CUSTOM-000-APP-299-306-15-16	28/01/2016	Commissioner (Appeals) of Customs, Ahmedabad	Arihant Tiles & Marbles P Ltd	C.C.-Mundra
27	C/10496/2016	OIA-MUN-CUSTOM-000-APP-299-306-15-16	28/01/2016	Commissioner (Appeals) of Customs, Ahmedabad	Arihant Tiles & Marbles P Ltd	C.C.-Mundra
28	C/10497/2016	OIA-MUN-CUSTOM-000-APP-299-306-15-16	28/01/2016	Commissioner (Appeals) of Customs, Ahmedabad	Arihant Tiles & Marbles P Ltd	C.C.-Mundra
29	C/11880/2015	OIA-MUN-CUSTOM-000-APP-157-159-15-16	01/09/2015	Commissioner (Appeals) of Customs, Ahmedabad	Arihant Tiles & Marbles P Ltd	C.C.-Mundra
30	C/11881/2015	OIA-MUN-CUSTOM-000-APP-157-159-15-16	01/09/2015	Commissioner (Appeals) of Customs, Ahmedabad	Arihant Tiles & Marbles P Ltd	C.C.-Mundra
31	C/12043/2015	OIA-MUN-CUSTOM-000-APP-157-159-15-16	01/09/2015	Commissioner (Appeals) of Customs, Ahmedabad	Arihant Tiles & Marbles P Ltd	C.C.-Mundra
32	C/11371/2015	OIA-MUN-CUSTOM-000-APP-034-044-15-16	15/05/2015	Commissioner (Appeals) of Customs, Ahmedabad	Arihant Tiles & Marbles P Ltd	C.C.-Mundra
33	C/11372/2015	OIA-MUN-CUSTOM-000-APP-034-044-15-16	15/05/2015	Commissioner (Appeals) of Customs, Ahmedabad	Arihant Tiles & Marbles P Ltd	C.C.-Mundra
34	C/11386/2015	OIA-MUN-CUSTOM-000-APP-034-044-15-16	15/05/2015	Commissioner (Appeals) of Customs, Ahmedabad	Arihant Tiles & Marbles P Ltd	C.C.-Mundra
35	C/11387/2015	OIA-MUN-CUSTOM-000-APP-034-044-15-16	15/05/2015	Commissioner (Appeals) of Customs, Ahmedabad	Arihant Tiles & Marbles P Ltd	C.C.-Mundra
36	C/11388/2015	OIA-MUN-CUSTOM-000-APP-034-044-15-16	15/05/2015	Commissioner (Appeals) of Customs, Ahmedabad	Arihant Tiles & Marbles P Ltd	C.C.-Mundra
37	C/11389/2015	OIA-MUN-CUSTOM-000-APP-034-044-15-16	15/05/2015	Commissioner (Appeals) of Customs, Ahmedabad	Arihant Tiles & Marbles P Ltd	C.C.-Mundra
38	C/11390/2015	OIA-MUN-CUSTOM-000-APP-034-044-15-16	15/05/2015	Commissioner (Appeals) of Customs, Ahmedabad	Arihant Tiles & Marbles P Ltd	C.C.-Mundra
39	C/11412/2015	OIA-MUN-CUSTOM-000-APP-034-044-15-16	15/05/2015	Commissioner (Appeals) of Customs, Ahmedabad	Arihant Tiles & Marbles P Ltd	C.C.-Mundra
40	C/11413/2015	OIA-MUN-CUSTOM-000-APP-034-044-15-16	15/05/2015	Commissioner (Appeals) of Customs, Ahmedabad	Arihant Tiles & Marbles P Ltd	C.C.-Mundra
41	C/11414/2015	OIA-MUN-CUSTOM-000-APP-034-044-15-16	15/05/2015	Commissioner (Appeals) of Customs, Ahmedabad	Arihant Tiles & Marbles P Ltd	C.C.-Mundra
42	C/11415/2015	OIA-MUN-CUSTOM-000-APP-034-044-15-16	15/05/2015	Commissioner (Appeals) of Customs, Ahmedabad	Arihant Tiles & Marbles P Ltd	C.C.-Mundra

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43	C/11155/2016	OIA-MUN-CUSTOM-000-APP-335-350-15-16	25/02/2016	Commissioner (Appeals) of Customs, Ahmedabad	Arihant Tiles And Marbles P Ltd	C.C.-Mundra
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Represented by
 For Applicant(s) : Shri Anand Nainavati, Advocate
 For Respondent(s) : Shri G Jha, Authorised Representative

CORAM :
Dr D.M. Misra, Hon'ble Member (Judicial)
Shri Devender Singh, Hon'ble Member (Technical)

Date of Hearing / Decision : 10/04/2018

ORDER No. A/10675-10717/2018

Per : Devender Singh

These appeals have been filed against the following OIAs passed by the Commissioner of Customs (Appeals), Ahmedabad.

- (i) OIA-MUN-CUSTOM-000-APP-034-044-15-16
- (ii) OIA-MUN-CUSTOM-000-APP-157-159-15-16
- (iii) OIA-MUN-CUSTOM-000-APP-299-306-15-16
- (iv) OIA-MUN-CUSTOM-000-APP-335-350-15-16
- (v) OIA-MUN-CUSTOM-000-APP-390-394-15-16

2. At the outset, the Ld. Advocate Shri Anand Nainawati appearing for the appellants submits that the issue in these 43 appeals is common. Ld. AR for the Revenue agrees with the said submission. Since, the issue involved is common in all these appeals, the same are taken up together for disposal.

3. Ld. Advocate for the appellant submits that they had imported "Rough Marble Blocks" against the 43 Bills of entry during the period 15.01.2015 to 31.07.2015 declaring the transaction value of the said Marble on the respective bills of entry. It is his contention that the value was enhanced by following the contemporaneous values but

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without issuing notice and no speaking order was issued to the appellants. The appellants had paid the duty to expedite the clearance to avoid the demurrage and disruption of product planning at the factory. However, aggrieved by the said assessment of the bills of entry, they filed appeals before the Ld. Commissioner (Appeals) disputing the enhancement of value. It is his contention the Ld. Commissioner (Appeals) without going into the grounds of appeal, whereunder the assessment order has been challenged, observed that since the appellants had not disputed the assessment and paid duty, therefore, the appeals are liable to be rejected. Consequently, he rejected the appeals. The Ld. Advocate for the appellants vehemently argued that since they did not agree with the enhanced value, in pursuing the appellate remedy, they filed appeals before the Ld. Commissioner (Appeals) which itself shows that they were aggrieved by the order of the assessment. It is his contention that the matter may therefore be remanded to adjudicating authority to allow them to present their case on merit. He relied on the decisions of the Hon'ble Calcutta High Court in the case of Gateway and Commodities Pvt. Ltd. Vs. UOI – 2016 (333) ELT 263 (Cal.) and of this Tribunal in the case of Hindalco Industries Limited vs. C.C.-Kandla in appeal No. C/10055-10073/2015, Final Order No. A/10509-10527/2018 dated 16.02.2018.

4. The Ld. AR for the Revenue submits that the appellants had accepted the enhanced value which was done on the basis of contemporaneous prices and accordingly paid the duty. Therefore, the assessment should be considered as final and the Ld. Commissioner (Appeals) has rightly rejected their appeals.

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5. Heard both sides and examine the records.

6. We find that the appellants had imported Rough Marble Blocks against the aforesaid 43 bills of entry and assessed the bills of entry declaring the value as per invoices. The department held that the declared value was not correct and re-assessed the value by enhancing the value. The appellants paid the duty on the enhanced value and cleared the goods. The reasoning in the order of Commissioner (Appeals) is that the appellants did not go for provisional assessment and if they have no doubt/grievance regarding enhancement of value and the re-assessment has been done by the proper officer and the importer accepts the same and does not ask any assessment/speaking order, re-assessment is final. The Commissioner (Appeals) has relied upon the Board Circular No. 17/2011-Customs, dated 08.04.2011. The basic premise is that since duty was paid on enhanced value after re-assessment under Section 17 of the Customs Act, 1962, there is no question of challenging the same. We find that the appellants have filed appeals within statutory period against all the impugned bills of entry before the Ld. Commissioner (Appeals) challenging the said assessment orders on the bills of entry. We also find that no speaking orders on re-assessments made were issued as is the requirement under Section 17 (5) of the Customs Act, 1962. It is the contention of the Ld. Advocate for the appellant that since they did not agree with the assessment order enhancing the value, therefore, the appeals have been filed before the Ld. Commissioner (Appeals). It is the contention

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of the Ld. AR for the Revenue on the other hand is that since the appellants have not disputed the enhanced value, therefore, the adjudicating authority did not go into detail and pass a speaking order. We find that in the case of Gateway and Commodities Pvt. Ltd. (supra), Hon'ble High Court of Calcutta has held that it is the statutory responsibility of the assessing officer to issue re-assessment order within 15 days of the re-assessment of bills of entry. Hon'ble Court also held that payment of duty by the importer on such re-assessment cannot be a ground for non issuance of the order of re-assessment. We also find that in similar set of facts, in case of Hindalco Industries Limited (supra), this Tribunal has remanded the matter to Adjudicating Authority to decide the issue on merit afresh.

7. By following the above judgements, the impugned matters are remanded back to the Adjudicating Authority to decide the issue on merit afresh after affording the opportunity to the appellants to defend themselves and pass a speaking order.

8. In the result, the appeals are allowed by way of remand to the Adjudicating Authority in above terms.

(Operative part of the order pronounced in the Court)

(D. M. Misra)
Member (Judicial)

(Devender Singh)
Member (Technical)

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