



**TELANGANA STATE APPELLATE AUTHORITY FOR ADVANCE RULING**  
**(Goods and Services Tax)**  
1<sup>st</sup> Floor, Commercial Taxes Complex, M.J. Road, Nampally, Hyderabad 500 001

**A.R.Appeal –No. AAAR/01/2018**

**Dated: 07 August, 2018**

**ORDER-IN-APPEAL NO. AAAR/01/ 2018 ( A.R.)**

*(Passed by Telangana State Appellate Authority for Advance Ruling under Section 101 (1) of the Telangana Goods and Services Tax Act, 2017)*

Preamble

1. In terms of Section 102 of the Telangana Goods & Services Tax Act, 2017 ("the Act", in short), this Order may be amended by the Appellate authority so as to rectify any error apparent on the face of the record, if such error is noticed by the Appellate authority on its own accord, or is brought to its notice by the concerned officer, the jurisdictional officer or the applicant within a period of six months from the date of the order. Provided that no rectification which has the effect of enhancing the tax liability or reducing the amount of admissible input tax credit shall be made, unless the applicant or the appellant has been given an opportunity of being heard.
2. Under Section 103 (1) of the Act, this advance ruling pronounced by the Appellate Authority under Chapter XVII of the Act shall be binding only
  - (a) On the applicant who had sought it in respect of any matter referred to in sub-Section (2) of Section 97 for advance ruling;
  - (b) On the concerned officer or the jurisdictional officer in respect of the applicant.
3. Under Section 103 (2) of the Act, this advance ruling shall be binding unless the law, facts or circumstances supporting the original advance ruling have changed.
4. Under Section 104 (1) of the Act, where the Appellate Authority finds that advance ruling pronounced by it under sub-Section (1) of Section 101 has been obtained by the appellant by fraud or suppression of material facts or misrepresentation of facts, it may, by order, declare such ruling to be void ab-initio and thereupon all the provisions of this Act or the rules made thereunder shall apply to the appellant as if such advance ruling has never been made.

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1. The **subject appeal** has been filed under Section 100(1) of the Telangana Goods and Services Tax Act, 2017 (hereinafter referred to as "TGST Act, 2017" or "the Act", in short) by **M/s. Maheshwari Stone Supplying Company, Tandoor, Vikarabad District** having GSTIN 36ABNPS1863MIZX (hereinafter referred to as M/s. MSSC / the appellant). The appellant had earlier filed an application under Section 97(1) of the Act before the Telangana State Authority for Advance Ruling ("TSAAR" or "Authority" or "lower authority", in short), seeking an Advance Ruling with regard to classification of goods viz., "Polished /

Processed limestone slabs". The said application was disposed by the Authority vide **TSAAR Order No.2/2018 dated 25.03.2018** by pronouncing the Advance Ruling as follows :

*"Polished / Processed limestone slabs are correctly classifiable under heading 6802 of the GST Tariff".*

It is against the aforesaid ruling that the present appeal has been filed.

#### **I. Whether appeal filed in time:**

2. In terms of Section 100 (2) of the Act, an appeal against Advance Ruling has to be filed within thirty (30) days from the date of communication thereof to the applicant. As seen from record, a soft copy of the Advance ruling (Word document) was mailed to the appellant on 3-4-2018. However, hard copy i.e. signed copy of the impugned Order dated 25.03.2018 was despatched by post on 10-4-2018; and received by the appellant on 17-4-2018, as mentioned in the appeal. Appellant filed the present appeal on 07-05-2018. Accordingly, considering the date of receipt of the signed copy of the order by appellant, the appeal is found to be filed within prescribed time.

#### **II. Brief Facts:**

3.1. The appellant had initially filed before the TSAAR an application for Advance Ruling, in the prescribed Form GST ARA-01, extracts of which are reproduced hereunder:

##### **"Nature of activity:**

"12(B)<sup>1</sup>: Description in brief: We are a SSI unit with an annual TO of under 1.5 Cr. Our main activities include; to bring rough limestone slabs (a minor mineral) which are by nature uneven in thickness ranging from 15 to 35 mm (or so), to our processing unit and POLISH it's one of the suitable surface with simple table polish machine and further cut it to square or rectangle shape on a table cutting machine. Out of two processes, we also opt for only one process called CUT on these stones. Some other kind of simple processes like CALIBRATION, TUMBLING etc. are also undertaken. But a stone SLAB generally do not need more than two processes before ready for selling into the market. After any kind of the process completed on a stone SLAB, the morphology doesn't change. The stone slab still remains a stone slab only, and no changes occur either in shape or in characteristic or in distinction. In essence both raw material and finished goods contain uniform Physical properties & chemical composition. After processing also our commodity still called STONE in general trade parlance. In other words, a "mineral" after processing remains a "mineral product" or "mineral substance" only and nothing more than that".

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<sup>1</sup> Para No. (12B) is as given in the application for Advance Ruling, apparently referring to the said Sl.No. in the prescribed format Form GST ARA-01 for 'Application form for Advance Ruling', which requires furnishing "Description of Nature of activity in brief".



**14.<sup>2</sup> Questions on which advance ruling is required:**

- A) In which Chapter the commodity called "Polished/Processed limestone slabs" falls ?
- B) Under which HSN Code the above commodity comes ?
- C) Can we put them under "Mineral substances not elsewhere specified or included" which is mentioned under HSN Code 2530 ? Or
- D) Can we retain them under any of the HSN Codes 2515/2516/2521 ? Or
- E) Can we retain them under HSN Code 25 with inaugural phrase of "Goods not mentioned elsewhere" as mentioned at the start of column of 5% ?

**15.<sup>3</sup> Statement of relevant facts having a bearing on the questions raised:**

"Very recently The GST Council in its GUWAHATI meeting held on 10/11/2017 had reduced the GST on "Marble/Granite other than blocks" from 28% to 18% effective from 15/11/2017. (Kindly see Notification no. 41/2017 dated 14/11/2017 issued to this effect). We draw your kind attention to the description of commodity in particular column mentioned there under, and without writing any adjectives related to any kind of processes such as POLISH, CUT etc. it is still quite evident that they have not been taken out of Chapter 25. Please refer to HSN Code mentioned for Marble/Granite in the said notification of Dated 15/11/2017 whose first four digits are 2515/2516. It does clearly mean that even without mentioning of any kind of processes such as CUT or POLISH etc. it can be presumed that all kinds of processing activities done on these stones were allowed in the Chapter 25 itself. Therefore in the light of this statement, we are of the opinion that our commodity called "Polished limestone slabs" comes under any of the HSN Codes of 2515/2516/2521/2530 etc. Or more probably as stated in Chapter 25 of GST column of 5% as "Goods not mentioned elsewhere" in the 'GST goods rate list of dated 18/05/2017'. The primary commodities such as STONE in our case, which is one of the title of Chapter 25 can be taken to another related Chapter, only when there is a huge difference in extent of finishing of such commodities. But in our case only POLISH is the finish which is added. When Marble/Granite blocks after undergoing a large amount of finishing processes (which are again each one is highly expensive in nature), have not been taken out of Chapter 25, then how our Polish stone slab will be taken out which is just like a peanut in the finish?

**<sup>4</sup>16.Statement containing the applicant's interpretation of law, facts and relevant submissions:**

While SAWN & CUT processes are allowed under HSN Code 2515/2516 in written form in the description column but our process is POLISH & CUT and to clarify this doubt the present Advance ruling is filed.

There are two kinds of stones available in limestone category. One is BLOCK and the other is SLAB. SAWN is a process performed on Block to derive uniform thickness TILES which are called a CREAM like material and our SSI unit don't do that process and sawn on blocks is mostly practiced in KOTA region of Rajasthan and also in Marble/Granite Industry worldwide.

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<sup>2 & 3</sup> Sl. No.s (14) & (15) are as given in the application for Advance Ruling, apparently referring to the said Sl.No.s in the prescribed format Form GST ARA-01 for 'Application form for Advance Ruling', which requires furnishing "Question(s) on which advance ruling is required" and "Statement of relevant facts having a bearing on the question(s) raised".

<sup>4</sup> Sl.No. (16) is as given in the application for Advance Ruling, apparently referring to the said Sl.No. in the prescribed format Form GST ARA-01 for 'Application form for Advance Ruling', which requires furnishing "Statement containing applicant's interpretation of law.....".



Whereas surface POLISH is a process which is performed on directly brought rough stone SLABs (minor mineral) of uneven thickness and it is called BUTTERMILK like material which we usually undertake in our small scale industries. The expenses incurred on a sawn TILE is higher than combined processes of POLISH & CUT done on a SLAB of same size. In economic terms also any of the two processes combined together cannot match a single process of SAWN which is allowed in written form under HSN Code 2516. Selling price wise and quality wise also there is a huge difference in these both varieties of stones and our cheap polish slabs are mostly used in low budget housing needs. These cheap quality Polish stones are also a last resort for a customer to select from.

It is noteworthy to mention here that, Processed or Mirror Polished Marble/Granite SLABs have also not been taken out of Chapter 25 which is evident from the NOTIFICATION No. 41/2017 issued after GST Council's Guwahati meeting held on 10/11/2017. The rate of GST on these stones have been reduced from 28 to 18 classifying under the same chapter of 25. It does mean that without mentioning of word POLISH or any other process for Marble/Granite under description column, they have been retained in Chapter 25 only and further bear a meaning of such as Polished, Cut etc. Likewise we are also expecting the same treatment for our processed limestone SLABs. In fact SAWN & CUT are also the processes which have been written clearly in description under HSN Code 2515/2516 and POLISH had not been written which is also a kind of process and the combined effect of CUT+POLISH or any two kinds of processes are less complex and less expensive than a single process of SAWN.

Hardly not even a single processing unit engaged in LIMESTONE SLABs in our region was falling under the jurisdiction of Excise Duty (ED). Hon'ble SC while dealing with many appeals and cases upheld that POLISH & CUTTING done on a Stone slab cannot be equated to manufacturing, hence such stone slabs are not liable to ED. Under VAT regime our "Polished limestone slabs" were charged 5% of Tax. Hence when no ED was charged and VAT was only 5%, then our commodity shall definitely fall in Chapter 25 only, whose GST is also 5% for Limestone category, it is also noteworthy for the competent authority to note that ROYALTY is a kind of Tax as decided by majority of Judges of SC so far and the matter is still sub-judice before a larger bench now. And our commodity in its raw form suffers additional juicy fiscal burden in the form of ROYALTY at the hands of Mining authorities of State Govt. The point we want to clarify and prove before this authority is that the process of expensive and luxurious category Marble/Granite is very complex in comparison to our Polish slabs; to such an extent that processing expenses incurred only on SAWN process of Granite/Marble is 2-4 times higher than the entire material cost of Processed Limestone slab itself of same surface area.

Therefore looking from any angle it is appropriate that our commodity called "Polished/Processed limestone slabs" should not be taken out from chapter 25. Therefore in light of our submissions we request the advance ruling authority to declare that POLISHED or PROCESSED LIMESTONE SLABS comes under any of the HSN Codes of Chapter 25.

If an opportunity be given, we will come personally and demonstrate to prove the substance in our discussions before the competent authority by bringing small pieces of sample stones so that it will become easier for the authority to decide the HSN Code of our commodity on merits. Further clarifications if any will be submitted at the time of arguments.



3.2. The appellant filed additional submissions before the TSAAR vide a letter dated 05-01-2018, as follows:

"Our further humble submissions are mentioned herein below substantiating that Processed/Polished Limestone slabs cannot be taken out of Chapter 25:

1. A downloaded list (four in no.s) of Rough as well as Processed Kota, Marble and Granite stones exported to different countries from India under Chapter & HSN Code: 25 is enclosed here with as ANNEXURE-A1 as further proof substantiating that polish stone slabs have not been taken out of Chapter 25.
2. A bunch of newspaper clippings clearly stating that how GST/FITMENT Committee, of late, realized its mistake and expressing its concern having wrongly taken into consideration of EXCISE DUTY aspect, though more than 95% of industries in India are of small scale in nature. (See ANNEXURE-A2). But in our case of Tandur region almost 100% stone processing industries fall in SSI Category only. Even if they do fall in Medium scale category i.e. above TO of Rs. 1.5 Cr, then also Polishing the surface of a rough slab cannot be equated to manufacturing. If no manufacturing taken place in a factory means it is against the very spirit of EXCISE DUTY. Hence no ED can be levied on such products. If no ED levied and VAT was only 5% means definitely Polish stone slabs must also be charged 5% under GST also.
3. Classification of goods depends on the extent to which they have been finished. When Granite/Marble which require many an expensive chain of finishing/processing activities on them have not been taken out of Chapter 25. (See Notification no. 41 of date 14/11/2017 after Guwahati GST Council meeting where they have been reduced from 28 to 18%). But in our case of Tandur stone **slabs, surface polish is the only process done that too with much inferiority and simplicity and very less expensive in comparison to Marble/Granite's chain of processing.**
4. GST Council says "GST brings good things of great joy for small tax players." And literally we are small tax players and our good things of great joy can be retained; only when our commodity do not be taken out of Chapter 25 or be assured from competent authorities that it falls in 5% column of GST in light of all the submissions made by us here in this advance ruling case.
5. Our Turn Over is below 1.5 Cr, even if it is in between 1.5 to 5 Cr., then also it is quite enough for us to use only two digit HSN Code as per rules. And Chapter 25's (HSN Code 25) title is most appropriate of all for our polish stone which is mentioning STONE in its title. Whereas Chapter 68's title is ARTICLES OF STONE. Article is defined as "A part or segment of something joined to other parts, or, in combination, forming a structured set". But we prepare no such articles of stone in our small industry.
6. Note 6 of Chapter 25 clearly mentioning that converting of Stone BLOCK into SLABS or TILES amounts to manufacture. But we bring rough slabs only (and not blocks) from quarry to Polish it's surface and certainly this activity doesn't change either its shape or character or distinction. In this way also it is quite evident that the polish stone slabs cannot be taken out of Chapter 25. (See ANNEXURE-A3)
7. Note 1 of Chapter 25 also allows other mechanical or physical processes on minerals without changing the structure of the product. It is very clear that "Polish" done on a stone slab is a process comes under mechanical or physical process by using simple



machine and the shape and structure of stone slab still remaining stone slab only and not changed. (See ANNEXURE-A3).

8. Note 2(e) of Chapter 25 is also mentioning that "Chapter 25 does not cover mosaic cubes or the like of heading 6802", it does clearly mean that other products coming under 6802 can have a place in Chapter 25. (See ANNEXURE-A3).
9. Tandur rough stones are stones of less value in the market and the marketable quality of these stones is enhanced by polishing and cutting. But the substance of the material is not altered. The stone slab is made more presentable and attractive for the benefit of the end users of low cost housing needs and it cannot be said that the activity is a manufacturing activity."
10. In the Hyderabad meeting of GST Council held on 9/09/2017, we saw that much complex processes like "Stone inlay work" (HSN Code 68), have been brought down to 12% from 28%, then POLISH process done on a directly brought rough slab is very less complex but much easy, in comparison to above mentioned. In fact Polish stone slab is a kind of Raw material out of many used for "Stone inlay work". In this way also it is quite appropriate to keep polished limestone slabs in Chapter 25....".

**3.3.** The appellant was heard in person by the Advance Ruling Authority (TSAAR) on 27-1-2018, wherein he put forth the following written submissions:

"...Now coming to the very important point is that Notification no. 41/2017 dated 14/11/2017 (central tax) while reducing the GST on Marble & Granite, it clearly mentioned on page no. 11 of the said notification that "Marble and travertine, other than blocks" as HSN Code 25151220/90 and "Granite other than blocks" as 25161200. It does clearly mean that they are SLABS/TILES and they were reduced from GST 28% to 18%. Now when 18% is the highest tax bracket for Marble/Granite other than blocks, it does further clearly mean that without mentioning the Processes such as Polish, sizing etc. they were also allowed in HSN Code (i.e. Chapter) 25 only. We want the same treatment with our "Polish stone slabs" also that they should not be taken out of Chapter 25 or in other words their HSN Code must be 25 only. That's all. For your ready reference page no. 9 to 11 of said notifications are attached here with and important matter marked as rounded with ink so that both of you can understand the essence before coming to conclusion. Based on this single point if this Hon'ble Advance Ruling authority can give the ruling that "Polish stones in slab" form are to be classified under HSN Code 25 only then there is nothing wrong in it and nobody can question also."

**3.4.** Vide a further letter dated 1-2-2018, the appellant had submitted as follows:

"This is to inform you that in Note 1 of Chapter 25, the word LEVIGATED is allowed on mineral products and I have gone through the Oxford dictionary meaning of LEVIGATE which had been taken from Latin word LEVIGAT, and the literal meaning of the same is "made smooth, polished". In this context also it is becoming so clear that the process of POLISH is allowed on surface of rough limestone slabs in Chapter 25 itself @ GST 5%.

secondly there allowed many processes in Chapter 25 under GST 5%, such as CRUSHING, POWDERING etc. on hardcore minerals which are expenditure wise also much costlier than POLISH done on surface of a rough slab by using a simple polish machine".



### III. Advance Ruling Order:

4. After examining the issues, the Authority (TSAAR) passed the impugned order, wherein (after briefly summarising facts, application-contents etc.), the submissions made by the applicant during personal hearing and the Authority's discussion/findings are recorded as follows:

". . . .

3. A personal hearing was held in this case and Mr. Rajgopal Sarda, Proprietor of M/s. Maheshwari Stone Supplying Co., Tandur have appeared for personal hearing on 27-01-2018 and explained the case, as under:
  - a) That there are two kinds of stones available in limestone category. One is BLOCK and the other is SLAB. SAWN is a process performed on Block to derive uniform thickness TILES which are called a CREAM like material and their SSI unit do not do that process and sawn on blocks is mostly practiced in KOTA region of Rajasthan and also in Marble/Granite Industry worldwide.
  - b) That surface POLISH is a process which is performed on directly brought rough stone SLABs (minor mineral) of uneven thickness and it is called BUTTERMILK like material which they usually undertake in their small scale industries. The expenses incurred on a sawn TILE is higher than combined processes of POLISH & CUT done on a SLAB of same size. In economic terms also any of the two processes combined together cannot match a single process of SAWN which is allowed in written form under HSN Code 2516. Selling price wise and quality wise also there is a huge difference in these both varieties of stones and their cheap polish slabs are mostly used in low budget housing needs. These cheap quality Polish stones are also a last resort for a customer to select from.
  - c) Processed or Mirror Polished Marble/Granite SLABs have also not been taken out of Chapter 25 which is evident from the Notification No. 41/2017 issued after GST Council's Guwahati meeting held on 10-11-2017. The rate of GST on these stones have been reduced from 28 to 18 classifying under the same chapter of 25. It does mean that without mentioning of word POLISH or any other process for Marble/Granite under description column, they have been retained in Chapter 25 only and further bear a meaning of such as Polished, Cut etc. Likewise, they are also expecting the same treatment for their processed limestone SLABs. In fact, SAWN & CUT are also the processes which have been written clearly in description under HSN Code 2515/2516 and POLISH had not been written which is also a kind of process and the combined effect of CUT+POLISH or any two kinds of processes are complex and less expensive than a single process of SAWN.
  - d) Further, it was contended that, Hon'ble SC while dealing with many appeals and cases upheld that POLISH & CUTTING done on a Stone slab cannot be equated to manufacturing, hence such stone slabs are not liable to Excise Duty (ED for short). Under VAT regime their "Polished limestone slabs" were charged 5% of Tax. Hence, when no ED was charged and VAT was only 5%, then their commodity shall definitely fall in Chapter 25 only, whose GST is also 5% for Limestone category it is also noteworthy for the competent authority to note that ROYALTY is a kind of Tax as decided by majority of Judges of SC so far and the matter is still sub-judice before a larger bench now. And their commodity in its raw form suffers additional juicy fiscal burden in the form of ROYALTY at the hands of Mining authorities of State Government. The process of expensive and luxurious category



Marble/Granite is very complex in comparison to their Polish slabs; to such an extent that processing expenses incurred only on SAWN process of Granite/Marble is 2-4 times higher than the entire material cost of Processed Limestone slab itself of same surface area.

e) Hence, finally it was submitted that at any angle it is appropriate that their commodity called "Polished/Processed limestone slabs" should not be taken out from chapter 25. Therefore, in light of their submissions they request the advance ruling authority to declare that POLISHED or PROCESSED LIMESTONE SLABS comes under any of the HSN Codes of Chapter 25."

4. The applicant is seeking advance ruling in respect of classification of "processed/polished limestone slabs" and with a submission that the said goods are correctly classifiable under chapter 25 of the GST Tariff.

5. Before deciding the classification of goods for which advance ruling was sought it is fair on our part to go through the Rules for Interpretation of Customs tariff which was made applicable to GST Tariff and General rules for Interpretation of the schedule. As per these general rules for interpretation, the heading which provides the most specific description shall be preferred to headings providing a more general description.

6. As the applicant has presented their case with an argument that "processed/polished limestone slabs" are classifiable under chapter 25 of the GST tariff, we would like to draw attention to the Explanatory notes to the Harmonized Commodity Description and coding system:

- > Section V of the HSN deals with classification of Mineral products and in Chapter 25 classification of Salt; sulphur; earths and Stone; plastering materials, lime *and cement are dealt with.*
- > As per the chapter notes to chapter 25, the headings of this *chapter covers* mineral products only in the crude state. Minerals which have been otherwise processed (e.g., made up into articles by shaping, carving etc.) generally fall in latter chapters (for example, chapter 28 or 68).

7. The heading 25.15 covers 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 and is restricted to the stones specified, presented in the mass or roughly trimmed or merely cut, by sawing or otherwise, into blocks or slabs of a rectangular(including square) shape.

- > Blocks, etc., which have been further worked, i.e., bossed, dressed with pick, bushing hammer or chisel, etc., sand-dressed, ground, **polished**, chamfered, etc., are classified in heading 68.02.

8. The subheading explanatory notes for subheading 2515.11 are given below:

- > For the purposes of this subheading, 'crude' refers to blocks or slabs which have been merely split along the natural cleavage planes of the stone. Their surfaces are often uneven or undulating and frequently bear marks of the tools used to separate them (crowbars, wedges, picks, etc.).
- > This subheading also covers unshaped stone (quarry stone, rubble) obtained by breaking out rocks from the quarry face (using picks, explosives, etc.). They have



uneven, broken surfaces and irregular edges. This type of stone often bears the marks of quarrying (blast holes, wedge marks, etc.),

- > "Roughly trimmed" stone is stone which has been very crudely worked after quarrying, to form blocks or slabs, still having some rough, uneven surfaces. This working involves removing superfluous protuberances by means of hammer or chisel type tools.
- > This subheading does not cover blocks or slabs which have been cut to a rectangular (including square) shape.

9. Similarly, the subheading explanatory notes for subheading 2515.12 are given below:

- > To fall in this subheading, the blocks and slabs which have been merely cut by sawing must bear discernible traces of the sawing (by wire strand or other saws) on their surfaces.

10. The heading 25.16 covers Granite, Porphyry, Basalt, sandstone and other monumental or Building stones, whether or not roughly trimmed or merely cut, by sawing or otherwise into blocks or slabs ...

- > The stones of this heading may be shaped or processed in the same ways as the stones of heading 25.15 (including building limestone or Portland stone) and that stones in shapes identifiable as road or paving setts, flagstones or curb stones are classified in heading 68.01 even if merely shaped or processed as specified in the text of *this heading*.

11. The heading 25.21 covers limestone flux and limestone and other calcareous rocks commonly used for the manufacture of lime or cement, not being building or monumental stone (heading 25.15 or 25.16).

12. Thus it is very clear from the above explanatory notes given for heading 25.15, 25.16 & 25.21 that stones which are roughly trimmed or merely cut by sawing or otherwise into blocks or slabs of a rectangular shape are classifiable in headings 25.15 or 25.16 and the blocks or slabs which have undergone the process of polishing are not classifiable under these headings.

13. The applicant in their submissions has stated that their main activity is to bring rough lime stone slabs to their processing unit and POLISHING one of the suitable surface with simple table polish machine and further cut it to square or rectangular shape on a table cutting machine. Since the stones which have undergone the process of polishing are not classifiable under chapter 25, we would like to draw our attention to the Explanatory notes to heading 68.02 which were reproduced below for ease of reference:

- > This heading covers natural monumental or building stone (except slate) which has been worked beyond the stage of the normal quarry products of chapter 25.
- > The heading therefore covers stone which has been further processed than mere shaping into blocks, sheets or slabs by splitting, roughly cutting or squaring by sawing(square or rectangular faces).
- > The heading thus covers stone in the forms produced by the stone-mason, sculptor, etc., viz:

(A) .....

(B) Stone of any shape (including blocks, slabs or sheets), whether or not in the form of finished articles, which has been bossed (i.e., stone which has been given a "rock faced" finish by smoothing along the edges while leaving rough protuberant faces), dressed with the pick, bushing hammer, or chisel, etc., furrowed with the drag-comb, etc., planed, sand dressed, ground, **POLISHED**, chamfered, moulded, turned, ornamented, carved, etc.

> The heading therefore includes not only **constructional stone** (including facing slabs) worked as above, but also articles such as steps, cornices, pediments, balustrades, corbels and supports, door or window frames and lintels, window sills, door steps.

14. A complete reading of the above Explanatory notes clearly specifies that limestone slabs which have undergone the processes of cutting and polishing and which have been worked beyond the stage of the normal quarry products of chapter 25 are correctly classifiable under heading 68.02 of the Customs tariff as per the Harmonized Commodity Description and Coding System. As the Rules for Interpretation of Customs tariff was made applicable to GST Tariff and General rules for Interpretation of the schedule, the "Polished/Processed limestone slabs" are correctly classifiable under heading 6802 of the GST Tariff.

15. The issue has been examined with reference to the provisions of the CGST/TGST Act, 2017 and the Rules made there under and the notifications issued till date; and the Advance Ruling is given as under: -

"Polished/Processed limestone slabs" are correctly classifiable under heading 6802 of the GST Tariff.

The application filed by M/s Maheshwari Stone Supplying Co., Tandur, Vikarabad, is disposed accordingly".

#### **IV: Appeal filed by the Appellant, Personal Hearing & Further submissions :**

5.1. Against the above Advance ruling Order, the appellant filed the present appeal on the following grounds:

"..We have received the copy of order no. 2/2018 of AAR on 17/04/2018 by regd. post which is enclosed here with as ANNEXURE-AA1.

We are a tiny & SSI unit involved in processing of limestone slabs. In any of the processing activity at our unit, a rough stone slab brought as a raw material always remains a stone slab only even after processing and the morphology of slab doesn't change. Our small factory run for 6-8 hours a day for 5 days a week on average and our production capacity is not more than around 2000 square meters per month i.e. 4 to 12 thousand pieces of stone slabs depending on sizes. Apart from the above, our company is also largely involved in trading of limestone slabs such as merely cut etc. of chapter 25 without bringing them to our SSI Unit.



We request AAAR to pay special attention to stressed/underlined phrases of our submissions herein below.

The Xerox copy of the order of AAR is enclosed here with as ANNEXURE-AA1 for the kind perusal and ready reference of the AAAR.

Our observations in the ruling of AAR are as under:

<sup>5</sup>(14). The AAR it seems had not considered our entire sets of submissions before classifying the Processed limestone slabs. The bunch is enclosed here with once again as ANNEXURE-AA2 for the kind perusal and consideration of this Appellate Authority (AAAR) and need no repetition except where ever becomes necessary. And this bunch of ANNEXURE-AA2 along with above statement in opening paragraph of this submission shall be treated as "The facts of the case" under Serial no. 14 of the Appeal form GST ARA-02.

<sup>6</sup> (15). The Grounds of Appeal under serial no. 15 of the said form are as under:

First of all we are very much confused with Customs tariff Act being taken as the base for interpretation of rules and explanatory notes for classification of goods in domestic market. While in May 2017 it was announced by all the heads of concerned GST that the Rate of ED coupled with VAT had been fixed the rate of a product under GST. Then instead of Customs, the Excise Tariff could have been taken as a base. There is huge a difference in Chapter notes of Customs & Excise for same Chapter, which can change the meaning, definition and interpretation of a product/commodity. Hence it is becoming very difficult for us to digest this fact of contradictory statement.

The AAR had not taken all the submissions made by us into consideration and it seems either overlooked such issues which were in our favour and didn't comment on those at all in their verdict. One such being as all RDs involved in processed stone slabs at source point in Telangana are falling under below 1.5 Cr. Turnover category, as such at the most they can write only two digit HSN code as per HSN Rules. And it had mentioned in GST goods rate list under HSN 25 that it covers "Goods not mentioned elsewhere" and this question had not been answered by AAR. We ask once again this AAAR that can't we opt for HSN 25 for Processed limestone slabs under category of "goods not mentioned elsewhere"?

Our further submissions before this AAAR are here under:

1. We strongly raise our objections for the fact that why "Marble/Granite other than BLOCKS" mentioned under the 18% GST column of Chapter 25 also shall not be called as "Worked monumental or building stone"? because other

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<sup>5</sup> Para No. (14) as given in the appeal, apparently referring to the said Sl.No. in the prescribed format Form GST ARA-02 for 'Appeal to the Appellate Authority for Advance Ruling'. Sl.No. 14 as per format is "the facts of the case (in brief)".

<sup>6</sup> Para No. (15) as given in the appeal, apparently referring to the said Sl.No. in the prescribed format Form GST ARA-02 for 'Appeal to the Appellate Authority for Advance Ruling'. Sl.No. 15 as per format is "Grounds of Appeal".



than Blocks means TILES/SLABS (in even thickness always) and they cannot be derived without bringing a BLOCK to a factory for splitting by subjecting to SAWN or CUT processes which are highly expensive than mere POLISH+SIZING combined together done on our Rough limestone slabs. If the AAR/GST is so particular about WORKED definition to be only interpreted for heading 6802, then why "Marble/Granite other than blocks" which are also WORKED have been given a place in Chapter 25 is our question?

2. The GST council while rolling it out said that they bring "Good things of great joy for small tax players." Can this AAAR explain us how good things of great joy can be brought for us when our processed stone's Tax rate which was 5% under VAT regime had suddenly been increased to 18% under GST as per AAR's ruling of classification of HSN 6802?

3. We are of the strong view that for domestic trade; norms of Excise tariff act shall be taken into consideration and not that of Customs which deals mainly with IMPORTATION of Goods.

4. If Excise were taken as a base, then it is very clear from explanation of schedule 1 of classification of excisable goods is that a) Each chapter contains goods of a particular class, b) The chapters are arranged classifying all goods of a kind beginning with RAW MATERIAL and ending with the FINISHED PRODUCTS, within the same chapter. Thus it is very clear that Rough limestone slabs brought as a raw material after being converted into processed limestone slabs as finished product cannot be taken out of said Chapter more so when the NATURE, DESCRIPTION, PURPOSE & USAGE of such stones both in RAW & FINISHED form do not change at all. c) Before resorting to interpretative rules & explanatory notes of Custom, the AAR could have ascertained or considered nature, description, purpose and usage of the goods, but without ascertaining, the AAR had directly gone into explanatory notes and interpretative rules which are, of course a last resort. A last resort cannot become the first and only resort for deciding the classification. Thus it is once again very clear that whether the raw or finished, our goods is unchanged either in Nature, description, purpose & usage. The AAR had forgotten this aspect to consider before entering into explanatory notes and interpretative rules.

5. It is evident that the AAR had forgotten the fact that Explanatory notes and interpretative rules for classification under Customs have no legal backing but of persuasive value and AAR had taken it as a base to define commodity of Processed limestone slabs which is uncalled for and without merits. Even when a classification of a product takes place under general interpretation rules, the trade parlance of the product must be checked first while classifying the product and not its technological manipulation. Where the product is classified on the very first level, then there is no need to drill down further in the strata below.

Whether RAW or FINISHED our stones are called STONES, BUILDING STONES, FLOORING STONES in the market but not WORKED BUILDING STONE.

6. The AAR didn't consider that the "GOODS under CETH 6802 are shaped articles and further worked by a Stone-mason or sculptor. Limestone



slabs in question are not such goods which are otherwise simply polished & cut and this activity would not change the morphology, character, name, description, purpose and usage of stone slabs to that of articles mentioned within the scope of heading 6802. Such processes would thus not take out their classification out of Chapter 25. As per Chapter Note 1 to Chapter 68, products of Chapter 25 are excluded from the scope of Chapter 68. Thus, the products which are otherwise classifiable under Chapter 25 are excluded from Chapter 68.

7. The processes such as CRUSHING, POWDERING of minerals have still been retained in Chapter 25 only, in spite of the fact that such processes not only require huge power consumption but also require huge capital investment on plant & machinery. But 100% stone industries in Tandur are of tiny & SSI in nature and throwing a mineral product called processed limestone slab of these SSI units in high bracket of GST in the name of HSN classification will definitely kill this industry in longer run or create a kind of friction amongst the trading community and concerned department or give fake invoice selling mafias to crop up or create an unhealthy competition amongst the industrial fraternity.

8. The AAR instead of relying on legal backing aspects such as describing heading of HSN with Chapter notes etc. had relied upon non-legal backing aspects such as explanatory notes and interpretative rules in deciding the classification of processed limestone slabs which is not correct. First they could have exhausted the legal backing aspects of Chapter notes and if they found any ambiguity then they might have entered into explanatory notes and interpretative rules. Even Chapter note 1 of both customs & excise permitting that mineral in crude form undergone the processes such as mechanical or physical or levigating can still be retained in chapter 25 only and our processed stone's story is not better than these narrated processes herein of chapter note 1.

9. The AAAR is requested to go through the comparison table in ANNEXURE-AA3 enclosed here with for better understanding of our case in a nutshell.

10. Customs norms are mostly dictated by "Customs co-operation council-Brussels" under GATT and interpretation rules, explanatory notes therein, have been drafted by them and adopted by all the GATT signing countries which do not have a legal backing in Indian domestic market. How those Custom norms can be imploded to domestically processed articles/Goods in India leaving aside Excise? This aspect is troubling us most. More so in such circumstances where concerned authorities themselves announced through many newspaper statements in the month of May 2017 that ED tariff of a commodity coupled with VAT had been fixed the rate under GST!!!

11. What is the definition of WORKED? If GST is saying as in heading 6802, then "MARBLE/GRANITE other than BLOCKS" as mentioned under 18% GST column of Chapter 25 (heading 2515/2516) are also to be called as WORKED only. Because a block without being brought to the factory and splitting it with a highly expensive processing machine, this is not possible. More over a BLOCK is being converted into TILES/SLABS of even thickness.



It does clearly mean that NATURE, DESCRIPTION, PURPOSE & USAGE have completely been changed and even after that it had been retained in Chapter 25 only!!! A block is no longer remained a Block but split into tiles/slabs thus changing its shape and usage.

12. Even there are many Excise judgments for Polished Marble/Granite not taking them out of Chapter 25. One such being in case of Classic Marble Company Pvt. Ltd. Vs Commissioner of Central Excise & ST., Vapi in 2013(11) TMI 384 - CESTAT Ahmedabad delivered in Nov 2013, where it was held that Polished Marble/Granite cannot be taken out of Chapter 25.

13. The ruling of AAR will put our low cost processed stones under much higher bracket rate of GST without considering the selling price and other phenomena. Hence almost all kinds of stones whether low cost or luxurious after processing will now have to suffer GST @ 18% (under HSN Code 68) including much lower category and cheaper stones like of our processed LIMESTONE SLABS. By doing so the AAR had put all varieties of EGGS into one basket without considering the ground realities and real facts. They have not at all differentiated prevailing huge Rate gap & luxury class material in Domestic Market while classifying. They have also not taken into consideration the actual facts that under previous VAT & EXCISE regime, how much overall Revenue was being collected by the Govt, on each finished unit of these cheaper quality stones in Domestic sales? They have failed to see that our stones were not Excisable Goods nor suffering any kind of Service Tax previously.

14. Al most all stone processing industries in Tandur belong to SSI category and even if one or two falls in medium scale, they are of EOU category belonging to politically very strong people who by exporting their processed material derive lot of benefits in the form of various kinds of incentives from Govt. For them or him it doesn't matter whether HSN is 6802 or 2515/2516. In these circumstances the point we want to stress before this AAAR is in entire Telangana region not a single limestone slab processing industry was either falling under excisable goods category nor Govt, earned a single paisa towards ED under VAT regime. When there was no gain in ED and VAT was only 5% even for processed slabs, then on what basis the AAR/GST Council is increasing our Tax base to 18% in the name of heading 6802? It is also not proper to take EOU as a benchmark in fixing the GST rate for our commodities, because there in EOU not only chain of value addition would be very high and more but also lot of transformation in shape of the article takes place from RAW to FINISH.

15. Tandur rough limestone slabs available always in uneven thickness are not of so special value in the market and the marketable quality of these stones is slightly enhanced by polishing and cutting. But the substance of the material is not altered. The stone slab is made more presentable and attractive for the benefit of the low budget housing or commercial users and it cannot be said that the activity is a manufacturing activity." When no manufacturing done and our processed stones are non-excisable, When no excise levied and VAT was only 5%, then how it would be justified to put them in the bracket of 18% in the name of heading 6802?



16. The water bottles which were excisable goods with 14.5% sales tax rate under VAT were previously fetching almost 27% of revenue to Govt, and they have been first put under 28% bracket in GST then reduced to 18%!!! We ask on what basis?? We afraid will it not be treated as a solid kind of favour extended to Corporate manufacturers who are financially so sound? The funny thing is MRP for each water bottle under both regimes remained same as Rs. 20/- on lower side and Given the fact of daily sales of water bottles in India, the Govt, is at a net loss of around INR 2000 Crores per annum. And this amount is very smartly entering into the pockets of financially well settled corporate houses, where as no benefits had been passed on to consumers. On the other hand if GST Council fix the rate of Tax on all kinds of low cost processed limestone slabs (produced from RAW slabs only and not to be confused produced from BLOCKS) in India to 5%, then also it may not amount to a decrease of INR 500 Crores per annum, though in actual terms it is not at all a decrease because under VAT regime our finished product was also charged only 5%.

17. From the above statement of point 16, at one end GST Council by reducing a TAX base unnecessarily has bringing loss to itself, where as small businessmen like us have been treated very unfairly by increasing GST to 360% in the name of classification of HSN 6802. We are unable to understand the modus operandi being adopted by GST Council/Fitment committee in fixing the rates of GST for commodities more so in such a circumstances where they themselves are telling that "GST brings good things of great joy for small tax players"!!! In the name of classification of HSN code 6802, if the GST Council/Fitment Committee/AAR want to throw us in the GST bracket of 18% on par with highly expensive and luxurious category stones such as Marble/Granite, then gross injustice will be done to our small industry and the act will be termed against the principles of natural justice.

18. Even if GST Council/Fitment Committee fix the GST rate of 5% or classify them under chapter 25 for processed stones of Telangana, they are not going to lose a single paisa in light of all the submissions. The GST Rate of 18% under heading 6802 is non-sustainable for cheaper quality of Tandur processed stones and tiny & small scale industry owners herein our region are appalled, agitated and frustrated with this arbitrary decision of GST Council which is highly unjustified and either will lead small players to close down their business in longer run or force them to adopt unethical means of moving their material through Bogus bill making mafias since the value of each truck will not exceed Rs. 40,000 (in most cases) which are exempted from e-way bills. So our humble request to the AA/GST Council is not to make honest people to become dishonest.

19. The GST had been rolled out with another great slogan-"One nation, one market and one tax", whereas ROYALTY is a kind of Tax being paid by a quarry owner on Raw material at pit's mouth and ultimately that burden has to be bear by a RD like us. In this way also at least it is not proper to classify our processed stones under heading 6802 of higher tax bracket rates.

20. In paragraph no. 6 of the order, the AAR mentioned that "As per Chapter notes to 25, the headings of this chapter covers mineral product only in the



crude state." If this were the case then why CEMENT a highly processed material manufactured with composition of various minerals had not been taken out of chapter 25? Why the ARTICLES made of CEMENT which are shaped such as grills, sheets etc., have been thrown into chapter 68? Even "Marble/Granite other than blocks" mentioned under 18% column of Chapter 25 does clearly mean that they have been further processed beyond quarry i.e. in a factory by subjecting them to SAWN or CUT processes. The GST of 18% is the highest tax rate for Marble/Granite and the like, then in the event it can also be construed that even POLISHED & SIZING for Marble/Granite slabs/tiles are also included in the same Chapter of 25.

21. The AAR's findings & interpretation rules if at all applicable then they are to a situation where in an assessee brings entire stone block into his factory, cuts into slabs or tiles and does all other activities thereafter such as POLISHING & SIZING etc. But in our case no such activity is undertaken. Our job is very simple; to bring rough stone slabs and brush polish it's one of the suitable surface, without changing the shape, structure of the stone slab. Therefore the AAR had failed to notify that the reliance placed by them in defining heading 6802 apply only when processes specified therein are undertaken for conversion of blocks into slabs or tiles only.

22. On harmonious reading of Note 1 and Note 6 of Chapter 25 of CET and in view of the opening qualifying phrase Except where the context or Note 4 to this Chapter otherwise requires, used in Note 1 and 'sizing' and 'polishing' being specifically included in Note 6, the inference is obvious that even after the natural stone slabs are subjected to the said processes, the final product would remain classified under Chapter 25; > that, further, the said Chapter Note 1 does not state nor it can be interpreted to mean that the said processes carried out by us on natural stone slabs would amount to manufacture.

23. On harmonious reading of contents of paragraph no. 9 of AAR's said order, the blocks and slabs which have been merely cut by SAWN must bear discernible traces of the sawing on their surfaces. Thus it is very clear that a BLOCK undergone the SAWN process will produce tiles/slabs of even thickness which are coarse finished on their surfaces and allowed in Chapter 25. What we want to insist upon is that this is a very expensive & complex process in comparison to combined effect of POLISH + SIZING done on a directly brought rough stone slab. Rate wise also the slabs with discernible traces on surface allowed in Chapter 25 are much expensive to merely polished + sized stone slabs which the AAR wants to classify them under heading 6802. The AAR had not properly understood our plea made in our application and completely relied upon heading and their explanatory notes instead of exploring the chapter notes first. Moreover as per the rules of HSN code, we have to mention not more than two digits, which the AAR didn't talk about or considered but explaining us the descriptions of such headings of 4 & 6 digits, which are not relevant to us. When we have raised this issue in our submission, why they have not passed any comment on this is dismaying us a lot!!!

24. Therefore in these circumstances stated herein and submissions made by us, we humbly request this AAAR to declare that our Processed limestone slabs cannot be taken out of Chapter 25. Since we have submitted all possible



material which might help this AAAR to declare our goods in Chapter 25, hence there is no need for personal hearing and further AAAR is requested to pass the order on merits of our submissions at the earliest possible.

25. If at all this AAAR finds it difficult to take out processed limestone slabs from Chapter 68 on legally backed grounds unknown to us and better known to them, then at least AAAR could recommend to GST Council/Fitment Committee or Appropriate Authority to fix the GST Rate as 5% for our commodity based on our genuine and justified facts and submissions submitted herein above and enclosed here with in enclosed ANNEXURES. This can also be done in heading 6802 by creating 5% GST column for such kind of lower cost stones where morphology in RAW & FINISH doesn't change at all".

5.2. The appellant made further submissions vide a letter captioned 'Sent by Regd. Post on 12/05/2018', as follows:

"2. Kindly refer Judgment of Customs, Excise & Gold Tribunal-Delhi, in the matter of: Madhusudan Ceramics vs Collector Of Central Excise on 13 November, 1990. (Can be searched in Google bar).

(Equivalent citations: 1992 (37) ECC 86, 1991 ECR 206 Tri Delhi, 1991 (53) ELT 90 Tri Del).

...

With reference to the above, our further submissions are as under:

1. While referring to paragraph no. 14 of ORDER No. 02/2018 of AAR in ANNEXURE-AA1, the AAR while classifying our GOODS had relied upon HCDSCS alone but in the above appeal under citation no. 2 the contention of the appellant (who were succeeded with relief) was that HCDSCS cannot be relied upon for the classification of GOODS. It is only the Tariff that can be relied upon for the purpose of classification. Therefore the said order of AAR is liable to be quashed and our appeal is to be allowed with relief as asked for.

Therefore it is very clear from the above statement, that even if Customs Tariff taken into consideration though without our admission of the fact (Since Excise Tariff is genuine), then also Chapter note 1 of Chapter 25 is allowing mechanical processes such as CRUSHING, GRINDING / LAVIGATING etc. on minerals in crude form to be retained in said chapter 25 only. Moreover physical processes have also been allowed in said chapter note. If one were to go through the meaning of mechanical process then it states as under:

*"Made, performed, or operated by or as if by a machine or machinery.  
2. A mechanical process concerned with machines or machinery. 3.  
Relating to or controlled or operated by physical forces."*

In the backdrop of above meaning if one were to look at the simple processes we are performing on our low cost limestone slabs, then one will understand that POLISHING is nothing but mechanical process of GRINDING/LAVIGATING done on the surface of rough limestone slab with

application of physical force by a labour through a simple polishing machine. Even CUTTING of sides of a Stone slab is possible only with the application of physical force of a labour against a cutting wheel of a simple machine. It was also held in the said appeal of appellant in reference 2 that their product which is identical in undergone processes to that of ours cannot be said to have manufactured and thus not excisable.

2. But all kinds of STONE BLOCKS (such as Marble, Granite, Kota blocks) have to undergo the SAWING process to get the tiles/slabs which is not possible without atomization of machines which further means no physical force of a labour is required in that process and shape is also changed.

And the AAR had failed to understand this distinguishing factor between a SLAB derived from a natural BLOCK and NATURAL SLAB as brought in by our Unit.

Hence, we humbly request this AAAR to consider these submissions also and declare that our "polished/processed limestone slabs" cannot be taken out of chapter 25".

**5.3.** The Appellant was given personal hearing before this Appellate authority on 07-06-2018. Sri Rajgopal Sarda, Proprietor appeared for the hearing and reiterated and explained the various submissions in his appeal. As to the arguments made by the AAR w.r.t. the Explanatory Notes, he mentioned that the AAR was legally not justified in relying upon the Explanatory Notes. He had nothing further to add.

**5.4.** Vide a letter dated 12/06/2018, the appellant put forth the following further submissions:

"With respect to my Appeal under GST for Tandur stone slabs, if your good self consider following few lines, then it would become so clear that why polished stone slabs of Tandur fall under Chapter 25 of Customs tariff only.

1. Kindly differentiate between a BLOCK & a SLAB as raw material undergoing the various processes. Slabs/Tiles derived from a Block come under manufacturing (shape is changed) activity, where as a rough stone slab undergone Polish or cutting processes cannot be equated to manufacturing because after undergoing those processes still it remains a stone slab only (no shape change).

2. The AAR in their judgment relied on non-statutory aspects such as HCDCS, giving description of only heading of HSN (without connecting them to Chapter note), exploring explanatory notes and interpretative rules etc. instead of first exhausting the remedy of Chapter note 1 of Chapter 25 under Customs Tariff Act. In their verdict the AAR have not at all touched note 1 of Chapter 25.

3. There is a sequence to be followed for AAR in the following manner:



First connect heading of 2515/2516 with Note 1 of Chapter 25 under Customs Tariff. If still any ambiguity persists in classification of GOODS, then move on to interpretative rules and then explanatory notes. But the AAR have directly gone into second & third option without going into Note 1 of Chapter 25 of Customs Tariff which is actually the first option to explore!!!

4. In note 1 of Chapter 25 under Customs Tariff, It is clearly mentioned that the further processes such as GRINDING, LEVIGATING, MECHANICAL, PHYSICAL done on raw material in crude form are still allowed in same Chapter of 25. Hence our job is nothing but to bring rough limestone slabs which are in crude form and perform polish & cut processes on them which are all nothing but comes under Mechanical processes. Polishing on a rough slab is nothing but grinding only. Even the literal meaning of Levigating is nothing but smooth or polished.

5. Literally speaking our Polished limestone slab is a MINERAL PRODUCT only and nothing more than that and this is what the title of Section V under Customs Tariff speaks about and Chapter 25 is a part of it.

6. Note 1(a) of Chapter 68 of Customs Tariff Act is clearly excluding the goods of Chapter 25.

Hence in all the above perspectives, it can be said that why rough stone slabs brought as a raw material even after polish shall be retained in Chapter 25 only, more so in such circumstances when we are not changing its shape, nature, characteristic, description, usage etc....".

#### **V. DISCUSSION, FINDINGS AND DETERMINATION OF THE APPEAL:**

6. We have considered the material on record including the appellant's grounds, submissions, statutory provisions etc. Appellant's request to consider all submissions in the initial application as part of the facts/grounds of appeal herein, has also been taken into account. In terms of Section 101 (1) of the Act, this Appellate Authority is mandated to pass such order as it thinks fit, confirming or modifying the ruling appealed against.

7. We now proceed to record our discussions and findings.

8.1. At the outset, it is observed that in the Grounds of Appeal (as also initial application for Advance Ruling), reproduced above, some of the submissions put forth by appellant are to the effect of disputing the GST levy-rate of 28% on limestone slabs (as goods falling under HSN Code 6802) or questioning the basis of and rationale behind fixing such quantum of levy; arguing as to purported discrimination / inequity by citing lesser rate of GST-levy fixed in respect of other products / commodities - Water bottles, marbles, granites etc., and industries/sectors having highly mechanised processes etc., compared to small-scale units and so forth. Certain other submissions are also made by referring to



newspaper reports/clippings, GST-captions/slogans, effects of the higher rate on small scale units, employment-aspects, etc.

**8.2.** We find that such submissions/contentions cannot merit consideration in the present proceedings before this forum since (i) the basis / rationale and reasoning in fixing quantum of levy @ 28% (or 18% as subsequently reduced), is a policy-decision of the Government(s) / statutory GST Council, which cannot fall for examination/consideration in the realm of appeal proceedings under the statute and are beyond the scope/domain of powers of this Authority being a creature of the statute; (ii) the newspaper reports, press releases, slogans, purported economic effects of the rate of tax, do not constitute legal or tenable material/grounds for determining classification of goods – which has to be purely based on statutory grounds i.e. based on relevant Tariff entries, Notes and Rules for interpretation as applicable to the issue on hand. Accordingly, we propose to consider only the legally relevant grounds raised by the appellant against the impugned order. The same are dealt at appropriate places/portions in the course of the discussion and findings enumerated in the following paragraphs.

**8.3.** We further observe that the lower Authority's findings in the impugned order are rather concise and do not reflect a detailed examination and analysis of the headings, Chapter Notes vis-à-vis the goods/processes, as ought to have been done in the given context. Moreover, as against totally 5 (five) questions framed for the Advance Ruling by appellant, the Advance Ruling as rendered addresses only the first two questions and not the remaining questions. Though the ruling rendered covering the first two questions would lead to and imply a negation / negative ruling in respect of the remaining three questions, propriety of the proceedings required specific ruling with regard to each question raised.

**8.4.** Notwithstanding the aforesaid, we note that the statutory mandate vide Section 101 (1) of the Acts, requires this Appellate authority to pass an order, inter-alia, confirming or modifying the Ruling appealed against. This in itself necessitates detailed analysis of the statutory provisions and related material/aspects (HSN notes) to arrive at conclusion as to the correctness or otherwise of the Advance Ruling impugned before us. We accordingly proceed to do so.

**9.** The **main question for determination in this appeal** is the correct classification of the goods viz., Polished / Processed Limestone slabs, for the purposes of GST levy. Whether the same would fall under specified headings of Chapter 25 (i.e. Headings 2515 / 2516 / 2521 or 2530) as claimed by the appellant; or would fall under Chapter 68 (Heading 6802) as held by the Advance Ruling Authority. Other questions framed in the application (reproduced above and hence not reiterated here), are corollary to the said



main question; their determination would depend upon that of the main question<sup>7</sup>.

**10.1.** To determine the aforesaid main question/issue, it would be appropriate to refer to the statutory provisions, relevant entries in the Central Tax (Rate) Notifications<sup>8</sup> as also the Headings, Chapter Notes etc., applicable in the given context.

**10.2.** Levy of GST came into effect from 1-7-2017. The charging Sections, Section 9 (1), in both the Central Goods and Services Tax Act, 2017 ("CGST Act"/ "the Act", in short) and the Telangana Goods & Services Tax Act, 2017 ("TGST Act" / "the State Act") – collectively referred to as "the Acts" – read as follows:

*"9. Levy and collection. — (1) Subject to the provisions of sub-section (2), there shall be levied a tax called the central goods and services tax on all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 and at such rates, not exceeding twenty per cent., as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person".*

**10.3.** Notification No.1/2017-CT (Rate) dated 28 June, 2017, effective from 1<sup>st</sup> July, 2017, issued by the Central Government notified the rates of Central Tax for goods, as specified in Schedules I to VI thereto. The said Notification was issued by the Central Government in exercise of the powers conferred by sub-section (1) of section 9 of the Act, on the recommendations of the Council.

**10.4.** Entries in the above-said Notification (as amended), relevant for the issue on hand (including those referred by appellant), read as follows:

**SCHEDULE I - 2.5%**

S. No.	Chapter/ Heading/ Sub-heading/ Tariff item	Description of Goods
(1)	(2)	(3)
<sup>9</sup> 123.	2515 [Except	Ecaussine and other calcareous monumental or building

<sup>7</sup> Questions framed by the appellant for Advance Ruling, and consequently this appeal pertain to only the classification under specified headings. The said questions, as framed, do not require ruling with regard to applicable rates of GST for the subject goods. Accordingly, the issue is considered w.r.t. the appropriate classification of the subject goods. Needless to state, rates of GST applicable on subject goods would be consequential as per the relevant Notification-entries as applicable.

<sup>8</sup> Under the scheme of GST, for every Central Tax (Rate) Notification issued, a corresponding Notification is issued by State under respective State GST Act. As such, the references hereinafter are made by citing the relevant Central Tax Rate Notifications and entries therein; which would also constitute a reference to the corresponding Notification issued under TGST Act, 2017. Appellant, in their grounds/submissions also having referred to only the Central Tax Rate Notifications and not State Notifications, this enables ease of reference and appreciation of the discussion/findings.

<sup>9</sup> Substituted w.e.f. 27 July, 2018 vide (A) (ii) of Notification No.18/2018-Central Tax (Rate) dated 26<sup>th</sup> July, 2018. Prior to substitution, the words/numbers " or 6802" in Col.(2) and "other than mirror polished stone which is ready to use" in Col.(3) were not there in the entry.



	2515 12 10, 2515 12 20, 2515 12 90] or 6802	stone; alabaster [other than marble and travertine], other than mirror polished stone which is ready to use
124.	2516 [Except 2516 11 00, 2516 12 00]	Porphyry, basalt, sandstone and other monumental or building stone, whether or not roughly trimmed or merely cut, by sawing or otherwise, into blocks or slabs of a rectangular (including square) shape.
125.	2516 11 00	Granite crude or roughly trimmed
130.	2521	Limestone flux; limestone and other calcareous stone, of a kind used for the manufacture of lime or cement.
137.	2530	Mineral substances not elsewhere specified or included.

**SCHEDULE II - 6%**

S. No.	Chapter/ Heading/ Sub-heading/ Tariff item	Description of Goods
(1)	(2)	(3)
51.	2515 12 10	Marble and travertine blocks
52.	2516	Granite blocks
176.	68	Sand lime bricks <sup>10</sup> or Stone inlay work
<sup>11</sup> 176A	6802	Statues, statuettes, pedestals; high or low reliefs, crosses, figures of animals, bowls, vases, cups, cachou boxes, writing sets, ashtrays, paper weights, artificial fruit and foliage, etc.; other ornamental goods essentially of stone";

**SCHEDULE III - 9%**

S. No.	Chapter / Heading / Sub-heading / Tariff item	Description of Goods
(1)	(2)	(3)
<sup>12</sup> 26A	2515 12 20, 2515 12 90	Marble and travertine, other than blocks
26B	2516 12 00	Granite, other than blocks";
<sup>13</sup> 177A	6802	All goods other than :- (i) all goods of marble and granite; (ii) Statues, statuettes, pedestals; high or low reliefs, crosses, figures of animals, bowls, vases, cups, cachou boxes, writing sets, ashtrays, paper weights, artificial fruit and foliage, etc.; other ornamental goods essentially of stone";
	<sup>14</sup> 6702	Artificial flowers, foliage and fruit and parts thereof; articles made of artificial flowers, foliage or fruit";
<sup>15</sup> 177E	6802	Worked monumental or building stone (except slate) and

<sup>10</sup> Words "or stone inlay work" inserted by (B)(xiv) of Notification No.27/2017-Central Tax (Rate) dated 22.09.2017.

<sup>11</sup> Inserted by (B (xv) of Notification No.27/2017-Central Tax (Rate) dated 22.09.2017.

<sup>12</sup> Entry Sl.No.s 26A and 26B inserted by ( C )(xii) of Notification No. 41/2017- Central Tax (Rate) dated 14-11-2017 with effect from 15-11-2017.

<sup>13</sup> Inserted by C (xii) of Notification No. 34/2017- Central Tax (Rate) dated 13.10.2017

<sup>14</sup> Entries in Col. (2) & (3) against Sl.No.177A above, were substituted vide C (xlix) of Notification No. 41/2017- Central Tax (Rate) dated 14.11.2017 w.e.f. 15-11-2017.

<sup>15</sup> Inserted by C (l) of Notification No. 41/2017- Central Tax (Rate) dated 14.11.2017 w.e.f. 15-11-2017.



		articles thereof, other than goods of heading 6801; mosaic cubes and the like, of natural stone (including slate), whether or not on a backing; artificially coloured granules, chippings and powder, of natural stone (including slate) [other than statues, statuettes, pedestals; high or low reliefs, crosses, figures of animals, bowls, vases, cups, cachou boxes, writing sets, ashtrays, paper weights, artificial fruit and foliage, etc.; other ornamental goods essentially of stone] <sup>16</sup> {except the items covered in Sl.No. 123 in Schedule I}.
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**SCHEDULE IV - 14%**

*(all these entries later omitted, as indicated below in footnotes)*

S. No.	Chapter / Heading / Sub-heading / Tariff item	Description of Goods
(1)	(2)	(3)
<sup>17</sup> 16.	2515 12 20, 2515 12 90	Marble and travertine, other than blocks
<sup>18</sup> 17.	2516 12 00	Granite, other than blocks
<sup>19</sup> 70.	6802	<sup>20</sup> All goods of marble or granite [other than Statues, statuettes, pedestals; high or low reliefs, crosses, figures of animals, bowls, vases, cups, cachou boxes, writing sets, ashtrays, paper weights, artificial fruit and foliage, etc.; other ornamental goods essentially of stone]"

**10.5.** The Notification contains an Explanation, relevant portion thereof being as under:

***“Explanation. - For the purposes of this notification, -***

*.....*

*(iii) “Tariff item”, “sub-heading” “heading” and “Chapter” shall mean respectively a tariff item, sub-heading, heading and chapter as specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975).*

<sup>16</sup> Phrase in {} inserted by (C)(v) of Notification No.18/2018-Central Tax (Rate) dated 26<sup>th</sup> July, 2018, effective from 27<sup>th</sup> July, 2018.

<sup>17</sup> Sl.No. 16 omitted by (D)(i) of Notification No. 41/2017- Central Tax (Rate) dated 14-11-2017 effective from 15-11-2017.

<sup>18</sup> Sl.No. 17 omitted by (D)(i) of Notification No. 41/2017- Central Tax (Rate) dated 14-11-2017 effective from 15-11-2017.

<sup>19</sup> Sl.No. 70 omitted by (D)(iii) of Notification No. 41/2017- Central Tax (Rate) dated 14-11-2017 effective from 15-11-2017.

<sup>20</sup> As substituted by (D)(iv) of Notification No.34/2017- Central Tax (Rate) dated 13.10.2017. Originally, the entry read as “Worked monumental or building stone (except slate) and articles thereof, other than goods of heading 6801; mosaic cubes and the like, of natural stone (including slate), whether or not on a backing; artificially coloured granules, chippings and powder, of natural stone (including slate); of marble, travertine and alabaster, of Granite or Other calcareous stone”. The words “of Other calcareous stone” were substituted by the words “of Other calcareous stone [other than statues, statuettes, pedestals; high or low reliefs, crosses, figures of animals, bowls, vases, cups, cachou boxes, writing sets, ashtrays, paper weights, artificial fruit and foliage; other ornamental goods essentially of stone]” by (D)(iv) of Notification No.27/2017-Central Tax (Rate) dated 22.09.2017.



*(iv) The rules for the interpretation of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), including the Section and Chapter Notes and the General Explanatory Notes of the First Schedule shall, so far as may be, apply to the interpretation of this notification ..”.*

**10.6.** From the above, it is seen that the statutory provision vide the charging Section 9 of the Acts, mandates that the rates of GST would be as per recommendations of the GST Council and notified by the Government. The Notification No.1/2017-Central Tax (Rate) dated 28.06.2017 has been issued in exercise of the powers conferred under the said Section 9 and on the recommendations of the GST Council. The Notification prescribes the rates of GST-levy on various goods with a reference to the Chapter Heading / sub-heading / Tariff Item along with description of goods. The said Chapter Heading, sub-heading and Tariff Item are defined, by the Explanation to the Notification, to be those specified in **the First Schedule to the Customs Tariff Act, 1975**. The Explanation further provides for application of the Rules for Interpretation, Section Notes, Chapter Notes and General Explanatory Notes, for interpreting the entries in the Notification, as far as the case may be.

**11.1.** The appellant has contended against lower Authority's reference to and application of Customs Tariff Act / Schedule, entries and Explanatory Notes thereto, on the ground that these have no legal backing; and instead Excise Tariff should have been considered/adopted. However, as detailed supra, the GST-rate notification specifically provides for applicability of the Customs Tariff and related Rules for Interpretation/Explanatory Notes. Thus, appellant's contentions in this regard are found to be not valid, as the statutory Notification makes it abundantly clear that for classification of goods in GST, the Customs Tariff is to be followed.

**11.2.** Further, other grounds / submissions put forth by the appellant are to the effect that the processes undertaken by them do not amount to 'manufacture' or that there is no change/transformation in the nature / substance / character / description, usage etc., of the products. Reference in this regard was also made to Note 6 to Chapter 25 of the Central Excise Tariff mentioning 'polishing' as deeming to be manufacture. As seen, these grounds/submissions are based upon the entries and Chapter / Heading notes in the Central Excise Tariff Act, 1985. These can have no relevance vis-à-vis the levy of GST since:-

- (i) the Central Excise Tariff Act, 1985 or the Notes therein have not been made applicable for GST-classification/rates. On the contrary, it is specifically the Customs Tariff and Headings, Notes therein which have been made applicable for interpretation of the GST (rates) Notifications.



- (ii) Levy of GST is on the taxable event of 'supply' of goods (or services or both) and not on/in relation to/with regard to the concept/aspect 'manufacture'. The questions of whether or not processes undertaken amount to 'manufacture' or whether it entails change in the characteristics of the products such as nature / description / usage etc., are not germane for determining the classification of the goods, unless such an aspect is indicated in or made a relevant/integral part of Tariff entries/Chapter Notes etc. In the Customs Tariff.

**12.1.** Another set of grounds/contentions put forth by appellant in this context, are that the HSN (Harmonised System of Nomenclature) Notes have no legal backing or support and hence, reference to the same by the lower Authority is not correct / not tenable. Reliance in this regard was also placed on the decision of Hon'ble Tribunal in the case of *Madhusudan Ceramics vs Collector Of Central Excise*<sup>21</sup>. We have examined the contention. The HSN (Harmonised System of Nomenclature) Explanatory Notes (formal description being the Brussels' Convention on the Harmonised Commodity Description and Coding System (HCDCS)), contain the internationally accepted nomenclature and classification of goods and India is a signatory to the said convention. It is a well-settled legal proposition that where the Tariff-Schedule is based upon and structured on the same pattern as the HSN, the HSN Notes are relevant and a safe guide for deciding issues of classification. This principle has been enunciated in a catena of judgements, including those of **Hon'ble Supreme Court** in **CCE, Shillong vs Wood Craft Products Ltd.**<sup>22</sup>, **CCE, Hyderabad vs. Bakelite Hylam Ltd.**,<sup>23</sup> **Commissioner of C.Ex., Goa vs Phil Corporation Ltd.**<sup>24</sup> etc. Though these decisions are rendered in the context of Central Excise Tariff, it is the substantive principle of law laid down therein which is applicable to the instant case, since there can be no dispute that the Customs Tariff (which is made applicable by the GST-rate Notification) is based upon and aligned with HSN. Hence, we find that reference to HSN Notes for deciding the classification issue involved, as done by the lower Authority, is in principle legally correct and tenable.

**12.2.** The appellant relied on the case law of *Madhusudan Ceramics* cited supra, to urge that in the said case the party had contended that HCDCS cannot be relied upon for classification of goods; that the Hon'ble Tribunal decided the issue in favour of the party by allowing their appeal and thereby, it should be considered that Hon'ble Tribunal had upheld the contention as to non-applicability of HCDCS. On perusal of the said case-law, it is observed that though the party made such a plea, the same was neither part of *ratio*

<sup>21</sup> 1991 (53) ELT 90 Tri Del

<sup>22</sup> 1995(77) ELT 23 (SC)

<sup>23</sup> 1997 (091) ELT 0013 (SC)

<sup>24</sup> 2008 (223) ELT 9 (SC)



*decidendi* of the decision nor was the said plea either expressly or impliedly affirmed / upheld by the Hon'ble Tribunal which decided the appeal basing on interpretation of the relevant Chapter Notes alone.

**12.3.** In view of the above, we find no merit in appellant's contentions against consideration of HSN Explanatory Notes for deciding the subject issue.

**13.** However, we find force and validity in the appellant's contentions vide letter dated 12-6-2018 that the lower Authority has directly referred to HSN explanatory Notes etc., without first analysing the Heading-description(s) and relevant Notes in Chapter 25 and in fact has not at all touched the Note 1 to Chapter 25. As indicated by us earlier, the lower Authority, in the given context involving classification issue, ought to have considered and analysed the relevant Tariff-headings, Chapter Notes and then in the event of doubt/ambiguity or for further guidance referred to HSN notes; however has not done so. As mentioned *supra*, we would be addressing the issue comprehensively in the following paragraphs.

**14.1.** Reverting to the issue in dispute as to the classification of subject goods, the relevant extracts of Chapter 25 of the First Schedule to the Customs Tariff Act, 1975 (hereinafter referred to as Customs Tariff / First Schedule, in short); the Headings 2515, 2516, 2521 and 2530 (cited by appellant) as well as Chapter 68 i.e, Heading 6802, along with the relevant Chapter Notes, are reproduced below: (Reference to HSN Explanatory Notes would come into consideration, only in case of any doubt / ambiguity in interpreting / applying these headings/Notes etc. and the same has accordingly been dealt, in the subsequent paragraphs).

## **“SECTION V MINERAL PRODUCTS**

### **Chapter 25**

#### **Salt; sulphur; earths and stone; plastering materials, lime and cement**

##### **Notes:**

1. Except where their context or Note 4 to this Chapter otherwise requires, the headings of this Chapter cover only products which are in the crude state or which have been washed (even with chemical substances eliminating the impurities without changing the structure of the product), crushed, ground, powdered, levigated, sifted, screened, concentrated by flotation, magnetic separation or other mechanical or physical processes (except crystallization), but not products that have been roasted, calcined, obtained by mixing or subjected to processing beyond that mentioned in each heading.

The products of this Chapter may contain an added anti-dusting agent, provided that such addition does not render the product particularly suitable for specific use rather than for general use.

2. This Chapter does not cover :

...



(e) setts, curbstones and flagstones (heading 6801); mosaic cubes or the like (heading 6802); roofing, facing or damp course slates (heading 6803);

Tariff Item	Description of goods	Unit
<b>2515</b>	<b>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</b>	
	- <i>MARBLE AND TRAVERTINE :</i>	
2515 11 00	-- CRUDE OR ROUGHLY TRIMMED	kg.
2515 12	- - Merely cut, by sawing or otherwise, into blocks or slabs of a rectangular (including square) shape :	
2515 12 10	- - - Blocks	kg.
2515 12 20	- - - Slabs	kg.
2515 12 90	- - - Other	kg.
2515 20	- <i>Ecaussine and other calcareous monumental or building stone; alabaster :</i>	
2515 20 10	--- Alabaster	kg.
2515 20 90	--- Other	kg.
<b>2516</b>	<b>GRANITE, PORPHYRY, BASALT, SANDSTONE AND OTHER MONUMENTAL OR BUILDING STONE, WHETHER OR NOT ROUGHLY TRIMMED OR MERELY CUT, BY SAWING OR OTHERWISE, INTO BLOCKS OR SLABS OF A RECTANGULAR (INCLUDING SQUARE) SHAPE</b>	
	- GRANITE :	
2516 11 00	-- Crude or roughly trimmed	kg.
2516 12 00	-- Merely cut, by sawing or otherwise, into blocks or slabs of a rectangular (including square) shape	kg.
2516 20 00	- Sandstone	kg.
2516 90	- <i>Other monumental or building stone :</i>	
2516 90 10	--- Pakur stone	kg.
2516 90 20	--- Stone boulders	kg.
2516 90 90	--- Other	kg.
<b>2521</b>	<b>- LIMESTONE FLUX; LIMESTONE AND OTHER CALCAREOUS STONES, OF A KIND USED FOR THE MANUFACTURE OF LIME OR CEMENT</b>	
2521 00	- <i>Limestone flux; limestone and other calcareous stones, of a kind used for the manufacture of lime or cement:</i>	
2521 00 10	-- Limestone flux (L.D., below 1% SiO <sub>2</sub> )	kg.
2521 00 90	-- Other	kg.
<b>2530</b>	<b>Mineral substances not elsewhere specified or included</b>	
2530 10	- <i>Vermiculite, perlite and chlorites, unexpanded :</i>	
2530 10 10	--- Vermiculite	kg.
2530 10 20	--- Perlite	kg.
2530 10 90	--- Others (including powder)	kg.
2530 20 00	- Kieserite, epsomite (natural magnesium sulphates)	kg.
2530 90	- <i>Other :</i>	
2530 90 10	--- Meerschaum (whether or not in polished pieces) and amber agglomerated; meerscham and agglomerated amber in plates, rods, etc., not worked after moulding jet	kg.
2530 90 20	--- Natural arsenic sulphides (such as orpiment)	kg.



2530 90 30	--- Calcite	kg.
2530 90 40	--- Ores and concentrates of rare earth metals	kg.
2530 90 50	--- Wollastonite	kg.
2530 90 60	--- Earth colour ochre, crude	kg.
2530 90 70	--- Other processed earth colour ochre	kg.
	--- Other :	
2530 90 91	--- Strontium sulphate (natural ore)	kg.
2530 90 99	--- Other	kg.

**SECTION XIII**  
**ARTICLES OF STONE, PLASTER, CEMENT, ASBESTOS, MICA OR**  
**SIMILAR MATERIALS; CERAMIC PRODUCTS; GLASS AND**  
**GLASSWARE**

**Chapter 68**

**Articles of stone, plaster, cement, asbestos, mica or similar materials.**

**Notes :**

1. This Chapter does not cover :
  - (a) goods of Chapter 25 ;
  - (b) to (n) *not reproduced since pertaining to other goods/Chapters etc and hence not relevant.*
  
2. In heading 6802, the expression "worked monumental or building stone" applies not only to the varieties of stone referred to in heading 2515 or 2516 but also to all other natural stone (for example, quartzite, flint, dolomite and steatite) similarly worked; it does not, however, apply to slate.

Tariff Item / HS Code	Description of goods	Unit
6802	<b>WORKED MONUMENTAL OR BUILDING STONE (EXCEPT SLATE) AND ARTICLES THEREOF, OTHER THAN GOODS OF HEADING 6801; MOSAIC CUBES AND THE LIKE, OF NATURAL STONE (INCLUDING SLATE), WHETHER OR NOT ON A BACKING; ARTIFICIALLY COLOURED GRANULES, CHIPPINGS AND POWDER, OF NATURAL STONE (INCLUDING SLATE)</b>	
6802 10 00	- Tiles, cubes and similar articles, whether or not rectangular (including square), the largest surface area of which is capable of being enclosed in a square the side of which is less than 7 cm; artificially coloured granules, chippings and powder	kg.
	<i>Other monumental or building stone and articles thereof, simply cut or sawn, with a flat or even surface :</i>	
6802 21	-- <i>Marble, travertine and alabaster :</i>	
6802 21 10	--- Marble blocks or tiles	kg.
6802 21 20	--- Marble monumental stone	kg.
6802 21 90	--- Other	kg.
6802 23	-- <i>Granite :</i>	
6802 23 10	--- Granite blocks or tiles	kg.
6802 23 90	--- Other	kg.



6802 29 00	-- Other stone	kg.
	- Other :	
6802 91 00	-- Marble, travertine and alabaster	kg.
6802 92 00	-- Other calcareous stone	kg.
6802 93 00	-- Granite	kg.
6802 99 00	-- Other stone	kg.

**14.2.** The **Rules for Interpretation** of the First Schedule to the Customs Tariff Act, 1975 (also referred in the Explanation to Notification No.1/2017- Central Tax (Rate) dated 28.06.2017), read as follows:

#### **\*GENERAL RULES FOR INTERPRETATION OF THE SCHEDULE**

*Classification of goods in this Schedule shall be governed by the following principles:*

1. *The titles of Sections, Chapters and sub-chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes and, provided such headings or Notes do not otherwise require, according to the following provisions:*

2. (a) *Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished articles has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or failing to be classified as complete or finished by virtue of this rule), presented unassembled or disassembled.*

(b) *Any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances. Any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance. The classification of goods consisting of more than one material or substance shall be according to principles of rule 3.*

3. *When by application of rule 2(b) or for any other reason, goods are, prima facie, classifiable under two or more headings, classification shall be effected as follows:*

(a) *The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.*

(b) *Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to (a), shall be classified as if they consisted of the material or component which gives them their essential character, in so far as this criterion is applicable.*



(c) *When goods cannot be classified by reference to (a) or (b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.*

4. *Goods which cannot be classified in accordance with the above rules shall be classified under the heading appropriate to the goods to which they are most akin”.*

[Rules 5, 6, General Notes and Additional Notes are not reproduced since not relevant]

**15.1.** On examining the nature of the subject goods and the processes stated to be undertaken thereon, we find as follows:

- (1) Appellant sought classification of goods “Polished / Processed limestone slabs” describing the nature of activity, as (quote) *“rough limestone slabs which are by nature uneven in thickness ranging from 15 to 35 mm (or so) are brought to their processing unit and one of the suitable surfaces is polished with simple table polish machine. Further, it is cut to square or rectangle shape on a table cutting machine. Some other kind of simple processes like CALIBRATION, TUMBLING etc. are also undertaken”*. (unquote).
- (2) It is pertinent to note that appellant's description of activities is that apart from polishing and cutting, “some other simple processes like tumbling, calibration etc., are also undertaken”. What is ‘tumbling’ or ‘calibration’ have not been detailed / explained by appellant<sup>25</sup>. Further, usage of word “etc.” as indicated above, denotes further or other processes [i.e. in addition to those specified in application/appeal], which however have not been disclosed / described or specified, either in the application or the appeal. Appellant's description of goods as “polished / processed limestone slabs” – as given in the question framed for advance ruling – in itself bears elements of vagueness / imprecision. That is, while the pre-fixed term ‘polished’ denotes process of ‘polishing’ undertaken, the word ‘processed’ is generalised and not specific.
- (3) However, in the given context, by taking into account the activities described by appellant for the purpose of these proceedings, the term ‘processed’ is taken to be denoting combination of all the processes mentioned in the application i.e. ‘cutting + polishing + tumbling + calibration’ (not necessarily in the said sequence). Further, appellant while describing goods in question as ‘polished / processed limestone slabs’, also did not specify whether the process undertaken is only ‘polishing’ in certain cases and ‘processed’ in other cases; or both ‘polishing’ and ‘processing’ are undertaken in some cases or in all cases.

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<sup>25</sup> In fact, in the application as well as grounds of appeal, in entirety, only the process of ‘polishing’ has been referred/emphasised/highlighted by appellant, without any further reference to tumbling or calibration which are only mentioned in the description of ‘nature of activity involved’.

**15.2.** In view of the above described aspects of indeterminate nature, the issue for determination is being considered<sup>26</sup> in these appeal proceedings based on appellant's description of goods/processes, as follows:

- (a) Classification of 'polished limestone slabs' i.e. where apart from cutting slabs into rectangular/square shapes, only the activity of 'polishing' is done; and
- (b) Classification of 'processed limestone slabs' i.e. where apart from cutting slabs into rectangular/square shapes, all the other specified activities viz., polishing, tumbling and calibration are undertaken (and not as merely one of these or a combination of one or more of these).

**15.3.** On examining the nature of activities i.e. processes mentioned above, we find as follows:

(i) Polishing is the process of smoothening one suitable surface of a given slab, mechanically. Appellant's description thereof in the application (reproduced at para 3.1 above under Nature of activity) is (quote) "*to bring rough limestone slabs (a minor mineral) which are by nature uneven in thickness ranging from 15 to 35 mm (or so), to our processing unit and POLISH it's one of the suitable surface with simple table polish machine*" (unquote). Though not specifically describing the process of 'polishing' in their application (whether any chemicals etc., are used/applied to obtain polished slabs), appellant has however mentioned in their submissions vide letters dated 12-5-2018 as well as 12-6-2018 (referred at paras 4.2 and 4.3 supra) that polishing is done by 'grinding'. Relevant extracts thereof are as under:

*"..In the backdrop of above meaning if one were to look at the simple processes we are performing on our low cost limestone slabs, then one will understand that POLISHING is nothing but mechanical process of GRINDING/LAVIGATING done on the surface of rough limestone slab with application of physical force by a labour through a simple polishing machine..."*

*"our job is nothing but to bring rough limestone slabs which are in crude form and perform polish & cut processes on them which are all nothing but comes under Mechanical processes. Polishing on a rough slab is nothing but grinding only".*

Accordingly, and in the absence of any other material to the contrary on record, it is considered that only mechanical grinding is undertaken as the method of polishing in respect of goods in question.

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<sup>26</sup> This Order would not be applicable in case of any difference / deviation, in respect of the one or more of above facts/aspects, which has not been brought on record by appellant in the present proceedings, in view of provisions vide sub-Section (2) of Section 103 and sub-Section (1) of Section 104 of the Acts.



(ii) Cutting is described as mechanical cutting of rough slabs into square/rectangular shapes; appellant's description thereof in their application (para 3.1 under Nature of activity) is (quote) "*cut it to square or rectangle shape on a table cutting machine*". And in their submissions vide letter dated 12-5-2018, it has been described as: (quote) "*..Even CUTTING of sides of a Stone slab is possible only with the application of physical force of a labour against a cutting wheel of a simple machine.*"

(iii) However, as stated above, appellant has not described/explained as to the meaning / nature of the processes 'tumbling' and 'calibration'. Hence, recourse is taken to dictionary/technical literature for ascertaining the same. As per the details available on public domain, 'tumbling'<sup>27</sup> and 'calibration'<sup>28</sup>, with regard to stones/slabs, are found to be described as:

"Tumbling": technique for smoothing and polishing a rough surface on relatively small parts.

"Calibration": process whereby the stone is put through a machine (strip-mill) to achieve flags (stones) of approximately the same thickness. After this process, the stone will retain its natural riven surface but will show calibration tool marks on the underside. Calibration also known as strip-milling involves running the stones through a series of closely spaced saw blades to cut grooves or channels into the underside and thereafter the remaining upstand is nubbled off to leave a stone of selected thickness.

Thus, tumbling, apart from polishing, is yet another/further process of smoothing and polishing, (the words 'on relatively small parts' apparently indicating that post machine-polishing this is done on visible small parts which did not attain the required finish). Calibration is a process by which apparently, slabs of uneven/variable thickness are made to be of approximately same thickness i.e., fairly regular/even, by sawing off/cutting off the protuberant/uneven portion of the under-side surface (i.e, other than the one polished).

**16.** Appellant's plea is for classification of the goods under Chapter 25 and in particular reference, under Chapter Headings 2515 / 2516 and alternatively under Headings 2521 or 2530. The Authority held the goods to be correctly classifiable under Heading 6802 of the GST Tariff, for the reasoning given in the impugned order.

**17.** Before considering the relevant Headings, Notes in Chapters 25 and 68 (and related Explanatory Notes where required), we deem it fit to deal with one of the grounds put forth by the appellant, whereby classification of the goods under Chapter 25 was sought, based on the Titles of the Sections and Chapters in the Tariff-Schedule. The contention is that title of Section V of the Tariff refers

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<sup>27</sup> <https://En.wikipedia.org>

<sup>28</sup> [www.pavingexpert.com](http://www.pavingexpert.com)

to "Mineral products", Chapter 25 title contains the word "Stone" and hence, these would be applicable to their goods 'limestone slabs'. On the other hand that title of Chapter 68 refers to "Articles of stone" which is not applicable to them as they do not prepare/produce any articles. In this regard, we find that the very first Rule 1 in Rules for Interpretation (as cited supra) specifies clearly that "*titles of Sections, Chapters and sub-chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes.....*". Hence, the above contention of appellant is not tenable.

**18.1.** On referring to the relevant Chapters and the Tariff entries, which have been reproduced earlier, it is seen that:

- a) The goods 'limestone slabs'- either with description as such or with the attributes 'polished' or 'processed' - do not per se figure in any of the entries in / under Headings 2515/2516/2521/2530 under Chapter 25 or Heading 6802.
- b) It is by the description of nature of goods i.e., Calcareous monumental or building stone, that limestone falls under Heading 2515, if apparent specific gravity thereof is 2.5 or more. (Meaning of "Calcareous" as per standard dictionaries and also in common and technical understanding<sup>29</sup> is "mostly or partly composed of calcium carbonate – in other words, containing lime or being chalky". Further elaboration given herein is that "major materials in Limestone sedimentary rock are the minerals calcite and aragonite, which are different crystal forms of calcium carbonate (CaCO<sub>3</sub>)").
- c) If specific gravity is less than 2.5 the same would fall under Heading 2516, notwithstanding that Heading 25.16 does not contain the word 'calcareous' and mentions only 'other monumental or building stone'. This is in view of the HSN (Harmonised System of Nomenclature) Explanatory Notes for Headings 25.15 and 25.16, which read respectively, as follows (the validity of reference to HSN Notes, has been delineated earlier):

**25.15 :** "*The heading covers other similar hard calcareous monumental or building stones, provided their apparent specific gravity is 2.5 or more (i.e., effective weight in kg/1,000 cm<sup>3</sup>). Calcareous monumental or building stones of an apparent specific gravity of less than 2.5 are classified in heading 25.16*".

**25.16 :** "*The heading also includes other hard igneous rocks (e.g., syenite, gneiss, trachyte...) as well as calcareous monumental or building stone not falling in heading 25.15 (including building limestone or Portland stone) and serpentine marble.....*".

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<sup>29</sup> <https://en.wikipedia.org>



- d) Appellant has not made any submission/averment as to the factor of apparent specific gravity in respect of their products for a specific claim under Heading 2515 or 2516; but has mentioned both the said Headings in their application/appeal. As seen, in any case, there is no substantive/material difference in the factors determining classification under either of these two headings, except the said aspect of specific gravity. As such, both the said headings are considered as equally applicable in the given context, depending on the actual specific gravity thereof.
- e) Appellant also claimed alternative classification under Headings 2521 or 2530 with regard to their goods 'polished / processed limestone slabs'. The former Heading, as seen, is applicable to only specified types/forms of limestone i.e. 'limestone flux, limestone and other calcareous stone, of a kind used for the manufacture of lime or cement'. That is, to fall under this Heading the goods should be either 'limestone flux' or 'limestone of a kind used for manufacture of lime or cement'. There is nothing on record, nor adduced / claimed by the appellant that the goods in question are either limestone flux (which is chiefly employed as a flux in iron and steel industry<sup>30</sup>) or of the kind used in the manufacture of lime or cement. On the other hand, it is specifically stated by the appellant that the impugned goods are for use in (quote) '*low budget housing needs*' (unquote). Hence, classification of the subject goods under Heading 2521 does not arise.
- f) Heading 2530, reading 'mineral substances not elsewhere specified or included' is a residual entry of the Chapter 25, applicability of which would arise only and only if classification under other headings/sub-headings of the said Chapter is ruled out. In the present case, the broad dispute is whether the goods fall under Chapter 25 or under Chapter 68; and if the former is found to be correct, only headings 2515 / 2516 would be applicable, since specifically covering limestone, as detailed above. Hence, Heading 2530 is also found to be not applicable and not relevant.

**18.2.** As such, the issue narrows down to classification of the subject goods either under Chapter 25 (i.e. Headings 2515 or 2516, as detailed *supra*) or under Chapter 68, Heading 6802 in particular. If the goods fall under Chapter 25, the same remain excluded from Chapter 68, by virtue of Note 1(a) of Chapter 68. It has to be therefore first examined whether the goods fall under Chapter 25. Classification under Chapter 25 is primarily governed by Note 1 to the said Chapter. The said Chapter Note specifies certain criteria for classification under Chapter 25. These can be analysed as follows: The Note starts with the phrase

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<sup>30</sup> HSN Explanatory Notes to Heading 25.21 refers.



"Except where their context (..<sup>31</sup>) otherwise requires, the headings of this Chapter cover..". This denotes that the description in the Headings is the first and foremost criterion to be considered. If the Headings do not otherwise require/provide, then headings would cover : (a) only products which are in the crude state, or (b) products "which have been washed, crushed, ground, powdered, levigated, sifted, screened or concentrated by flotation, magnetic separation or other mechanical or physical processes (except crystallisation)". This phrase and construction thereof indicates that the words used therein denote both the state/form in which the goods should be, and the corresponding processes that are "allowed" for goods to (continue to) fall under Chapter 25. The Note further provides a specific exclusion for products which have been subjected to certain other specified processes i.e. products that have been roasted, calcined, obtained by mixing or subject to processing beyond that mentioned in the heading (except where such process is mentioned/included in the Heading-description itself for e.g., calcined in Headings 2507, 2508, 2511, 2512 etc., ).

**18.3.** Thus, we find that in order to fall under Chapter 25, the goods/products should be:

- (i) those obtained by / subjected to only the specific processes mentioned / indicated in the relevant Heading-description. This is the primary or paramount criteria within Chapter 25 as per Note 1; or
- (ii) subject to the above, the goods should be in crude state; or
- (iii) should be in the state/form or subjected to only the processes, as specified, i.e. washed, crushed, ground, powdered etc., but
- (iv) should not have been subjected to other processes i.e. either those specified i.e. roasted, calcined etc., (except when the Heading-description allows); or any process beyond that mentioned in the Heading.

**19.1.** Examining the subject goods in the light of above criteria vis-à-vis the relevant Headings 2515/2516 & Chapter Note, we find as follows:

- (a) Headings 2515 and 2516, both contain similar phrase "whether or not roughly trimmed or merely cut, by sawing or otherwise, into blocks or slabs of a rectangular (including square) shape". There are two processes / stages mentioned in this description i.e. (i) roughly trimmed or (ii) cut, by sawing or otherwise, into blocks/slabs of rectangular/square shapes.

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<sup>31</sup> The phrase herein reads "or Note 4 to this Chapter otherwise requires" which is not relevant since Note 4 deals with goods falling under Heading 2530 which is not applicable, as detailed earlier.



- (b) The phrase 'roughly trimmed' is not defined in the Chapter/Tariff/Schedule. However, the same is explained in Chapter 25 of the Harmonised System of Nomenclature (HSN) Notes as follows:

*"Roughly-trimmed" stone is stone which has been very crudely worked after quarrying, to form blocks or slabs, still having some rough, uneven surfaces. This working involves removing superfluous protuberances by means of hammer or chisel-type tools*".<sup>32</sup>

- (c) The appellant has not claimed/stated that their products qualify to be 'roughly trimmed' i.e., superfluous protuberances are removed by means of hammer or chisel-type tools. On the contrary, it is admitted position that they are undertaking 'calibration', which as seen, is a mechanical process of obtaining approximate uniformity in thickness of slabs.
- (d) Calibration, by the nature of process and objective/end-result, appears to be similar to or in the nature of trimming ('trimming' by dictionary meaning - is to make something tidier or more level by cutting a small amount off it"). However, Headings 2515 & 2516 use the phrase "roughly trimmed" and not merely as 'trimmed'. The two terms "roughly trimmed" and "trimmed" cannot be considered as being on same footing; moreover when the former term has been assigned with a defined meaning in the HSN. Hence, calibration would not fall under the category of 'roughly trimmed'. As such, is not a permitted process in the Headings.
- (e) Process of cutting limestone slabs into square or rectangular shapes (as per surfaces), is admittedly undertaken by the appellant. The said process is specifically mentioned in the description under Headings 2515/2516; and hence is an 'allowed process'.

**19.2.** With regard to other processes of polishing (including tumbling), these do not find place in descriptions of either Heading 2515 or 2516. The said descriptions also do not expressly provide for exclusion/prohibition of any other process(es). Hence, it is to be seen whether the subject goods / processes of polishing and tumbling as also calibration (which is not covered in Heading description, as detailed supra) are covered by Note 1 to Chapter 25, as analysed earlier.

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<sup>32</sup> The text explaining the phrase 'roughly trimmed' appears in the HSN under Notes to sub-heading 2515.11 - which covers goods of description 'Marble or travertine - - Crude or roughly trimmed'. The said explanation and meaning would be applicable for all goods falling under Heading 2515 since the expression 'roughly trimmed' is part of the description in the said Heading and not merely the subheading 2515.11.

**19.3.** The first criterion in the said Note is that goods should be in crude state. The appellant has not claimed that the goods are in crude state; in fact, as per appellant's own description viz., Polished / processed limestone slabs, these have been admittedly subjected to certain processes as indicated. Hence, the subject goods do not merit consideration as being 'in crude state'.

**19.4.** The other criterion is that the goods should have been subjected to the specified processes (and/or thereby be in the state/form indicated) i.e., washed, crushed, ground, powdered, levigated, sifted, screened, concentrated by floatation, magnetic separation or other mechanical or physical processes. As evident, the state/form of the subject goods as 'polished', nor the process of polishing or that of tumbling or calibration, are not among those specified or indicated in Chapter Note 1.

**20.1.** Appellant's contention in this regard is that their products/process of polishing', would be covered by Note 1 to Chapter 25, by virtue of -

- (i) the word 'levigated' – which, as per Oxford dictionary, has been taken from Latin word LEVIGAT, and the literal meaning of the same is "made smooth, polished"; or
- (ii) Polishing is nothing but 'grinding' the surface of the slab (and therefore covered by the word 'ground' used in the Chapter Note); or
- (iii) the words/phrase 'mechanical or physical process' would apply to the activity of polishing undertaken by them, as the same was undertaken without changing the structure of the product.

**20.2.** Above contentions have been examined. It is observed as follows:

A. With regard to the word 'levigated':

- (i) On referring to standard dictionaries<sup>33</sup>, the meaning of 'levigate' (indicated as 'archaic') is found to be given as "to reduce (a substance) to a fine powder or smooth paste". It is further mentioned that the origin of the word is in mid-16<sup>th</sup> century: from Latin levigat- 'made smooth, polished', from the verb levigare, from levis 'smooth'. Other dictionaries Collins, Merriam Webster etc., also show the meaning of the word, as verb, to be 'reducing / grinding to a smooth, fine powder', while indicating its origin/etymology to be linked to Latin word meaning 'polish/smooth'.
- (ii) Thus, while the word 'levigated' may have been originally used as a reference to smoothness/polish (and thereby including process of polishing also), the contemporary meaning is only that of reducing/grinding to a smooth fine powder/paste. Hence, it appears that

<sup>33</sup> <https://en.oxforddictionaries.com>



the meaning which is in contemporary vogue and prevalence merits consideration, in preference over an archaic meaning/origin of the word. In common parlance also, usage of the word 'levigated' as an equivalent / substitute for 'polished' is not found/prevalent; i.e, in the trade, reference is made to 'polished slabs/stone' and not as 'levigated slabs/stones'.

- (iii) Further, if one considers the usage of the word 'levigated' in the Chapter Note, the same appears with the other words 'crushed', 'ground', powdered, as the immediately preceding ones. Hence, on this analogy also applying the doctrine of *noscitur a sociis*<sup>34</sup> it appears that 'levigated' merits consideration as denoting that the goods/product is in the state/form of 'smooth fine powder'. Or by considering that the term 'powdered' is separately mentioned in the Note as immediately preceding word (which would cover all forms of powdered state – whether coarse or fine), the only alternative meaning of 'levigated' as per contemporary prevalence, would be to denote goods in the state/form of/or subjected to process(es) of making into 'smooth paste'.

B. With regard to the word 'ground':

- (i) The word 'ground' used in the Chapter Note, in the given context; has been cited by appellant as covering their activity of 'polishing' by mechanical grinding. However, here again, the said word appears along with the other words 'crushed', powdered etc., which refer to the processes of reducing substances to lesser size / finer particles / powdered forms.
- (ii) Further, the said word 'ground' appears in Heading / sub-heading description of various products under Chapter 25, as follows:

2508 10 90	Other Clays - Bentonite —	Other (includes processed and ground)
2508 50 22	—Kyanite: —	Processed other than calcined (washed or ground or screened or beneficiated).
2510 10	Natural Calcium Phosphates....	- Unground
2510 20	-do-	- Ground
2525 20 20	— Mica powder, dry ground	
2525 20 40	— Mica powder, wet ground	

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<sup>34</sup> The rule of construction *noscitur a sociis* means: "The meaning of a word is to be judged by the company it keeps". "It is a legitimate rule of construction to construe words in an Act of Parliament with reference to words found in immediate connection with them". **Ref: para 40 in 2017 (352) E.L.T. 113 (S.C.) Parle Agro Products vs Commissioner of Commercial Taxes, Trivandrum**

All the above entries when considered with the products involved shows that word 'ground' as used in the specific context of Chapter 25 only denotes the state/process of being reduced to lesser size / finer particles / powders etc; and not with the connotation of 'polishing' or 'polished' state of goods. There is no usage of the said word 'ground' in the Chapter/Headings denoting the meaning of 'polished'.

C. With regard to the phrase "other mechanical or physical process":

- (i) The phrase 'other mechanical or physical process' appearing in Note 1 to Chapter 25, as seen, is not an independent / stand-alone phrase, but used in conjunction with the earlier words/phrases which qualifies it. For ready reference, the said Chapter Note, is again reproduced as under:

*"1. Except where their context or Note 4 to this Chapter otherwise requires, the headings of this Chapter cover only products which are in the crude state or which have been washed (even with chemical substances eliminating the impurities without changing the structure of the product), crushed, ground, powdered, levigated, sifted, screened, concentrated by flotation, magnetic separation or other mechanical or physical processes (except crystallization), but not products that have been roasted, calcined, obtained by mixing or subjected to processing beyond that mentioned in each heading".*

- (ii) In the above text, the words "screened, concentrated" appear in continuation followed by description of processes "flotation, magnetic separation or other mechanical or physical processes..". This would denote a construction / meaning that processes of flotation, magnetic separation or other mechanical or physical processes, are applicable to only the word 'concentrated'. However, on referring the HSN Notes, it is observed that (though Chapter Note 1 therein is also identically worded/punctuated as above in Customs Tariff Chapter 25), however, in the General Explanatory Notes of Chapter 25, the wording appears with the conjunction 'or' in between screened, concentrated. The said text in General Notes to Chapter 25 as per HSN, is reproduced as follows:

*"As provided in Note 1, this Chapter covers, except where the context otherwise requires, mineral products only in the crude state or washed (including washing with chemical substances to eliminate impurities provided that the structure of the product itself is not changed), crushed, ground, powdered, levigated, sifted, screened or concentrated by flotation, magnetic separation or other mechanical or physical processes (not including crystallisation). . . . ."* (conjunction highlighted).

- (iii) The meaning denoted with the use of the conjunction 'or' as above, appears to be apt, as otherwise, if only the word 'concentrated' has to be reckoned as qualifying the subsequent words/phrases 'flotation, magnetic separation or other mechanical or physical processes' – the same would



not reflect a contextually relevant or true meaning, since processes of flotation, magnetic separation cannot be said to be used only for 'concentration'; more so since the earlier words in the Note include sifted / screened etc. Therefore, the above said phrase in Chapter Note 1 of Tariff, read with the HSN Explanatory Notes, merits to be considered as denoting that the processes mentioned 'flotation, magnetic separation or other mechanical or physical processes' as applicable, to one or more of the earlier appearing words 'washed..., crushed, ground, powdered, levigated, sifted, screened or concentrated'. Consequently, the phrase "other mechanical or physical processes" (as also flotation, magnetic separation) would apply to only one or more of the specified words 'washed.. ,crushed, ground, powdered... concentrated".

- (iv) A different construction or interpretation that the phrase "other mechanical or physical processes" is to be considered independently and allowing various other processes (such as 'polishing', tumbling or calibration, as in the instant case), would render the further phrase in the Chapter Note "but not products.... subjected to processing beyond that mentioned in each heading", as redundant/otiose. Such interpretation or construction is therefore impermissible as per settled legal principles of interpretation. Hence, appellant's contention that their goods would be covered by Chapter Note 1 by virtue of the phrase 'or other mechanical or physical processes', is not based on correct appreciation of the said Note; and hence, not tenable.

**20.3.** From the above, it therefore emerges that the meaning / interpretation sought to be canvassed by appellant for the words 'levigated', 'ground' and 'other mechanical or physical process' appearing in Chapter Note 1, do not find sustainability or legal support, as analysed supra.

**20.4.** It follows from the above discussion that the processes of 'polishing', 'tumbling' and 'calibration'; or the state of goods as polished / tumbled / calibrated are not covered by Note 1 to Chapter 25 of the Customs Tariff Act, 1975.

**21.** Before arriving at a definite conclusion in this regard, we deem it fit to now also refer to the HSN Explanatory Notes pertaining to Chapter 25 and the headings 2515/2516 therein; which read as follows: (the relevant extracts are highlighted (underlined)):

" Chapter 25

Salt; sulphur; earths and stone; plastering materials, lime and cement

*Notes.....(Chapter Notes similar to those in Customs Tariff Act Schedule referred earlier hence not reproduced).*

GENERAL



As provided in Note 1, this Chapter covers, except where the context otherwise requires, mineral products only in the crude state or washed (including washing with chemical substances to eliminate impurities provided that the structure of the product itself is not changed), crushed, ground, powdered, levigated, sifted, screened or concentrated by flotation, magnetic separation or other mechanical or physical processes (not including crystallisation). The products of this Chapter may also be heated to remove moisture or impurities or for other purposes, provided that the heat treatment does not modify their chemical or crystalline structures. However, other heat treatments (e.g., roasting, fusion or calcination) are not allowed, unless specifically permitted by the heading text. Thus, for example, heat treatment which could entail a change in chemical or crystalline structure is allowed for products of headings 25.13 and 25.17, because the texts of these headings explicitly refer to heat treatment.

The products of this Chapter may contain an added anti-dusting agent, provided that such addition does not render the product particularly suitable for specific use rather than for general use. Minerals which have been otherwise processed (e.g., purified by re-crystallisation, obtained by mixing minerals falling in the same or different headings of this Chapter, made up into articles by shaping, carving, etc.) generally fall in later Chapters (for example, Chapter 28 or 68).

In certain cases, however, the headings :

- (1) Refer to goods which by their nature must have been subjected to a process not provided for by Note 1 to this Chapter. Examples include pure sodium chloride (heading 25.01), certain forms of refined sulphur (heading 25.03V), chamotte earth (heading 25.08), plasters (heading 25.20), quicklime (heading 25.22) and hydraulic cements (heading 25.23).
- (2) Specify conditions or processes which are admissible in those cases in addition to those allowed generally under Note 1 to this Chapter. For example, witherite (heading 25.11), siliceous fossil meals and similar siliceous earths (heading 25.12) and dolomite (heading 25.18) may be calcined; magnesite and magnesia (heading 25.19) may be fused or calcined (dead-burned (sintered) or caustic-burned). In the case of dead-burned (sintered) magnesia, other oxides (e.g., iron oxide, chromium oxide) may have been added to facilitate sintering. Similarly the materials of headings 25.06, 25.14, 25.15, 25.16, 25.18 and 25.26 may be roughly trimmed or merely cut, by sawing or otherwise, into blocks or slabs of a rectangular (including square) shape.

When products are classifiable in heading 25.17 and any other heading of this Chapter, they are to be classified in heading 25.17.

The Chapter excludes precious or semi-precious stones of Chapter 71.

.....	
25.15	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 (+).
	- Marble and travertine :
2515.11	-- Crude or roughly trimmed
2515.12	-- Merely cut, by sawing or otherwise, into blocks or slabs of a rectangular (including square) shape
2515.20	-- Ecaussine and other calcareous monumental or building stone; alabaster

#### **Heading Notes:**

**Marble** is a hard calcareous stone, homogeneous and fine-grained, often crystalline and either opaque or translucent. Marble is usually variously tinted by the presence of mineral oxides (coloured veined marble, onyx marble, etc.), but there are pure white varieties.



**Travertines are varieties of calcareous stone containing layers of open cells.**

**Ecaussine** is extracted from various quarries in Belgium and particularly at Ecaussines. It is a bluish-grey stone with an irregular crystalline structure and contains many fossilised shells. On fracture Ecaussine shows a granular surface similar to granite and is therefore sometimes known as "Belgian granite" "Flanders granite" or "*petit granit*".

The heading covers other similar hard calcareous monumental or building stones, provided their apparent specific gravity is 2.5 or more (i.e., effective weight in kg/1,000 cm<sup>3</sup>). Calcareous monumental or building stones of an apparent specific gravity of less than 2.5 are classified in heading 25.16.

The heading also includes both gypseous alabaster, which is usually white and uniformly translucent, and calcareous alabaster, normally yellowish and veined.

The heading is restricted to the stones specified, presented in the mass or roughly trimmed or merely cut, by sawing or otherwise, into blocks or slabs of a rectangular (including square) shape. In the form of granules, chippings or powder, they fall in heading 25.17.

Blocks, etc., which have been further worked, i.e., bossed, dressed with the pick, bushing hammer or chisel, etc., sand-dressed, ground, polished, chamfered, etc., are classified in heading 68.02. The same classification applies to blanks of articles.

The heading also excludes:

- (a) Serpentine or ophite (a magnesium silicate sometimes called marble) (heading 25.16),
- (b) Limestone (known as "lithographic stone" and used in the printing industry) (heading 25.30 when in the crude state).
- (c) Stones identifiable as mosaic cubes or as paving flagstones, even if merely shaped or processed as specified in the text of this heading (heading 68.02 or 68.01 respectively).

Subheading 2515.11

For the purposes of this subheading, "crude" refers to blocks or slabs which have been merely split along the natural cleavage planes of the stone. Their surfaces are often uneven or undulating and frequently bear marks of the tools used to separate them (crowbars, wedges, picks, etc.).

This subheading also covers unshaped stone (quarystone, rubble) obtained by breaking out rocks from the quarry face (using picks, explosives, etc.). They have uneven, broken surfaces and irregular edges. This type of stone often bears the marks of quarrying (blast holes, wedge marks, etc.). Unshaped stone is used for the construction of dykes, breakwaters, road foundations, etc.

The subheading also includes waste of irregular shape arising from the actual extraction or from subsequent working (quarry stones, waste from sawing, etc.), but only if large enough to be used for cutting or construction. Otherwise it is classified in heading 25.17.

"Roughly-trimmed" stone is stone which has been very crudely worked after quarrying, to form blocks or slabs, still having some rough, uneven surfaces. This working involves removing superfluous protuberances by means of hammer or chisel-type tools.

This subheading does not cover blocks or slabs which have been cut to a rectangular (including square) shape.

Subheading 2515.12

To fall in this subheading, the blocks and slabs which have been merely cut by sawing must bear discernible traces of the sawing (by wire strand or other saws) on their surfaces. If care

was taken with the sawing, these traces may be very slight. In such cases, it is useful to apply a sheet of thin paper to the stone and to nib it gently and evenly with a pencil held as flat as possible. This often reveals saw marks even on carefully sawn or very granular surfaces.

This subheading also covers blocks and slabs of a rectangular (including square) shape obtained otherwise than by sawing, e.g., by working with a hammer or chisel.

**22.1.** From the above extracts of the HSN, especially the highlighted portions, it is evident that the HSN Explanatory Notes also reflect the restriction as to only certain specified processes being allowed on the products for a classification under Chapter 25. The said Notes further specify and give illustrative details of other processes which, if undertaken, entails classification under other Chapters, as follows:

- (i) The General Notes in HSN under Chapter 25 specify that "Minerals which have been otherwise processed ... generally fall in later Chapters (for example, Chapter 28 or 68). Heading Notes for Heading 2515, specify that "The heading is restricted to the stones specified, presented in the mass or roughly trimmed or merely cut, by sawing or otherwise, into blocks or slabs of a rectangular (including square) shape. ....". This is further elaborated by the explanation "Blocks, etc., which have been further worked, i.e., bossed, dressed with the pick, bushing hammer or chisel, etc., sand-dressed, ground, polished, chamfered, etc., are classified in heading 68.02".
- (ii) The phrase "Blocks, etc." (emphasis added) used herein shows that the same would be applicable to goods other than Blocks which fall under the said heading; and thereby includes "slabs".
- (iii) The processes / stages indicated i.e., "bossed, dressed with ..., ground, polished, chamfered etc., are not used in a cumulative connotation i.e. it is not required/necessary that all these processes have to be undertaken; any one or more of the processes if undertaken would attract application of the said explanation. The list of these mentioned processes, is also not exhaustive as seen from "etc." appearing after "chamfered".

**22.2.** In view of the above, as per HSN notes also, slabs which have been 'polished', tumbled and/or calibrated would be covered by exclusions detailed in both General Note to Chapter 25, as well as the Heading Note to Heading 2515.

**23.** Based on the above detailed analysis, we find that in sum, the goods in question, limestone slabs, have admittedly been subjected to processes of 'polishing' (including tumbling) and calibration, in addition to being cut to rectangular/square shapes. The said processes, except that of cutting, are not among those specified either in the Heading description or the Chapter Note 1, for an eligible classification under Chapter 25. Hence, classification of the



subject goods under Chapter 25 i.e, specific Headings 2515 / 2516 remains precluded by virtue of description in said Headings as also Chapter Note 1. Note 1 to Chapter 25 makes fulfilment of the specified criteria in the Heading-description or the Note itself, as mandatory, which is reflected by the aforesaid phrase "Except where.....this Chapter covers only products...", as also the subsequent specific exclusion phrase "but not products.....subjected to processing beyond that mentioned in each heading".

**24.1.** Appellant relied on the case law of **Classic Marble Company Pvt. Ltd. Vs Commissioner of Central Excise & ST., Vapi 2013 (11) TMI 384 - CESTAT Ahmedabad**<sup>35</sup>, to contend that as per ratio therein, process of 'polishing' (marble/granite slabs in the said case –falling under Headings 2515/2516) would not take the goods out of Chapter 25.

**24.2.** We have referred to the said decision. As seen, in this decision (Final Order No.s A/11380-11384 / 2013 -WZB/AHD dated 24-10-2013), the Hon'ble Tribunal held the classification of polished Marble slabs and polished Granite slabs under Chapter 25 by considering that in their earlier Final Order No. A/1740-1744/WZB /AHD/2012 dated 27-12-2012, the issue was held in favour of the same assessee; and the said Final Order was accepted by the Department and hence that the ratio of the earlier order would apply. Thus, in this decision, Hon'ble Tribunal has not given specific findings. We have therefore referred to the earlier Final Order dated 27-12-2012 cited therein, which is available with citation **Classic Marbles vs CCE,, Vapi**<sup>36</sup>. In this decision, Hon'ble Tribunal while deciding the classification issue involved, referred to various other judgments, including **Oriental Trimex Ltd.**<sup>37</sup>, **Nitco Tiles Ltd.**<sup>38</sup>.

**24.3.** We find that in the above judgements, all relating to Central Excise duty levy, the main and primary issue considered and examined was whether the process of, inter-alia, polishing of marble blocks / slabs amounted to 'manufacture'. On the basis of applicable Chapter Notes, Hon'ble Supreme Court decisions and certain Board's clarifications etc., apart from specific facts of the cases, Hon'ble Tribunal held the said activity to be not amounting to 'manufacture' in the period prior to 1-3-2006 (when Note 6 was introduced in Chapter 25, with specific reference to headings 2515 and 2516, by deeming the processes of cutting or sawing or sizing or polishing or any other process for converting of stone blocks into slabs or tiles, as amounting to manufacture). For the period post 1-3-2006, in view of Chapter Note 6, the activity of converting blocks into slabs with the processes of, inter-alia, polishing was held to be amounting to 'manufacture'; and the goods classified under Chapter 25. Thus, in view of the specific Chapter Note incorporated in the Central Excise Tariff, process of 'polishing' came to be included in Chapter 25, which was

<sup>35</sup> Equivalent citation 2014 (301) E.L.T. 533 (Tri. - Ahmd.)

<sup>36</sup> 2013 (293) ELT. 563 (Tri-Ahmd.)

<sup>37</sup> 2010 (249) ELT. 259 (Tri-Del).

<sup>38</sup> 2004 (165) ELT.50 (Tri-Mum).



accordingly considered by the Hon'ble Tribunal. It is pertinent to note that the words "or polishing" in the above said Note 6 to Chapter 25, were omitted by the Finance Act, 2012.

**24.4.** We therefore find that the aforesaid decisions were rendered in totally different context i.e. Central Excise duty levy which is on 'manufacture', coupled with existence of Chapter Notes deeming 'polishing' to be manufacture in a given period; and further the decisions therein, were based on specific facts of cases vis-à-vis certain applicable clarifications issued by the Board (Central Board of Excise & Customs) etc. We find that in these case-laws, the issue of classification under the competing entries of Chapters 25 and 68 de hors the aspect of 'manufacture' does not find specific examination and analysis. As such, we find that the said case law of Classic Marble cited by appellant, cannot have application in the subject context of GST-levy and the present appeal/application, also keeping in view the distinguishable facts.

**25.** In view of the above, we find that neither of the two categories of limestone slabs viz., Polished limestone slabs or Processed Limestone slabs (as referred at para 15.2 supra), can be classified under Chapter 25 in general and under Headings 2515/2516, in particular.

**26.** Consequently, the bar/exclusion in Note 1(a) to Chapter 68 (that Chapter 68 would not cover goods falling under Chapter 25) would not be applicable, since the subject goods do not qualify for classification under Chapter 25.

**27.1.** The **next question** arises as to the correctness of classification of the goods under Heading 6802, as held by the lower authority. Description against Heading 6802 in the First Schedule to Customs Tariff Act, 1975 reads as follows :

"Worked monumental or building stone (except slate) and articles thereof, other than goods of heading 6801; mosaic cubes and the like, of natural stone (including slate), whether or not on a backing; artificially coloured granules, chippings and powder, of natural stone (including slate)".

In the above entry, the relevant part meriting consideration for the issue on hand would be whether subject goods are covered by the expression "worked monumental or building stone and articles thereof"; the subsequent portion of the entry being not relevant. The phrase 'monumental or building stone', is the same as appearing in Headings 2515/2516 (with prefix 'calcareous' and 'other' respectively). Notes to Chapter 68 in the Tariff-Schedule, as earlier reproduced, do not define the word "worked" nor contain any explanation / description as to the meaning/scope thereof<sup>39</sup>. In view of the same, a reference is to be

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<sup>39</sup> Note 2 to Chapter 68 only states that the expression in Heading 6802 "worked monumental or building stone" applies not only to the varieties of stone referred to in heading 2515 or 2516 but also to all other natural



made to the HSN, which as stated supra, is a safe guide for classification purposes, as laid down by Hon'ble Supreme Court.

**27.2.** Extracts of HSN Notes for Chapter 68, the relevant portions highlighted (underlined), read as follows:

### **“CHAPTER 68**

Articles of stone, plaster, cement, asbestos, mica or similar materials

*Notes.....(Chapter Notes similar to that in Chapter 68 of Customs Tariff Schedule referred earlier hence not reproduced).*

#### **GENERAL**

This Chapter covers :

- (A) Various products of Chapter 25 worked to a degree beyond that permitted by Note 1 to that Chapter.
- (B) The products excluded from Chapter 25 by Note 2 (e) to that Chapter.
- (C) Certain goods made from mineral materials of Section V.
- (D) Goods made from certain of the materials of Chapter 28 (e.g., the artificial abrasives).

Some of the goods in category (C) or (D) may be agglomerated by means of binders, contain fillers, be reinforced, or in the case of products such as abrasives or mica be put up on a backing or support of textile material, paper, paperboard or other materials.

Most of these products and finished articles are obtained by operations (e.g., shaping, moulding), which alter the form rather than the nature of the constituent material. Some are obtained by agglomeration (e.g., articles of asphalt, or certain goods such as grinding wheels which are agglomerated by vitrification of the binding material); others may have been hardened in autoclaves (sand-lime bricks). The Chapter also includes certain goods obtained by processes involving a more radical transformation of the original raw material (e.g., fusion to produce slag wool, fused basalt, etc.).

Further text “ Articles obtained by .....” to exclusion clause (g) “ Original sculptures....”, being not relevant, not reproduced.

#### **Heading description:**

- |         |  |
|---------|--|
| 68.02   | Worked monumental or building stone (except slate) and articles thereof, other than goods of heading 68.01; mosaic cubes and the like, of natural stone (including slate), whether or not on a backing; artificially coloured granules, chippings and powder, of natural stone (including slate).  |
| 6802.10 | - Tiles, cubes and similar articles, whether or not rectangular (including square), the largest surface area of which is capable of being enclosed in a square the side of which is less than 7 cm; artificially coloured granules, chippings and powder<br>- Other monumental or building stone and articles thereof, simply cut or sawn, with a flat or even surface : |
| 6802.21 | -- Marble, travertine and alabaster  |

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stone (for example, quartzite, flint, dolomite and steatite) similarly worked; it does not, however, apply to slate).

6802.23	--	Granite
6802.29	--	Other stone
	-	Other:
6802.91	--	Marble, travertine and alabaster
6802.92	--	Other calcareous stone
6802.93	--	Granite
6802.99	--	Other stone

**Heading Notes:**

"This heading covers natural monumental or building stone (except slate) which has been worked beyond the stage of the normal quarry products of Chapter 25. There are, however, certain exceptions where goods are covered more specifically by other headings of the Nomenclature and examples of these are given at the end of this Explanatory Note and in the General Note to the Chapter.

The heading therefore covers stone which has been further processed than mere shaping into blocks, sheets or slabs by splitting, roughly cutting or squaring, or squaring by sawing (square or rectangular faces).

The heading thus covers stone in the forms produced by the stone-mason, sculptor, etc., viz.:

(A) Roughly sawn blanks; also non-rectangular sheets (one or more faces triangular, hexagonal, trapezoidal, circular, etc.).

(B) Stone of any shape (including blocks, slabs or sheets), whether or not in the form of finished articles, which has been bossed (i.e., stone which has been given a "rock faced" finish by smoothing along the edges while leaving rough protuberant faces), dressed with the pick, bushing hammer, or chisel, etc., furrowed with the drag-comb, etc., planed, sand dressed, ground, polished, chamfered, moulded, turned, ornamented, carved, etc.

The heading therefore includes not only constructional stone (including facing slabs) worked as above, but also articles such as .....

Stone slabs forming the tops of articles of furniture (sideboards, washstands, tables, etc.) are classified in Chapter 94 .....

Articles of worked monumental or building stone are usually obtained from the stones of heading 25.15 or 25.16, but may also be obtained from any other natural stone except slate (e.g., quartzite, dolomite, flint, steatite). Steatite, for example, is used for industrial structural work where resistance to heat or chemical corrosion is required (e.g., in recuperative furnaces). It is also used in paper pulping and chemical plant.

The heading also covers small prepared mosaic cubes and the like of marble, etc., for various floor or wall coverings, etc., whether or not backed with paper or other materials. It further includes artificially coloured granules, chippings and powder of marble or of other natural stones (including slate) (e.g., for shop window displays), but untreated pebbles, granules, chippings and coloured natural sands fall in Chapter 25."

**28.1.** From the above, and especially the highlighted parts, it may be seen that the meaning/scope of the word 'worked' is not separately and specifically delineated in the HSN Notes also. However, the said word is used at various places denoting certain illustrative and not exhaustive list of processes. From a reading of the above Notes and keeping in view those under Chapter 25, referred earlier, it can be seen that:



- (i) Minerals / mineral products figure in both Chapter 25 and Chapter 68.
- (ii) The distinction for classifying under either of the Chapters lies in the level of activities / processes undertaken on the goods.
- (iii) That is, to fall under Chapter 25, the goods should be either crude or subjected to only those processes/stages which are specified in the relevant Heading-description or Note 1 to Chapter 25. Any processes undertaken beyond those specified for Chapter 25 purpose, would take the goods out of purview of the said Chapter.
- (iv) Once the goods fall out of Chapter 25, they would fall under other Chapters, including Chapter 68 subject to the Heading-descriptions therein.
- (v) The General Note to Chapter 68, in HSN, specifies that "This Chapter covers...various products of Chapter 25 worked to a degree beyond that permitted by Note 1 to that Chapter". Heading Note to Heading 6802 states that "This heading covers natural monumental or building stone (except slate) which has been worked beyond the stage of the normal quarry products of Chapter 25". There are, however, certain exceptions where goods are covered more specifically by other headings of the Nomenclature and examples of these are given at the end of this Explanatory Note and in the General Note to the Chapter. The said exceptions do not include 'limestone slabs' either polished or processed.
- (vi) The description in Heading 6802 itself covers 'stone' i.e. worked monumental or building stone; apart from articles of such stone.
- (vii) The said stone should be subjected to processes beyond that specified in Chapter 25, which is also described as 'beyond the stage of normal quarry products of Chapter 25'.
- (viii) Any further process than mere shaping into slabs by cutting, also would render the goods to fall under Heading 6802.
- (ix) Amplification / illustrations to the above Note, specifies that the heading covers stone in the forms produced by stone mason, sculptor etc...[ here again, usage of word "etc.", shows that the same is not exhaustive to restrict it to products made by a stone mason or sculptor only].
- (x) Stone of any shape, including slabs, which may or may not be in the form of finished articles but which have been, among others, 'polished' is also covered in the heading. Herein again, the list of processes i.e., bossed, dressed with the pick, bush-hammer, chisel.... Polished, chamfered, turned... is not exhaustive, as evident from the multiple usage of "etc." therein. Also, the enumeration of processes is not cumulative so as to require that all the processes should be undertaken on a given product/slab. Any one or more of the



processes, if undertaken, would attract application of this note, as evident from the sentence-construction and in the given context.

**28.2.** On applying the above analysis and criteria to the subject goods i.e. polished / processed limestone slabs, it emerges that:

- (a) The goods have been subjected to processes of polishing, tumbling and calibration, which are beyond those specified in Chapter 25, notwithstanding that the cutting into rectangular (incl. square) shapes is covered by the relevant Headings 2515/2516. As such, the goods are not classifiable under Chapter 25 i.e. Headings 2515/2516.
- (b) The goods fall within the scope and meaning of the term "worked monumental or building stone" as per the description in Heading 6802, read with the relevant Chapter Notes and the HSN Explanatory Notes, as detailed supra. As such, they are rightly classifiable under Heading 6802 of the First Schedule to the Customs Tariff Act, 1975.

**29.** The appellant's grounds/contentions against classification of the subject goods under Chapter 68 / Heading 6802 are that Heading 6802 applies only to shaped articles and further worked by a stone-mason or sculptor, whereas the limestone slabs are simply polished & cut which does not change morphology, character, name, description, purpose and usage of the stone; hence, these processes would not take the classification out of Chapter 25. We are unable to accept this contention. As detailed above, the Heading 6802, apart from articles, also specifically covers stone in the description itself i.e. "worked monumental or building stone.. **and** articles thereof". The same, coupled with the HSN Explanatory Notes, as detailed and analysed above, show that such stone (limestone slabs, in the instant context) which have been 'worked' beyond the processes mentioned in Chapter 25 on the one hand and 'polished' as specified under Chapter 68 in particular reference to slabs (blocks etc..) has to be classified under Heading 6802. There is no restrictive connotation that such working has to be done only by stone-mason or sculptor, as explained above. Further, the reason that there is no change in morphology, character, name, description, usage etc., would not be a relevant criteria for classification under Chapter 68, as the HSN Notes specifically acknowledge that "stone of any shape including slabs, whether or not in the form of finished articles, but which has been, among others, polished" are covered under the Heading 6802. In respect of the subject goods, there is further process of 'calibration' undertaken to achieve relative uniformity in thickness. Hence, appellant's contentions in this regard are devoid of merit, in the light of the HSN Explanatory Notes.

**30.** The remaining grounds / contentions put forth by the appellant have been examined, as detailed below:-

- (a) The appellant has made repeated references that the goods Marble and Granite – blocks/slabs- have been kept in Chapter 25. It was further



urged that by the very description of the said goods, without any prefix or adjective also, these would include polished varieties and hence, the same analogy would apply to the goods limestone slabs.

On examining, we find that in the Central Tax Rate Notification, the goods Marble and Granite are mentioned by description in certain entries, with the classification under Chapter 25 (Headings 2515 or 2516, as the case may be) with reference to specific subheading / Tariff Item Number. However, the description against said sub-heading numbers, is given with a qualification/restriction as 'blocks' or 'other than blocks'. The same corresponds to the fact that Marble and Granite, by the said names, are specified in the Headings 2515, 2516 respectively; and again in respect of certain specific sub-headings.

Appellant's argument that by mere description, the words 'marble' or 'granite' in the Notification would include polished, is only an assumption; since no such indication is given in the Notification or the Tariff. In fact, if Heading 6802 in the Customs Tariff Schedule, reproduced at para 14.1 supra, is perused, it would be noted that various sub-headings / Tariff Items thereunder, also contain specific description of Marble, Granite. For ready reference, the same are as given below:

6802 21	--	<i>Marble, travertine and alabaster:</i>
6802 21 10	---	Marble blocks or tiles
6802 21 20	---	Marble monumental stone
6802 21 90	---	Other
6802 23	--	<i>Granite:</i>
6802 23 10	---	Granite blocks or tiles
6802 23 20	---	Other

From the above, it is evident that Marble, Granite by specific description figure under the relevant Headings / subheadings of Chapter 68 also, apart from Chapter 25. Consequently, on the same analysis as has been detailed above, the classification of Marble, Granite / articles thereof including blocks under either of the said Chapters, Headings would depend upon criteria for classification, as per Chapter Notes, Rules for Interpretation etc. read with HSN notes. In essence, here again it depends on the nature / level of processing undertaken; whereby if these are in crude state or subjected to specific processes (detailed in HSN also), they would be classifiable under Chapter 25 and if worked beyond that, including polishing, they would be classifiable under Chapter 68 under any of the above subheadings, as applicable. In Notification No. 1/2017- Central Tax (Rate) dated 28.06.2017; against the Heading 6802, the description appearing in Heading 6802 of Customs Tariff has been as such incorporated (with certain specified exceptions/exclusions), pursuant to the amendment effective from 15-11-2017 (Sl.No. 177E of the Notification refers). As such, specific mention



of Marble, Granite does not appear in the description against Heading 6802 in the Notification, since the said Heading along with the description, encompasses coverage of Marble, Granite under certain specific subheadings / Tariff Item number. Appellant's argument in this regard is thus without any basis.

- (b) Another contention of the appellant is that marble, granite as well as Cement which are all figuring in Chapter 25, but involve high costs of production, mechanisation etc.; and consequently that their limestone slabs which are low-cost, small scale industry and labour intensive products, cannot be taken out of Chapter 25. Similarly that crushing, powdering of minerals are expensive and capital / power-intensive activities still allowed in Chapter 25. However we find that these aspects are extraneous and do not constitute relevant factors for determining the classification of goods, which can only be based upon the applicable entries in the Tariff-Schedule. The parameters of high investment, huge cost of production, capital intensive nature of industry, high / complex processes etc., do not figure in the statutory criteria for determination of classification of goods, for GST-levy purposes; and as such cannot be of any relevance.
- (c) It has further been contended that 'as per rules of HSN Code', the appellant has to mention only two digits, whereas the Authority has considered 4-digit or 6-digit classification which are not relevant to them. We find that this contention of the appellant is also not in proper appreciation of the facts and statutory provisions. Classification of goods, as per the GST-Notifications, merits to be determined by considering the relevant entries, Notes in the Customs Tariff Schedules, which provide for upto 8-digit classification, at the ultimate specification levels. The mention of 'two-digit' classification, under GST, is only a procedural relaxation given in respect of reporting in the statutory returns. The same has no bearing/relevance with regard to the primary question of determination of classification of the goods, as per the Tariff-Schedule.
- (d) Appellant also contended that findings of lower Authority are applicable only in cases where quarry-stage Blocks are brought into the factory and cut/sawn into slabs, tiles and further undergoing processes of polishing etc; and that these would not be applicable in their case, since the product received by them is itself in the form of slab; and that this distinction was not appreciated by the lower authority. However, from relevant Chapter Notes, Heading description, Rules for Interpretation and also the guidance derived from the HSN notes, as discussed in detail in the foregoing paragraphs, we find no room or scope for a different interpretation / treatment on the basis of only reason that the subject



goods are received in the form of 'slabs'. Classification for GST-levy purposes, has to be determined in respect of the goods, as they are supplied. Accordingly, on the detailed analysis of both given facts and the relevant provisions, as discussed above, the subject goods viz., polished / processed limestone slabs merit to be classified under Heading 6802 of the Tariff Schedule.

**31.1.** In view of the foregoing, we find that the appellant has not made out a case against the decision in impugned Advance Ruling in so far as it has been ruled that "Polished / Processed Limestone slabs are correctly classifiable under heading 6802 of the GST Tariff (sic)". The classification under Chapter Heading 6802 of the First Schedule to the Customs Tariff Act, 1975 is the appropriate classification of the said goods (both 'polished' only as well as 'processed', as referred at para 15.2 supra), in view of the relevant Heading-description read with the Chapter Notes and HSN Explanatory Notes; as discussed and analysed above.

**31.2.** In terms of sub-classification under Heading 6802, the said goods would fall under Tariff Item No. 6802 92 00 – "Other calcareous stone"; considering that limestone slabs are 'calcareous stone', as stated earlier and keeping in view the structure of grouping under Heading 6802 read with Rules for Interpretation<sup>40</sup>.

**31.3.** Inasmuch as the classification of the subject goods is found to be determinable based on the Heading-description and relative Chapter Notes (read with HSN Explanatory Notes, where necessary as above), the same remains covered by Rule 2 of the Rules for Interpretation, supra. Consequently, need for invoking subsequent Rules 3 to 4 of the said Rules, does not arise.

**32.** In sum, and having regard to the questions framed in the appellant's application for Advance Ruling and for the reasons cited at para 8.3 supra, we render the rulings, question-wise as follows:

Sl. No.	Question framed for Advance ruling	Ruling (by this Appellate Authority)
A)	In which Chapter the commodity called "Polished / Processed limestone slabs" falls ?	The commodity "Polished/Processed limestone slabs" falls under Chapter 68 of the First Schedule to the Customs Tariff Act, 1975; for reasons detailed above.

<sup>40</sup> Under Heading 6802, Subheading 6802 10 (and the Tariff Item 6802 10 00) applies to specifically described items viz., Tiles, cubes and similar articles..... Subheadings 6802 21, 6802 23 and 6802 29 apply to/cover the goods of description grouped as "- Other monumental or building stone and articles thereof; simply cut or sawn, with a flat or even surface". Under the further group captioned "- Other", 6802 91 00 covers "Marble, travertine and alabaster", 6802 92 00 covers "Other calcareous stone", 6802 93 00 covers "Granite" and the last residual entry 6802 99 00 covers "other stone".

B)	Under which HSN Code the above commodity comes ?	The commodity comes under Chapter Heading 6802 (Tariff Item No. "6802 92 00 – Other calcareous stone") of the Schedule.
C)	Can we put them under "Mineral substances not elsewhere specified or included" which is mentioned under HSN Code 2530 ?	The goods Polished/ Processed Limestone slabs do not fall under HSN Code – Chapter Heading 2530 of the Schedule.
D)	Can we retain them under any of the HSN Codes 2515/2516/2521 ?	The goods Polished / processed Limestone slabs do not fall under HSN Codes i.e, Chapter headings 2515 / 2516 / 2521 of the Schedule.
E)	Can we retain them under HSN Code 25 with inaugural phrase of "Goods not mentioned elsewhere" as mentioned at the start of column of 5% ?	The goods would not fall under Chapter 25 of the Schedule, in view of the above discussion and findings.

33. Accordingly, we pass the following

#### ORDER

The Advance Ruling given vide TSAAR Order No. 02/2018 dated 25-03-2018 passed by the Telangana State Authority for Advance Ruling in re: appellant M/s. Maheshwari Stone Supplying Co., Tandur, is modified as specified in para 32 above. The subject appeal is disposed of accordingly.

  
 (V. Anil Kumar),  
 Commissioner of State Tax,  
 Telangana State

  
 (Bankey Behari Agrawal)  
 Chief Commissioner of  
 Central Tax & Customs,  
 Hyderabad Zone

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To:

M/s. Maheshwari Stone Supplying Co., Sy. No. 202, Old Tandur, Tandur, Vikarabad Dist., Telangana – 501 141.

Copy to:

1. The Telangana State Authority for Advance Ruling, CT Complex, MJ Road, Nampally, Hyderabad- 500 001.
2. Chief Commissioner of Central Tax & Customs, Hyderabad Zone – for sending it to the concerned / jurisdictional officer of central tax.
3. Commissioner of State Tax, Telangana State – for sending it to the concerned / jurisdictional officer of state tax.



