Supreme Court of India
Akbar Badrudin Jiwani vs Collector Of Customs, Bombay on 14 February, 1990
Equivalent citations: 1990 AIR 1579, 1990 SCR (1) 369
Author: B Ray
Bench: Ray, B.C. (J)

PETITIONER:
AKBAR BADRUDIN JIWANI

Vs.

RESPONDENT:
COLLECTOR OF CUSTOMS, BOMBAY

DATE OF JUDGMENT14/02/1990

BENCH:
RAY, B.C. (J)
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RAY, B.C. (J)
PANDIAN, S.R. (J)

CITATION:
1990 AIR 1579 1990 SCR (1) 369
1990 SCC (2) 203 JT 1990 (1) 256
1990 SCALE (1)176

ACT:
Customs Act, 1962: Sections III(d), 112 and 125--Calcareous stone imported by appellant--Whether 'marble' under Import & Export Policy April 1988--March 1991 Entry 62, Appendix 2, Part B-Whether can be confiscated on that ground--Whether option to clear goods for home consumption on payment of fine valid: the term 'marble' to be interpreted in a manner which is in consonance with the statutory context and not as understood in commercial parlance.

HEADNOTE:
The appellant on behalf of his firm, which is engaged in processing of stone slabs, placed an order for calcareous stone (other than marble) with the exporter in Italy, and asked the exporter to certify that the said goods were not marble. The appellant further obtained from the foreign exporter a sample tile and had the same tested by a reputed geologist who confirmed that the sample was not marble. The goods were imported under OGL Appendix 6, Item I of Import and Export Policy for April 1988--March 1991.

The Customs Department sent sealed samples of the imported goods for testing to various technical authorities, and on the basis of some of these reports/opinions/visual

observations issued a show cause notice to the appellant alleging that the calcareous stone were nothing but marble only as per the commercial definition of marble and there- fore governed by Entry 62, Appendix 2, Part B of the Import

JUDGMENT:

lant's contention was that the said goods could not be regarded as 'marble' in terms of the expression 'marble' appearing in heading 25.15 in Schedule 1. Appendix I-B, Customs Tariff Amendment Act, 1985.

The Collector of Customs however passed an order that the goods imported were marble requiring a specific import licence. The Collector further ordered confiscation of the goods and imposition of fine and penalty. The Customs, Excise and Gold (Control) Appellate Tribunal dismissed the appellant's appeal but reduced the penalty amount.

Before this Court it was contended on behalf of the appel- lant that:

(1) for the purpose of understanding the meaning of 'marble' occurring in Appendix 1-B, Schedule I of the Im- ports (Control) Order, 1955 it is necessary to refer to Mineral Products, in Chapter 25, Tariff Entry No. 25.15.

the term 'marble' therein does not occur by itself or in isolation bal as an inseverable part of a Tariff Entry which deals with five items (a) Marble (b) Travertine (c) Ecaussine (d) Other calcareous stone Alabaster;

the Tariff Entry draws a clear line of distinction between each of these five items and regards them as five distinct products;

(4) the term 'marble' has to be given a meaning which fits in and harmonises in the above mentioned statutory context, so that 'marble' continues to remain distinct and different from the said other four items:

though the general principle of interpretation of tariff entries occurring in a tax statute is that of commer- cial nomenclature or understanding in the trade, the said doctrine or commercial nomenclature or trade understanding can and should be departed from in a case where the statuto- ry context in which the tariff item appears, requires such a departure;

(6) the principles of interpretation are never embodied rules and the same must always yield to the context of the particular statute;

(7) as the word 'marble' has not been defined and the tariff item refers to calcareous stone of an apparent spe- cific gravity of 2.5 or more, has to be taken to be used in a technical and scientific sense and as such the same cannot be interpreted in the popular commercial sense;

the end-use of the particular product is irrelevant and of no consequence for determining its classification; and (9) if the term 'marble' is to be given the commercial meaning as relied upon by the Customs Authorities then the inevitable consequence would be that the term 'marble' in Chapter Heading 25.15 would automatically include within it the other four items thereby rendering the rest of the Tariff Entry otiose, redundant and meaningless.

On behalf of the Revenue it was contended that:

(1) the word 'marble' has not been defined in the Tariff Act and as such in interpreting the word 'marble' as men- tioned in Tariff Item No. 25.15 in Appendix 1-B, Schedule 1 to the Import (Control) Order, 1955, the test in commercial and trade parlance has to be applied i.e. how the said product came to be commercially known by the trading people;

(2) it is not a scientific or technical word and as such it does not require to be interpreted in its scientific and technical sense;

(3) the word 'marble' if so interpreted will include calcareous stone of 2.5 or more specific gravity;

(4) marble is the genus and all other four items of stone mentioned in Tariff Entry 25.15 which are of apparent specific gravity of 2.5 are included within marble as they are commercially and in trade parlance known as marble; and (5) the end-use of the product i.e. marble and calcare- ous stone has to be taken into consideration in the determi- nation of the other items of stone mentioned in that Entry. Allowing the appeal, this Court, HELD: (1) According to a number of reports as well as the ISI specification the slabs of rocks that have been imported by the appellant and claimed to be calcareous stones are not 'marble' in the scientific and technical sense of the term 'marble'. [387F-G] (2) Calcareous stone as mentioned in ITC Schedule has to be taken in scientific and technical sense as therein the said stone has been described as of an apparent specific gravity of 2.5 or more. Therefore, the word 'marble' has to be interpreted in the scientific or technical sense and not in the sense as commercially understood or as meant in the trade parlance. [388D-E]

4. The general principle of interpretation of tariff entries occurring in a tax statute is that of commercial nomenclature or understanding in the trade. The said doc- trine of commercial nomenclature or understanding can and should be departed from in a case where the statutory con- tent in which the tariff item appears requires such a de-

parture. If the application of the commercial meaning of trade nomenclature runs counter to the statutory context then the said principle of interpretation cannot and should not be applied. [388E-F] (5) Trade meaning or commercial nomenclature would be applicable if a particular product description occurs by itself in a Tariff Entry and there is no conflict between the Tariff Entry and any other Entry requiring to reconcile and harmonise that Tariff Entry with any other Entry. [388G] Union of India v. Delhi Cloth & General Mills, [1963] Supp. 1 SCR 586; Dunlop India Ltd. v. Union of India & Ors., [1976] 2 SCR 98; Commissioner of Sales Tax, M.P. v. Jaswant Singh Charan Singh, [1967] 2 SCR 720; Grenfell v. Inland Revenue Commissioner, [1876] 1 EX. D. 242, 248; Holt & Co. v. Collyer, [1881] 16 Ch. D. 718, 720; K.V. Varkey v. Agri- cultural Income Tax and Rural Sales

Tax Officer, [1954] 5 STC 384; Cannanore Spinning and Weaving Mills Ltd. v. Col- lector of Customs and Central Excise Cochin, [1970] 2 SCR 830; Collector of Central Excise, Kanpur v. Krishna Carbon Paper Co., [1989] 1 SCC 150; Collector of Customs, Bombay v. Hargovindas & Co., [1987] 29 LET 975 and Collector of Cus- toms, Bombay v. Swastic Woollens (P) Ltd. and Ors., [1988] Supp SCC 796, referred to.

(6) The commercial nomenclature or trade meaning cannot be given to marble in as much as such a meaning if given will render otiose and redundant the terms travertine, ecaussine, alabaster and other calcareous monumental or building stone of an apparent specific gravity of 2.5 or more whether or not roughly trimmed or merely cut by sawing. [397F-G] (7) In interpreting a product its end-use is of no relevance in determining the classification because in interpreting a term appearing in the Tariff Item which has not been defined either in the Tariff Schedule or in the Import Control Order, the same is to be interpreted in such a way which is in consonance with the Items specified in the ITC Schedule without leaving out any part of the Items mentioned therein. [399A-B] (8) Considering all the reports, and since the term 'marble' has not been defined in the Imports Control Order as well as in the ITC Schedule it has to be taken in a scientific and technical sense as well as in the context the word has been used, and the slabs of calcareous stones imported by the appellant from Italy cannot be held to be marble as they have not been recrystallised and metamor- phosed in the geological and petrological sense of the term. [398F] (9) The slabs of calcareous stone imported by the appel- lant are not marble as mentioned in Entry No. 62 of Appendix 2 of the Import and Export Policy for April 1988--March 1991 and so it is covered by Open General Licence. [399G] (10) The imported goods cannot be confiscated by the Government under Section III(d) of the Customs Act, 1961 nor the appellant can be given the option to clear the said goods for home consumption on payment of fine in lieu of confiscation under Section 125 of the Customs Act, 1962. [399H; 400A] (11) The appellant cannot be said to have imported calcareous stones without an import licence and as such there being no violation of the Import Control Policy the imposition of penalty under Section 112 of the Customs Act, 1962 is unwarranted and not sustainable. [400A] (12) Even if it is taken for arguments sake that the imported article is marble falling within Entry 62 of Appen- dix 2, the burden lies on the Customs Department to show that the appellant has acted dishonestly or contumaciously or with the deliberate or distinct object of breaching the law. In the instant case, in view of the finding arrived at by the Appellate Tribunal that the said product was imported on a bona fide belief that it was not marble, the imposition of such a heavy fine is not at all warranted and justified. [400B-C; 401A-B] Merck Spares v. Collector of Central Excise & Customs, Delhi, [1983] ELT 1261; Shama Engine Valves Ltd. Bombay v. Collector of Customs, Bombay, [1984] 18 ELT 533; Madhusu- dan Gordhandas & Co. v. Collector of Customs, Bombay, [1987] 29 ELT 904 and Hindustan Steel Ltd. v. State of Orissa, [1970] 1 SCR 753, referred to.

& CIVIL APPELLATE JURISDICTION: Civil Appeal No. 3655 of 1989.

From the Judgment and Order dated 14.8.1989 of the Customs, Excise and Gold (Control) Appellate Tribunal, West Regional Bench, Bombay in Appeal No. CD(BOM)A. No 322 of 1989 in Order No. 704 of 1989.

Anil B. Diwan, S. Ganesh, R.K. Krishnamurthy, S.R. Narain and Sandeep Narain for the Appellant.

A.K. Ganguli, B. Parthasarthy, K. Swami and P. Parmesh- waran for the Respondent.

The Judgment of the Court was delivered by RAY, J. This appeal under Section 130-E(b) of the Customs Act, 1962 is directed against the judgment and order dated August 14, 1989 passed by the Customs, Excise & Gold (Control) Appellate Tribunal. Bombay in CD(Bom) A. No. 322 of 1989.

The most vital question that comes up for consideration in this appeal is whether marble as mentioned in Tariff Item No. 25.15 in Appendix 1-B, Schedule I to the Import (Con- trol) Order, 1955 mentioning "Marble, travertine, ecaussine and other calcareous monumental or building stone of an apparent specific gravity of 2.5 or more and Alabaster, whether or not roughly trimmed or merely cut, by sawing or otherwise, into blocks or slabs of a rectangular (including square) shape" is genus within which a11 other kinds of calcareous stones are included or whether marble is a distinct or different item which is one of the restricted item in the List of Restricted Items described in Appendix 2, Part B of Import and Export Policy for April 1988--March 1991.

The matrix of the case is that the Appellant has been carrying on business as sole proprietor under the name and style of M/s Interior Manufacturers at A-12, Yuwan Apart- ments, 413/414, Mount Mary Road, Bandra, Bombay which is a small scale industry engaged in processing of stone slabs. In the course of his manufacturing activity the Appellant utilises and requires as raw material polishable calcareous stones viz. marble, travertine, ecaussine, alabaster and other calcareous stones. All these different types of stones are hard and capable of taking polish. Marble is distinguished from other calcareous rocks, by the fact that it is a metamorphic rock formed from recrystallization of lime- stones and has a visibly crystallined nature. In order to import calcareous stones covered by the Open General Licence and with a view to ensuring that the same was not marble, the Appellant took the following precautions: (1) The appellant referred to the Indian Standards Specifi- cation for Marble viz. IS: 1130-1969 which defines marble as follows:

Para 0.2:

"Marbles are metamorphic rocks capable of taking polish, formed from the re-crystallization of limestones or dolomit- ic limestones and are distinguised 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."

(2) The Appellant obtained from the foreign exporters a sample tile of Botticino', the calcareous rock proposed to be imported and had the same tested by a reputed Geologist, Dr. S.F. Sethna who tested the sample and by his report dated October 13, 1988 confirmed that the same was not marble. His letter dated October 14, 1988 explains now the sample tested was limestone, different from marble. The sample tile tested and attested by Dr. Sethna was submitted to the Customs Department vide their letter dated February 20, 1989.

(3) The appellant then referred to an Italian Book MARHI ITALTA wherein the index evidenced the fact that 'Botticino' varieties were covered under polishable calcareous rocks' and not under true marbles (re-crystallised calcareous rocks).

(4) The appellant specifically placed an order for calcare- ous stones (other than marble) and asked the Exporter to certify that the said goods were not marble. The exporter Elle Marmi of Italy by a certificate dated December 6, 1988 certified that all the goods were calcareous stone slabs other than marble.

(5) The appellant also obtained the certificate dated Decem- ber 6, 1988 from one Gianni C. Baigini, a Surveyor regis- tered with the Chamber of Commerce, Carrara and a Specialist for stones. Gianni C. Baigini after checking the said con- signment loaded in the containers for import by the Appel- lant in Italy certified that the slabs loaded in Container Nos. LMCU 051315/8, 050082/3, 05 15 19/2, 05 1520/6 were calcareous stones other than marble since the same were not re-crystallised calcareous rocks.

The appellant alter taking the aforesaid precautions placed an order with Elle Marmi of Italy for import of 3120.50 sq. mtrs. of slabs of calcareous stones having a thickness of 2 cms. at a price of Italian Lira 4.22.56.000 i.e. Rs.4,93,000 approximateIy. The said Elle Marmi issued an invoice dated December 2, 1988 for the said purpose. The goods arrived in Bombay by the vessel 'Orient Tri- umph' on or about 19th January, 1989. The appellant filed a Bill of Entry No. 007569 dated 19.1. 1989 for clearance of the goods for home consumption. The goods were declared as slabs of calcareous stones (other than marble) and were imported under OGL Appendix 6, Item 1 of Import and Export Policy for April 1988--March 1991.

The goods were inspected by the Assistant Collector (Docks) who observed as follows:

"These goods under import do not appear to be marble or granite and are not polished, they are roughly squared and are having smooth edges on all four sides but are having smooth edges on 2 or 3 sides due to sawing."

The sample of the goods was sent by the Assistant Collector (Docks) to the Assistant Collector of Customs (Group I). The Assistant Collector of Customs (Group I) issued a query memo dated February 6, 1989 on the alleged basis that 'calcareous stones are nothing but marble only' and therefore, governed by Entry 62, Appendix 2, Part B of Import and Export Policy for March 1988 to April 1991. The query was allegedly based upon explanatory notes contained in the "Harmonised Commodi- ty Description and Coding System" (HSN) evolved by the International Customs Cooperation Council. The appellant set out the correct position and informed the Department by several letters dated 7th February, 1989, 13th February, 1989, 16th February, 1989 and 20th February, 1989 that the said goods could not be regarded as 'marble' in terms of the expression 'marble' appearing in heading 25.15 in Schedule I, Appendix I-B Customs Tariff Amendment Act, 1985. The appellant also requested for release of part of the goods pending the technical test of the sample from imported goods.

Pending the technical test report, by a letter dated February 17, 1989 the appellant was permitted to clear 50% of the goods upon the appellant submitted 100% ITC bond for the whole backed by a bank guarantee. The balance 50% of the imported consignment was detained. The appellant accordingly cleared 50% of the imported consignment. The appellant, however, paid import duty on the full consignment.

The Assistant Collector of Customs (Group 1) sent the sealed samples of the imported goods for testing to the Deputy Director General Petrology Department, Geological Survey of India, Central Region, Nagpur. The sealed cover containing the samples was sent through the appellant's representative. The appellant also by a letter dated Febru- ary 25, 1989 sent a sample of the same consignment for testing to the Geological Survey of India.

The appellant addressed further letters dated March 7, 1989, March 8, 1989 to the Customs Department. By a letter dated March 13, 1989 the appellant forwarded to the Customs Department a sealed envelope containing a test report given by the Geological Survey of India, Nagpur on the sample of tile imported goods.

The appellant on March 17, 1989 received a letter dated March 13, 1989 from the Geological Survey of India enclosing the test report on the sample of the imported goods submit- ted by the appellant to the Geological Survey of India. This test report categorically stated that the sample was "allo-chemic (Pelmicritic) limestone. It cannot be termed as a marble." It is pertinent to mention that the Geological Survey of India had tested two samples from the materials imported by the appellant, one sample forwarded by the Customs Department and the other by the appellant. The report of the Geological Survey of India on the sample forwarded by the Customs Department was set out earlier and sent in a sealed cover to the Customs Department. The Customs Department, however, did not release the goods inspite of the categorical report of the Geological Survey of India and instead issued a show cause notice dated March 17, 1989. The Customs Department inter alia relied upon the opinion based on visual observation received from the Indian Bureau of Mines, Government of India, Udaipur and test reports based on technical test received from the Director of Mines & Geology Department, Udaipur and Geologi- cal Survey of India, Nagpur. The test report received by the respondent from the Geological Survey of India, Nagpur was kept back and not disclosed to the appellant. None of the three reports/opinions were disclosed to the appellant at the time of issue of show-cause notice. On the basis of these reports/opinions it was alleged in the show-cause notice that the imported goods were marble allegedly as per the commercial definition of marble enunciated in the show- cause notice. The Department threatened to confiscate the goods and initiate the penal action against the appellant pursuant to Section 112 of the Customs Act. The appellant by a letter dated March 20, 1989 called upon the Customs De- partment to set aside the show-cause notice. The Collector of Customs, New Customs House, Ballard Estate, Bombay passed an order that the goods imported are marble and thus require a specific import licence. He also held that these goods are liable for classification as marble and the import of these goods under OGL is not admis- sible and therefore in exercise of the powers conferred under Section 111(d) of the Customs Act, 1962, the Collector of Customs ordered the confiscation of the imported goods and further ordered that the Bond be enforced towards a fine of Rs.4,93,199 imposed on the said goods in lieu of confis- cation. The Assistant Collector of Customs was directed to enforce the said Bond

and the Bank Guarantee for realisation of this amount of fine. However, the importer was given option to clear the said goods for home consumption on payment of fine of Rs.5,00,000 in lieu of confiscation under Section 125 of the Customs Act, 1962, the option to be exercised within 60 days from the date of receipt of the said order. He further held that since the importer contra- vened the provisions of section 111(d) of the Customs Act, 1962 read with Section 3 of the Import and Export (Control) Act, 1947 rendering the said goods for confiscation, the importer is liable for penal action under provisions of Section 112 of the Customs Act. Accordingly, the penalty of Rs. 10,00,000 under Section 112 of the said Act was directed to be paid forthwith.

Against this order, the appellant filed a writ petition being Writ Petition No. 1398 of 1989 which was dismissed at the admission stage on the ground that it involves disputed questions of fact which were difficult to be decided in a writ jurisdiction. However, the appellant was permitted to clear the goods on payment of redemption fine and furnishing full bank guarantee for the penalty amount. Aggrieved by this order, an appeal being Appeal No. 6 18 of 1989 was filed in the High Court of Bombay. The said appeal was dismissed with liberty to file a departmental appeal by Order dated June 15, 1989. The appellant thereaf- ter filed the said appeal before the Customs, Excise and Gold (Control) Appellate Tribunal, West Regional Bench, Bombay. The said Appellate Tribunal after hearing the appel- lant as well as the Revenue dismissed the appeal and con- firmed the order of the Collector of Customs but reduced the penalty amount from Rs. 10,00,000 to Rs.5,00,000.

Feeling aggrieved by the said order the appellant filed the instant appeal under Section 130-E(b) of the Customs Act, 1962. The entire controversy relates to the question whether the calcareous stone which has been imported by the appellant falling within the Tariff Item No. 25.15 of Sched- ule I, Appendix I-B commonly known as I.T. Schedule is marble as mentioned in Entry No. 62 of the List of Restrict- ed Items, Annexure 2, Part B of the Import and Export Policy for April 1988 to March 1991 and as such the import of calcareous stone made by the appellant being not covered under OGL, is liable for confiscation and penalty for ille- gal import without the specific import licence obtained from the respondent. In Appendix I-B, Schedule 1 of ITC Schedule, Entry No. 25.15 of Chapter 25 (Mineral Products) mentions: "Marble travertine, ecaussine and any other calcareous monumental or building stone of an apparent specific gravity of 2.5 or more and Alabaster, whether or not roughly trimmed or merely cut by sawing or otherwise, into blocks, of slabs of a rectangular (including square) shape."

In the said Appendix I-B, Schedule I states that each heading number in Column (1) corresponds to the respective Chapter and heading number of the first Schedule to the Customs, Tariff Amendment Act, 1985 as amended on 24.1. 1986 and each entry in Column (2) has the same scope and meaning as the corresponding Chapter and heading of the said first Schedule.

It is appropriate to refer to Appendix 6 of the Import and Export Policy for April 1988 to March, 1991 which men- tions import of items under Open General Licence. The cate- gories of importers, the items allowed to be imported by them under Open General Licence and the conditions governing their importation have been set out therein:

Items	Category of eligible importers

1. Raw materials components and consumables Actual Users (Non-iron and steel items) other than (Industrial) those included in the Appendices 2, 3 Part A, 5 and 8 In Appendix II-B, in the List of Restricted Items, Entry 6.2, of Import and Export Policy for March 1988 to April 1991 refers to marble/granite/onyx.

Mr. Diwan, learned counsel appearing on behalf of the appellant has submitted that for the purpose of understand- ing the meaning of 'marble' occurring in Appendix I-B, Schedule I of the Imports (Control) Order, 1955 it is neces- sary to refer to Mineral Products, in Chapter 25, Tariff Entry No. 25.15 which refers to Marble, Travertine, Ecaus- sine and other calcareous monumental and building stone of an apparent specific gravity of 2.5 or more and Alabaster, whether or not roughly trimmed or merely cut by sawing or otherwise into blocks or slabs of a rectangular (including square) shape. The term 'marble' does not occur by itself or in isolation but as a inseverable part of a Tariff Entry which deals with five items referred to hereinbelow:

(a) Marble

(b) Travertine

(c) Ecaussine

(d) Other calcareous stone

(e) Alabaster Each of these five items is a monumental or building stone which is hard and can be cut and sawed into the required sizes and can take polish. The Tariff Entry draws a clear line of distinction between each of these five items and regards them as five distinct products. The basic scheme of the Tariff Entry is important for the purposes of the present appeal. The term 'marble' has to be given a meaning which fits in and harmonises in the above mentioned statuto- ry context, so that 'marble' continues to remain distinct and different from the said other four items. Thus whatever principle of interpretation or canon of construction is applied it cannot be said that the term 'marble' include and takes within its fold any or more distinct items or goods mentioned in the said Tariff Entry, thereby rendering a part of the said Entry meaningless. It has, therefore, been submitted on behalf of the appellant that the term 'marble' has to be interpreted in a manner which is in consonance with the context and which does not militate against it. It is appropriate to refer in this connection the following passage from Maxwell on Interpretation of Statutes, 12th Edition. Page 294 set out hereunder:

"The word 'land' is generally understood as including build- ing. but if, after imposing a rate on houses, buildings, works, tenements and hereditaments, an Act exempted 'land', this word would be restricted to land unburdened with houses, buildings, or works which would otherwise have been unnecessarily enumerated."

It has been secondly submitted on behalf of the appel- lant that the general principle of interpretation of tariff entries occurring in a tax statute is that of commercial nomenclature or understanding in the trade. It is also a settled legal position that the said doctrine of commercial

nomenclature or trade understanding can and should be de- parted from in a case where the statutory context in which the tariff item appears, requires such a departure. If the application of the commercial meaning or trade nomenclature runs counter to the statutory context then the said princi- ple of interpretation cannot and should not be applied. Commercial nomenclature or trade understanding is merely a general principle of interpretation, It is well settled that the principles of interpretation are never embodied rules and the same must always yield to the context of the partic- ular statute which comes up for interpretation. It has also been submitted in this connection that the trade meaning or commercial nomenclature would be applicable if a particular product description occurs by itself in a Tariff Entry, and there is no competition between that Tariff Entry and any other tariff entry, nor is there any need to reconcile and harmonise that tariff entry with any other. It has been submitted in this respect that the reading of the Tariff Entry No. 25.15 in Appendix I-B of Imports (Control) Order, 1955 which refers to Marble, Ecaussine, Travertine and other calcareous monumental or building stones as well as Entry No. 62 in Appendix 2-B of Import and Export Policy, April 1988-March 1991 refer only to marble/granite/onyx as re- stricted items of import in such a way that such interpreta- tion does not exclude or render redundant any of the items included in Tariff Entry No. 25.15. It has next been con- tended that the end-use of the particular product is irrele- vant and of no consequence for determining its classifica- tion. In support of this proposition several decisions have been cited. It has been further submitted that each of the five distinct items referred to in Chapter Heading 25.15 of Appendix I-B of Imports (Control) Order, 1955 is a hard stone capable of being cut into the required size and of taking polish. If, therefore, the term marble is to be given the said commercial meaning as relied upon by the Customs Authorities then the inevitable consequence would be that the term 'marble' in Chapter Heading 25.15 would automati- cally include within it the other four items thereby render- ing the rest of the Tariff Entry, otiose, redundant and meaningless. On this ground alone, it has been submit-

ted that the test of commercial meaning or trade understand- ing necessarily has to be rejected and the same cannot be applied in the present case. It has also been contended on behalf of the appellant that from the language of the Tariff Entry itself it is only the technical meaning which can be applied for interpreting Chapter Heading 25.15. The expres- sions calcareous, travertine, ecaussine, and alabaster are all technical expressions known to the science of Geology which are found defined in dictionaries of Geology. These are not terms of trade or expressions which businessmen use in the ordinary use to describe a product they deal in. Moreover, the reference to the requirement of specific gravity of 2.5 or more is also more or less a technical requirement which evinces that the principle of trade nomen- clature or commercial understanding is not applicable to the Tariff Item. Valuable guidance can also be obtained from the notes which are part of the Harmonised System of Nomencla- ture (HSN) with which the present Customs Tariff as amended in 1986, has been fully aligned. The HSN Explanatory Notes specifically state that ecaussine, on being fractured, shows a granular surface, similar to granite and is, therefore, known sometimes as Belgian granite, Flanders Granite and Petiti granite. It needs to be understood that, therefore, even though ecaussine may be known in the market as a spe- cies of granite and may be dealt with and treated as a type of granite, the same is, nevertheless not classified as granite under Chapter Heading 25.16. This is only because the technical nature of ecaussine has been taken into con- sideration and applied by HSN as opposed to the trade nomen- clature or commercial understanding.

It has also been submitted that the said HSN also con- tains specific note regarding serpentine rocks to the effect that the same are sometimes called 'Marble', but the same is excluded from Chapter Heading 25.15. This clearly shows that according to HSN, Chapter Heading 25.15 must be construed according to its technical meaning. Technically, serpentine does not fall under Heading 25.15 and the same is according- ly excluded therefrom by the HSN. If, on the other hand, the commercial meaning is to be applied, then, serpentine would definitely have to be classified under Chapter Heading 25.15 in as much as it is sometimes called marble. The HSN Explan- atory notes, therefore, clearly and conclusively establish that Chapter Heading 25.15 must necessarily be construed by its technical meaning and not by applying the commercial nomenclature test. If the commercial nomenclature test is applied, then, as explained hereinabove, two fundamental principles of interpretation are infringed: (a) the princi- ple that no part of a statute may be construed as to render it redundant and otiose, and (b) that a tariff item is not to be classi- fied on the basis end-use-in other words an item cannot be considered to be marble merely because it is a hard rock which is capable of being cut and polished and being put to same use as marble. It has, therefore, been submitted that the findings arrived at by the Customs, Excise and Gold (Control) Appellate Tribunal that the calcareous stone slab imported by the appellant is marble as understood in the commercial or trade nomenclature and as such the import of the said slab being without a licence, is subject to the liability of confiscation and imposition of penalty and wholly unwarranted.

Mr. Ganguli, learned counsel appearing on behalf of the Revenue has submitted that in interpreting the word 'marble' as mentioned in Tariff Item No.25.15 in Appendix 1-B, Sched- ule 1 to the Import (Control) Order, 1955, the test in commercial and trade parlance has to be applied i.e. how the said product came to be commercially known by the trading people. It is further submitted that it is not a scientific or technical word and as such it does not require to be interpreted in its scientific and technical sense. He fur- ther submitted that the general principle of expression of Tariff Entries in a text statute is that of commercial nomenclature or understanding in the trade. The word 'mar- ble' if so interpreted will include calcareous stone of 2.5 or more specific gravity. He has cited certain decisions in support of his above contention. Mr. Ganguli also submitted referring to the said Tariff Entry 25.15 that it includes calcareous stones of specific gravity of 2.5 or more which are capable of polish. Marble is the genus and all other four items of stone mentioned in the said Entry which are of apparent specific gravity of 2.5 are included within marble as they are commercially and in trade parlance known as marble. He further submitted that the ISI specification for marble as referred to in IS: 1130-1969, item No. 0.2 which defines marble as metamorphic rocks can not be applied in the instant case especially in view of the note to the said item that sometimes rocks, such as serpentine are also polished and used in trade as marble. Mr. Ganguli further submits that taking into consideration this note, calcareous stone imported by the appellant falls within marble which is one of the restricted 'items in the list of restricted items as mentioned in Appendix 2, Part B of the Import and Export Policy, April 1988-March 1991. Mr. Ganguli further submitted that the word marble cannot be taken in its Geological or Petrological sense in as much as the whole purpose of put- ting the marble stone slabs in the list of restricted items for import is to restrict the outflow of foreign exchange from the country. Mr. Ganguli next submitted that the end- use of the product i.e. marble and calcareous stone mentioned in Item No. 25.15 of Appendix 1-B of the Import and Export Policy April 1988--March 1991 has to be taken into consideration in the determination of the other items of stones mentioned in that Entry. Viewed from this angle, the said calcareous stone being

capable of polish and used for monumental or building purposes has to be taken to be marble as has been done by the Revenue and it being one of the restricted items, a licence for import of the same is mandatory. It has also been submitted in this connection by Mr. Ganguli that the word 'marble' has not been defined in the Tariff Act and as such the meaning of the said word has to be given as understood by the trading communities as is known in trade parlance. Mr. Ganguli, therefore submitted that there is no infirmity in the findings and conclusions of the Appellate Tribunal and as such the calcareous stone slabs imported by the appellant being marble, one of the restricted items, the order of confiscation of the said stone slabs and in lieu thereof the imposition of the cus- toms duty and the penalty is quite in accordance with law. The sole question to be considered in this appeal is whether the word calcareous monumental or building stones of more than 2.5 or more specific gravity as mentioned in Tariff Item No. 25.15 in Appendix 1-B, Schedule 1, commonly known as ITC Schedule to the Imports (Control) Order, 1955 comes within the purview of the restricted items mentioned in Item 62, Appendix 2, Part B of the Import and Export Policy April 1988--March 1991. In Entry No. 62, the re- stricted item is described as 'Marble/granite/onyx'. Marble has not been defined either in the ITC Schedule or in Appen- dix 2, Part B of Import and Export Policy dealing with the list of restricted items. It is convenient to refer in this connection to para 64 of the Hand Book of Procedures, April 1988--March 1991 which is in the following terms: "Classification of Items

64. (1) The Schedule I to the Imports (Control) Order, 1955, reproduced in Appendix 1-B to this Book, commonly known as the I.T.C. Schedule,. contains the classification of all the articles that enter into the import trade.

(2) With effect from 1st April, 1988 the Schedule 1 to the Imports (Control) Order, 1955 reproduced in Appendix I-B to this Book has been revised in alignment with the First Schedule of the Customs Tariff (Amendment) Act, 1985. The Revised ITC Schedule contains 21 Sections subdivided into 99 Chapters."

It is also convenient to refer to the note. to the Appendix 1-B, Schedule I to the Imports (Control) Order, 1955 which is to the following effect:

Note:-- Each heading number in Column (1) corresponds to the respective Chapter and heading number of this first Schedule to the Customs Tariff Amendment Act, 1985 as amend- ed on 24.1.1986 and each entry in Column (2) has the same scope and meaning as the corresponding Chapter and heading of the said first Schedule.

It is also appropriate to set out hereunder the relevant portion of Appendix 6 of the Import and Export Policy for April 1988--March 1991:

Items	Categories of eligible Importers
Raw materials, components and consumables (Non-iron and steel items) (Industrial) other than those included in the Appendices 2, 3 Part A, 5 and 8.	Actual Users

Section 3(1) of the Imports and Exports (Control) Act, 1947 as amended upto 30th April, 1979 provides that: "The Central Government may, by order published in the Official Gazette, make provisions for prohibiting, restrict- ing or otherwise controlling in all cases or in specified classes of cases and subject to such exceptions if any, as may be made by or under the order ..... "

Chapter 25 of Schedule I, Appendix i-B of the ITC Sched- ule mentions mineral products which can be imported under O.G.L. Entry No. 25.15 refers to marble which is as under: "Marble, travertine, ecaussine and other calcareous monumen- tal or building stone of an apparent specific gravity of 2.5 or more and Alabaster, whether or not roughly trimmed or merely cut, by sawing or otherwise, into blocks or slabs of a rectangular (including square) shape."

Appendix 2, Part B of the Import and Export Policy for April 1988-March 1991 enumerates the restricted items. Item No. 62 deals with marble which is to the following effect 'Marble/granite/onyx'.

In the instant case, admittedly the appellant on behalf of his firm which is a small scale industry engaged in processing of stone slabs placed an order for calcareous stone (other than marble) with the exporter Elle Marmi of Italy asking the exporter to certify that the said goods were not marble. The exporter, Elle Marmi of Italy issued a certificate dated December 6, 1988 certifying that all the goods in question were calcareous stone slabs other than marble. The appellant also obtained from the foreign export- er a sample tile of 'Botticino' the calcareous rock proposed to be imported and had the same tested by a reputed Geolo- gist, Dr. S.F. Sethna who submitted his report dated October 13, 1988 confirming that the same sample was not marble. It has been stated in the said report that the sample is a limestone and thus differs from the marble in being of sedimentary origin and has not undergone any metamorphism to be considered under metamorphic rocks to be described as a marble. If the rock would have shown any slightest amount of metamorphism the recrystallization of carbonate crystals would make the individual crystals distinctly visible under the microscopic examination.

The appellant also referred to an Italian Book MARMI ITALTA wherein the index evidenced the fact that "Botticino" varieties were covered under "Polishable Calcareous Rocks" and not under 'True Marbles' (Re-crystallised Calcareous Rocks). The appellant also while placing order asked the exporter to send a certificate about the calcareous stones for which order was placed for importation. The exporter, Elle Marmi of Italy issued a certificate dated December 6, 1988 certifying that all the rough slabs loaded are 'calcar- eous stone slabs other than marble'. The appellant also obtained a certificate from one Gianni C. Baigini, a survey- or registered with the Chamber of Commerce, Carrara and a specialist for control of marble, calcareous stones (other than Marble) and Granite. The said expert after checking the said consignment loaded in the containers for import by the appellant in Italy certified that all rough slabs are cal- careous stone slabs of good quality. He also certified that these are calcareous stones other than marble because they are not recrystallized calcareous rocks and that the calcar- eous stone slabs in the above consignment are not marble. In Indian Standard Specification for Marble, IS: 1130-1969, Entry No. 0.2 marbles have been described as metamorphic rocks capable of taking polish, formed from the re-crystal- lization of limestones or dolomitic limestones and are distinguished from limestone by even visible crystallined nature and

non-flaggy stratification. Note to the said Entry states that sometimes rocks, such as serpentine are also polished and used in trade as marble.

The Director, Regional Petrology Laboratory where the appellant sent a sample of the rocks ordered of importation, for examination has also forwarded a technical report on study of sample by Dr. H.M. Ramachandra, a Geologist, which states: "The rock is an allochemic (Pelmicritic) limestone, it cannot be termed as a marble."

The Indian Bureau of Mines in its letter dated March 3, 1982 has mentioned that:

"Technical Definition:

Geologically (petrologically) marble is recrystallised (metamorphosed) limestone. Ordinary limestone is a sedimen- tary rock but once it is metamorphosed i.e. once it has undergone recrystallisation, it is turned to marble. So marble is metamorphosed limestone which consist essentially the minerals calcite, dolomite or a combination of the two. "

"The specimen has been examined and it is observed that the rock is cryptocrystalline, fine grained, mildly metamor- phosed with few bigger grains of calcite. The specimen is hard and compact and is capable of being cut into slabs/ blocks of desired size and can take a good polish."

Thus, according to all these reports as well as the ISI specification the slabs of rocks that have been imported by the appellant and claimed to be calcareous stones are not 'marble' in the scientific and technical sense of the term marble. As we have already stated hereinbefore that Tariff Item No. 25.15 mentions five kinds of rocks such as Marble, Travertine, Ecaussine, Alabaster and other calcareous monu- mental or building stone of a specific gravity of 2.5 or more whereas in the List of Restricted Items--Item No. 62 only mentions Marble/ granite/onyx are mentioned. In the absence of any definition of the term 'marble' it is to be decided what is the scope and meaning of the word marble and whether it includes within it the other kinds of calcareous stones such as travertine, ecaussine, alabaster and other calcareous monumental or building stone of a specific gravity of 2.5 or more in order to saddle the importer with the burden of obtaining a licence for import- ing the said restricted item. It has been submitted on behalf of the appellant that as the word marble has not been defined and the tariff item refers to calcareous stone of an apparent specific gravity of 2.5 or more, it has to be taken to be used in a technical and scientific sense and as such the same cannot be interpreted in the popular commercial sense or as understood in trade parlance by persons dealing with the' said stones.

In deciding this question the first thing that requires to be noted is that Entry No. 25.15 refers specifically not only to marble but also to other calcareous stones whereas Entry No. 62 refers to the restricted item marble only. It does not refer to any other stones such as ecaussine, tra- vertine or other calcareous monumental or building stone of a certain specific gravity. Therefore. on a plain reading of these two Entries it is apparent that travertine, ecaussine and other calcareous monumental or building stones are not intended to be included in 'marble' as referred to in Entry No. 62 of Appendix 2 as a restricted item. Moreover, the calcareous stone as mentioned in ITC

Schedule has to be taken in scientific and technical sense as therein the said stone has been described as of an apparent specific gravity of 2.5 or more. Therefore, the word 'marble' has to be interpreted, in our considered opinion, in the scientific or technical sense and not in the sense as commercially under- stood or as meant in the trade parlance. There is no doubt that the general principle of interpretation of Tariff Entries occurring in a text statute is of a commercial nomenclature and understanding between persons in the trade but it is also a settled legal position that the said doc- trine of commercial nomenclature or trade understanding should be departed from in a case where the statutory con- tent in which the Tariff Entry appears, requires such a departure. In other words, in cases where the application of commercial meaning or trade nomenclature runs counter to the statutory context in which the said word was used then the said principle of interpretation should not be applied. Trade meaning or commercial nomenclature would be applicable if a particular product description occurs by itself in a Tariff Entry and there is no conflict between the Tariff Entry and any other Entry requiring to reconcile and harmo- nise that Tariff Entry with any other Entry. In Union of India v. Delhi Cloth & General Mills, [1963] Supp. (1) SCR 586 the question arose as to how the term "refined oil"

occurring in the Tariff was to be construed. There was no competition between that Tariff Entry with any other, nor was there any need to reconcile and harmonise the said entry with any other provision of the tariff. This Court, there- fore, considered the term "refined oil" by applying the commercial meaning or trade nomenclature test and held that only deodorised oil can be considered to be refined oil. This Court also referred to the specification of "refined oil" by the Indian Standards Institution and held that: "This specification bY the Indian Standards Institution furnishes very strong and indeed almost incontrovertible support for Dr. Nanji's (respondent's) view and the respond- ent's contention that without deodorisation the oil is not "refined oil" as is known to the consumers and the commer- cial community."

In Dunlop India Ltd. v. Union of India and Ors., [1963] Supp. 1 SCR 586 the question arose whether the product known as V.P. Latex which was imported by the appellant can be considered to be 'rubber raw' within the meaning of Tariff Entry No. 87 of the Indian Tariff Act, 1934. The choice was between classifying V.P. Latex as 'rubber raw' and the general residuary entry at the end of the Tariff (a general catch) all entry which was described as "the orphanage of the residuary clause". In these circumstances, this Court applied the commercial meaning or nomenclature test. In the case of Commissioner of Sales Tax, M.P. v. Jas- want Singh Charan Singh, [1967] 2 SCR 720 the respondent was a dealer in firewood and charcoal. In a proceeding for assessment of sales tax under the M.P. General Sales Tax Act, the respondent claimed that charcoal was 'coal' within the meaning of Entry 1 of Part III of the Schedule II to the Act and therefore was taxable at the 'rate of 2%. The Sales Tax Authorities however, held that charcoal was not 'coal' and was taxable at 4% as it fell under the residuary Entry 1 of Part VI of Schedule II. The Board of Revenue and the High Court held in favour of the respondent relying on the dic- tionary meaning of the word 'coal'. The Commissioner of Sales-tax appealed. It was held by this Court that in inter- preting items in statutes like the Sales Tax Acts resort should be had not to the scientific or technical meaning of the terms used but to their popular meaning or the meaning attached to them by those dealing in them, that is to say, in their commercial sense. Viewed from this angle, both a merchant dealing in coal and a consumer wanting to purchase it would regard coal not in its geological sense but in these sense as ordinarily

understood and would include 'charcoal' in the term 'coal' It may be pointed out that this Court has clearly and unequivocally laid down that it is not permissible but in fact it is absolutely necessary to depart from the trade meaning or commercial nomenclature test where the trade or commercial meaning does not fit into the scheme of the commercial statements. This Court referring to the observa- tions of Pullock B. in Grenfell v. Inland Revenue Commis- sioner, [1876] 1 Ex. D. 242,248, observed:

"that if a statute contains language which is capable of being construed in a popular sense such statute is not to be construed according to the strict or technical meaning of the language contained in it, but is to be construed in its popular sense, meaning of course, by the words 'popular- sense', that sense which people conversant with the subject-matter with which the statute is dealing would attribute to it." But "if a word in its popular sense and read in an ordinary way is capable of two constructions, it is wise to adopt such a construction as is based on the assumption that Parliament merely intended to give so much power as was necessary for carrying out the objects of the Act and not to give any unnecessary powers. In other words, the construction of the words is to be adapted to the fit- ness of the matter of the statute."

The Court has also referred to the observations of Fry, J in Holt & Co. v. Coilyet, [1881] 16 Ch. D. 718, 720. The observation is: "If it is a word which is of a technical or scientic character then it must be construed according to that which is its primary meaning, namely, its technical or scientific meaning."

Referring to the above decisions this Court held that: "While construing the word 'coal' in Entry 1 of Part III of Schedule II, the test that would be applied is what would be the meaning which persons dealing with coal and consumers purchasing it as fuel would give to that word. A sales tax statute is being one levying a tax on goods must in the absence of a technical term or a term of science or art, be presumed to have used an ordinary term as coal according to the meaning ascribed to it in common parlance."

This Court in K.V. Varkey v. Agricultural Income Tax and Rural Sales Tax Officer, [1954] 5 STC 384 specifically declined to apply the popular or commercial meaning of 'Tea' occurring in the sales tax statute holding that the context of the statute required that the technical meaning of 'a product of plant life' required to be applied and therefore green tea leaves were tea even though they might not be tea was known in the market.

In Cannanore Spinning and Weaving Mills Ltd. v. Collec- tor of Customs and Central Excise Cochin and Ors., [1970] 2 SCR 830 this Court held that the word 'hank' occurring in a Central Excise Notification could not be interpreted accord- ing to the well-settled commercial meaning of that term which was accepted by all persons in the trade in as much as the said commercial meaning would militate against the statutory context of the said exemption Notification issued in June, 1962. The word 'hank' as used in the Notification meant a 'coil of yarn' and nothing more.

In Collector of Central Excise, Kanpur v. Krishna Carbon Paper Co., [1989] 1 SCC 150 it has been observed by this Court that it is a well settled principle of construction that where the word has a

scientific or technical meaning and also in ordinary meaning according to common parlance, it is in the latter sense that in a taxing statute the word must be held to have been used, unless contrary intention is clearly expressed by the legislature. It has also been observed that whether the general principle of interpreta- tion was applicable or not depended on the statutory con- text. If special type of goods is subject matter of a fiscal entry then that entry must be understood in the context of that particular trade, bearing in mind and particular word. The trade meaning is one which is prevalent in that particu- lar trade where that goods is known or traded. Where, howev- er, there is no evidence either way then the definition given and the meaning flowing from particular statute at particular time would be the decisive test. It has further been observed by this Court in this case that: "Where no definition is provided in the statute itself, as in this case, for ascertaining the correct mean- ing of a fiscal entry reference to a dictionary is not always safe. The correct guide, it appears in such a case, is the context and the trade meaning. In this connection reference has been made to the observations of this Court in CST v. M/s. S.N. Brothers, Kanpur, [1973] 3 SCC 496."

In Collector of Customs, Bombay v. Hargovindas & Co., [1987] 29 ELT 975 the import policy restricted the import of milk powder. The importer had imported skimmed milk powder and relied upon the principle of commercial nomenclature or trade understanding in order to contend that there was a settled and accepted distinction between milk powder and skimmed milk powder which was specifically recognised and accepted by this Court in Healthways Dairy v. State of Haryana. The Special Bench of the Tribunal negatived that contention and held that:

"unlike the central excise tariff the import schedule itself provided a statutory basis of interpretation. The controver- sy before us relates to a period during which the Imports (Control) Order, 1955, issued under the Imports and Exports (Control) Act, 1947, had a separate import schedule annexed to it. This import schedule was aligned with the import schedule of the Customs Tariff Act, 1975. The import sched- ule under the Import (Control) Order itself did not contain any rules of interpretation, section notes and chapter notes. However, a statutory Note at the beginning of the import schedule stated that the scope of various terms and headings in it was to be the same as in the import tariff schedule in the Customs Tariff Act, 1975. Thus the elaborate statutory scheme of the customs tariff import schedule got applied to the import schedule as well. It is by now well known that the customs tariff import schedule hardly left any scope to go in for trade parlance or common parlance because it statutorily defined almost everything with the help of rules of interpretation and explanatory notes. In such a scheme, the statutory definitions must prevail over the trade parlance or any other aides to interpretation."

In Collector of Customs, BOmbay v. Swastic Woollens (P) Ltd. and Ors., [1988] Supp. SCC 796 this Court has observed that the expression 'wool wastes' which has not been defined in the Customs Tariff Act, 1975 or in the relevant Notifica- tion is not an expression of art. It may be understood, as in most of financial measures where the expressions are not defined not in a technical or pre-conceived basis but on the basis of trade understanding of those who deal with these goods. When no statutory definition is provided in respect of an item in the Customs Act or the Central Excises Act, the trade understanding, meaning thereby the understanding in the opinion of those who deal with the goods in question, is the safest guide. It has also been observed therein that the Tribunal has not ignored the Technical Committee's observation nor the Board's Tariff Advice.

On a conspectus of all these decisions mentioned herein- before the position thus emerges is that when the expression 'marble' has not been defined in the Customs Tariff Act as well as in the Customs Act or in the relevant Notification regarding the restriction on import of Marble in the List of Restricted Articles, it is necessary to decide the signifi- cance and true meaning of the word 'marble' as used in the ITC Schedule as well as in the List of Restricted Items, Customs Tariff Act and the Customs Act not in its popular sense i.e. people who are dealing with this trade meant the same or what that term is commercially known in trade par- lance but it has to be given a meaning in the context in which this word has been used in the ITC Schedule as well as in the List of Restricted items of Import. It is also neces- sary to decide whether the word 'marble' as stated in the ITC Schedule refers to only marble or includes travertine, ecaussine, alabaster and other calcareous monumental or building stones and can be termed as marble in the commer- cial sense or in trade nomenclature so as to bring the same within the restricted Item No. 62 of Appendix-2 of the Import and Export Policy for April 1988-March 1991. We have already stated hereinbefore that in the List of Restricted Items under item No. 62 only marble has been mentioned and not the other stones including calcareous stone used for building or monumental purposes which have been left out. Therefore, per se it may be difficult to say that marble includes the other calcareous stones mentioned in the ITC Schedule. It is pertinent to mention in this connection to the Report of Dr. S.F. Sethna of the Department of Geology, St. Xaviers College, Bombay to whom a sample of the said calcareous slab of stone intended to be imported has been sent. Dr. Sethna, a noted Geologist after examination of the sample specifically stated that the sample under investiga- tion is a sedimentary rock which does not show any sign of metamorphic recrystallization and thus cannot be considered as a marble. The report sent by the exporters of Italy, Elle Marmi and Andree Muciani dated December 6, 1988 also states that all the rough slabs loaded are calcareous stone slabs other than marble. Furthermore, Gianni C. Baigini, a Survey- or registered with the Chamber of Commerce of Carrara and a Specialist for control of Marble, Calcareous Stones (other than marble) and Granite sent a certificate on inspection of the sample that all rough slabs stuffed are calcareous stone slabs of good quality. These are calcareous stones other than marble because they are not recrystallized calcareous rocks. He further certified that the calcareous stone slabs in above consignment are not marble. One Shri S.V. Chaudhary, Direc- tor, Regional Petrology Laboratory, Geological Survey of India after examination of the sample sent a report dated March 13, 1989 under the signatures of Dr. H.M. Ramachandra, Geologist to the appellant. The said report states that, 'the rock is a allochemic (Palmicritic) limestone, it cannot be termed as a marble'. In Invoice No. 126-88 a certificate has been given by the exporter to the following effect: "We certify that merchandise is of Italian origin. Contents are true and authentic, prices correct and current and that it is the only invoice for the goods described therein."

In the said invoice the goods has been described as slabs of calcareous stone of 2 Cms thick quantity. Thus it appears from all the aforesaid reports and certificates that the slabs of stone which have been imported from Italy are nothing but calcareous stones and the same cannot be termed as marble. Even according to item No. 0.2 of Indian Standard Specification for Marble (Blocks, Slabs and Tiles) the stone slabs imported by the appellant being not re-crystallized and even being not metamorphosed cannot be considered as marble. Of course, the Revenue has tried to contend relying on the Note to the same wherein it has been stated that sometimes rocks, such as serpentine are also polished and used in trade as marble that the slabs of calcareous stone imported are used as

marble in trade.

In Harmonised System of Nomenclature (H,S.N.) marble has been defined as a hard calcareous stone, homogeneous and finegrained, often crystallie and either opaque or translu- cent, Marble is usually variously tinted by the presence of mineral oxides (coloured veined marble, onyx marble, etc.), but there are pure white varieties.

The Revenue Authorities sent the sample of the calcareous stone imported by the appellant to the Department of Mines, Indian Bureau Mines. A report has been sent by them to the Superintendent, Central Excise and Customs Division, Udaipur after testing of the sample of March 3, 1989. The said report gives the' Technical and Commercial definition of marble as:

Technical definition:

"(Geologically (Petrologically) marble is recrystallised (Metamorphosed) limestone. Ordinary limestone is a sedi-

mentary rock but once it is metamorphosed i.e. once it has undergone recrystallisation, it is turned to marble. So marble is metamorphosed limestone which consist essentially the minerals calcite, dolomite or a combination of the two."

Commercial Definition:--

"The usage of the term 'marble' has a much vider applica- tion. In the commercial circle, any limestone which is sufficiently hard and coherent to take a good polish and which can be cut into desired sizes (into blocks) free of cracks can be called marble."

It has also been stated therein that commercial marble refer to a crystalline rock composed of predominantly of one or more of following minerals; calcite, dolomite or serpentine and capable of taking a polish. It has been further stated under the said report that the specimen has been examined and it is observed that the rock is cryptocrystalline, fine grained, mildly metamorphosed with few bigger grains of calcite. The specimen is hard and compact and is capable of being cut into slabs/blocks of desired size and can take a good polish. Keeping above visual observations into view, it has been concluded that the specimen under reference is marble as per commercial definition. The Director of Mines, and Geology Department, Udaipur also sent a report to the Assistant Collector of Customs. It has been stated in the said report that the sample is of a fine grained off-white rock. It gives very good effervescence with dilute hydro- chloric acid and its hardness indicates that it is a fine grained carbonate rock. It takes good polish and can be used as marble. Regarding the microscopic characters it states that the rock is mainly composed of very fine grained cherty calcitic mass and iron oxides. No polygonal crystals are present. Recrystallization has not taken place. The rock sample has been identified as 'fine grained cherty lime- stone'. It has also been stated that technically marble is a product of thermal metamorphism of limestone (impure lime- stone) in which recrystallisation takes place and silicate minerals are also produced. Commercially the term 'marble' has been applied to any stone, other than those known in trade as granite, that has a

pleasing appearance and will take a polish. Thus, the term 'marble' adopted in the trade is based on the general properties and use of the stone. It has been further stated that the definition of marble given in IBM publication 'Marble in India' 1983, Government of India is as under:

"Marble:-- Petrologically marble is recrystallised (Metamorphosed) limestone. But in commercial parlance the term marble has a much wider application. Commercial marble is any crystalline rock composed predominantly of calcite, dolomite or serpentine that is capable of taking polish."

In Webster Comprehensive Dictionary, International Edition, the word 'Marble' has been defined as "A compact, granular, partly crystallized limestone, occuring in many colours, valuable for building or ornamental purposes."

In Shorter Oxford English Dictionary, the word 'Marble' has been defined as "Limestone in a crystalline (or, less strictly, also a granular) state and capable of taking a polish, occurring in many Varieties; much used in sculpture and architecture."

The Appellate Tribunal after considering various reports referred to hereinbefore observed that the term 'marble' cannot be construed on geological and petrological consider- ation, but has to be construed in commercial parlance. It has also been observed that the Tribunal is unable to place reliance on these reports. In Commercial circle any lime- stone which is sufficiently hard and coherent to take good polish and which can be cut into desired sizes free of cracks can be called as marble as per the opinion given by the Indian Bureau of Mines. The Tribunal also observed that the Tribunal has found that the specimen could be termed as 'marble' as per the commercial definition but not technical- ly referring to the report of the Director, Mines and Geolo- gy Department, Udaipur. It has also been observed by the Tribunal that in the sample re-crystallization has not taken place. The Tribunal has also held that it was not necessary to go into any other aspects in term's of the ISI or techni- cal and scientific definition and held that the impugned goods do fall under marble in trade understanding and as such the same comes within the List of Restricted Items in Item No. 62, of Appendix 2. This finding cannot be sustained in as much as all the above reports referred to hereinbefore clearly lay down that any stone to be termed as marble falling within Entry No. 62 of the List of restricted Items in Appendix 2, has to be recrystallised. The Indian Stand- ards Institution has also given a similar definition of marble as recrystallization of limestones or dolomitic limestones. Furthermore, Petrologically and Geologically the slabs of stones which have been imported are allochemic (pelmicritic) limestone and it cannot be termed as marble. The Indian Bureau of Mines also observed on testing the sample of rock that it is cryptocrystalline, fine grained, mildly metamorphosed with few bigger grains of calcite and identified the same as very fine grained cherry calcitic limestone.

It is apparent from all these reports that the calcare- ous stone of specific gravity of 2.5% is not marble techni- cally and scientifically. The finding of the Appellate Tribunal is, therefore, not sustainable. it is, of course, well settled that in Taxing Statute the words used are to be understood in the common parlance or commercial parlance but such a trade understanding or commercial nomenclature can be given only in cases where the word in the Tariff Entry has not been used in a scientific or technical sense and where there is no conflict between the words used in the Tariff

Entry and any other Entry in the Tariff Schedule. In the instant case, in the Tariff Entry No. 25.15 in the ITC Schedule, Appendix 1-B, Marble, Travertine, Ecaussine, Alabaster and other calcareous stones of an apparent specif- ic gravity of 2.5 or more have been mentioned whereas in Entry No. 62 only the word marble has been mentioned as a restricted item for import, the other calcareous stones such as travertine, ecaussine, alabaster etc. have not been mentioned in Entry No. 62. In these circumstances, some significance has to be attached to the omission of the words travertine, ecaussine and other calcareous monumental or building stones of an apparent specific gravity of 2.5 or more and Alabaster from the ITC Schedule in Entry No. 62 of Part B, Appendix 2 of Import and Export Policy for April 1988--March 1991. The only natural meaning that follows from this is that Entry 62 is confined only to marble as it is understood in a petrological or geological sense and as defined by the Indian Standard Institute and not as men- tioned in the opinion given by the Indian Bureau of Mines on visual observation and it does not extend to or apply to other calcareous stones mentioned in the ITC Schedule. Moreover, the commercial nomenclature or trade meaning cannot be given to marble in as much as such a meaning if given will render otiose, redundant the terms travertine, ecaussine, alabaster and other calcareous monumental or building stone of an apparent specific gravity of 2.5% or more whether or not roughly trimmed or merely cut by sawing. Moreover, in Appendix 6 i.e. Import of items under Open General Licence, Item No. t refers to Raw Materials, compo- nents, and consumables (Non-iron and steel items other than those in Appendices 2, 3, Part A, 5 and so the other calcar- eous stones excluding marble which is a restricted item of import fall within import items under Open General Licence. Although much stress has been laid on the note to Item No. 0.2 of Indian Standards Specification for Marble (Blocks, Slabs and Tiles) wherein it has been stated that some-

times rocks, such as serpentine are also polished and used in trade as marble but it cannot be taken into consideration in coming to the finding that marble is the genus and all the other calcareous stones referred to in Tariff Entry No. 25.15 in ITC Schedule, Appendix I-B are included in it. Moreover, the onus heavily lays upon the Revenue Authorities to prove by adducing cogent evidence that limestone without Metamorphism and recrystallisation not being opaque or translucent will fall within the category of stone called 'marble' in Entry No. 62 of Appendix 2 as one of the re- stricted items. The appellant before placing the order took considerable precaution in ascertaining from the exporter that the calcareous stone to be imported from Italy is calcareous stone and not marble. Moreover, he referred the sample of the calcareous stone to be imported to the Depart- ment of Geology, Bombay and to the Regional Petrology Labo- ratory of the Geological Survey of India to ascertain wheth- er calcareous stone in question is marble or not in order to enable him to import the same under open general licence. He also asked his exporter to send a certificate whether the calcareous stone for which order is placed is marble or not. The exporter sent a certificate alongwith the report of the expert stating that the slabs of calcareous stones contained in the containers sent by the exporter are calcareous stones and not marble. No tangible evidence has been produced nor even affidavits of persons attached to this trade to the effect that the slabs of calcareous stone imported by the appellant are marble as defined within Entry No. 62 of the List of Restricted Items have been filed. The Revenue has not taken any steps to ascertain whether the calcareous stones imported are marble not by any scientific, geological or petrological test.

Considering all these reports we are of the opinion that since the term marble has not been defined in the Imports Control Order as well as in the ITC Schedule, it has to be taken in a scientific and technical sense as well as in the context the word has been used and the slabs of calcareous stones imported by the appellant from Italy cannot be held to be marble as they have not been recrystallised and meta- morphosed in the geological and petrological sense of the term. It is pertinent to refer in this connection the fol- lowing passage of Maxwell on the Interpretation of Statutes, Twelfth Edition by P. St. J. Langan:

"The word "land" is generally understood as including build- ings, but if, after imposing a rate of houses, buildings, works, tenements and hereditaments, an Act exempted "land", this word would be restricted to land unburdened with houses, buildings or works which would ,otherwise have been unnecessarily enumerated."

As regards the submission that the end-use of a particu- lar item has to be taken into consideration in interpreting a product is of no relevance in determining its classifica- tion as we have stated hereinbefore that in interpreting a term appearing in the Tariff Item which has not been defined either in the Tariff Schedule or in the Import Control Order, the same is to be interpreted in such a way which is in consonance with the Items specified in the ITC Schedule without leaving out any part of the Items mentioned therein. In other words, a harmonised interpretation has to be given to each of the calcareous stones mentioned in the said Tariff Item in ITC Schedule and nothing should be left out or made redundant in giving the interpretation. The commer- cial nomenclature or understanding in the trade which is generally given in tax statute can not be taken recourse to in the instant case in as much as the statutory context in which the Tariff Item appears requires departure in the instant case. In the Tariff. Item the calcareous stones used for monumental or building purposes and of a specific gravi- ty of 2,5% or more is used in the scientific or technical sense and as such the commercial nomenclature or understand- ing in the trade should not be taken recourse to in inter- preting the word 'marble'. The reference to the requirement of gravity of 2.5% or more is also a purely technical crite- ria or requirement which shows that the principle of trade nomenclature or commercial understanding is not applicable to that Tariff Item. Moreover, the said Harmonised System of Nomenclature (HSN) contains a specific note regarding ser- pentine rocks to the effect that the same are some times called marble, but the same is excluded from Chapter Heading 25.15. This again clearly shows that according to HSN, Chapter Heading 25.15 has to be construed according to its technical meaning. Technically, serpentine does not fall under Heading 25.15 and the same is accordingly excluded therefrom by the HSN. If commercial meaning is to be applied then serpentine would have to be classified under Item 25.15 in as much as is sometimes called marble in the trade. The HSN Explanatory Notes, therefore, establish that Chapter Heading 25.15% must be construed by its technical sense and not by applying a commercial nomenclature test. Considering all these aspects, there is no other alter- native but to conclude that the slabs of calcareous stone imported by the appellant are not marble as mentioned in Entry No. 62 of Appendix 2 of the Import and Export Policy for April 1988--March 1991 and so it is covered by open general licence. The imported goods cannot be confiscated by the Government under section 111(d) of the Customs Act, 1961 nor the appellant can be given the option to clear the said goods for home consumption on payment of fine of Rs. Five lakhs in lieu of confiscation under Section 125 of the Customs Act, 1962. The appellant cannot be said to have imported calcare- ous stones without an

import licence and as such there being no violation of the Import Control Policy the imposition of penalty of Rs.Ten lakhs under section of the Customs Act, 1962 is also unwarranted and not sustainable. Before we conclude it is relevant to mention in this connection that even if it is taken for arguments sake that the imported article is marble falling within Entry 62 of Appendix 2, the burden lies on the Customs Department to show that the appellant has acted dishonestly or contumaciously or with the deliberate or distinct object of breach- ing the law.

In the present case, the Tribunal has itself specifical- ly stated that the appellant has acted on the basis of bona fide behalf that the goods were importable under OGL and that, therefore, the Appellant deserves lenient treatment. It is, therefore, to be considered whether in the light of this specific finding of the Customs, Excise & Gold (Con- trol) Appellate Tribunal, the penalty and fine in lieu of confiscation require to be set aside and quashed. Moreover, the quantum of penalty and fine in lieu of confiscation are extremely harsh, excessive and unreasonable bearing in mind the bona fides of the Appellant, as specifically found by the Appellate Tribunal.

We refer in this connection the decision in Merck Spares v. Collector of Central Excise & Customs, New Delhi, [1983] ELT 1261; Shama Engine Valves Ltd. Bombay v. Collector of Customs, Bombay,[1984] 18 ELT 533 and Madhusudan Gordhandas & Co. v. Collector of Customs, Bombay, [1987] 29 ELT 904 wherein it has been held that in imposing penalty the requi- site mens rea has to be established. It has also been ob- served in Hindustan Steel Ltd. v. State of Orissa, [1970]1 SCR 753 by this Court that:

"The discretion to impose a penalty must be exercised judi- cially. A penalty will ordinarily be imposed in cases where the party acts deliberately in defiance of law, or is guilty of contumacious or dishonest conduct, or acts in conscious disregard of its obligation; but not, in cases where there is a technical or venial breach of the provisions of the Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the statute."

In the instant case, even if it is assumed for arguments sake that the stone slabs imported for home consumption are marble still in view of the binding arrived at by the Appel- late Tribunal that the said product was imported on a bona fide belief that it was not marble, the imposition of such a heavy fine is not at all warranted and justifiable. In the premises aforesaid, we allow the appeal and set aside the judgment and order passed by the Appellate Tribu- nal and direct the Tribunal to release the goods to the appellant forthwith. We also direct the Tribunal to release the personal bond given by the Appellant for a sum of Rs.2,50,000 on the basis of which one container wasreleased as per order of this Court dated October 25, 1989 and also to release the appellant from payment of detention charges and demurrage for retaining the goods. In the facts and circumstances of the case there will be no order as to costs.

R.S.S. Appeal allowed.