



सत्यमेव जयते

केंद्रीय कर आयुक्त (अपील)

O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,

वस्तु एवं सेवा

GST Building, 7<sup>th</sup> Floor,,

कर भवन,

Near Polytechnic,

सातवीं मंजिल, पोलिटेकनिक के पास,

380015

आम्बावाडी, अहमदाबाद-380015



: 079-26305065

टैलेफैक्स : 079 - 26305136



- क फाइल संख्या : File No : **V2/64/GNR/2019-20/14747 TO 14751**
- ख अपील आदेश संख्या : Order-In-Appeal No.: **AHM-EXCUS-003-APP-01-20-21**  
दिनांक Date : **21.04.2020** जारी करने की तारीख Date of Issue: **09/06/2020**  
आयुक्त (अपील) द्वारा पारित  
Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals) Ahmedabad
- ग आयुक्त, केन्द्रीय उत्पाद शुल्क, अहमदाबाद-III आयुक्तालय द्वारा जारी मूल आदेश : **AHM-CEX-003-ADC-JN-004-19-20** दिनांक : **27-Jun-19** से सृजित

Arising out of Order-in-Original: **AHM-CEX-003-ADC-JN-004-19-20**, Date: **27-Jun-19**  
Issued by: Additional Commissioner, CGST, Div:RRA, HQ, Gandhinagar Commissionerate, Ahmedabad.

- घ अपीलकर्ता एवं प्रतिवादी का नाम एवं पता  
Name & Address of the Appellant & Respondent  
**M/s. Somany Ceramics Ltd**

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

I. Any person aggrieved by this Order-In-Appeal issued under the Central Excise Act 1944, may file an appeal or revision application, as the one may be against such order, to the appropriate authority in the following way :

भारत सरकार का पुनरीक्षण आवेदन :  
**Revision application to Government of India :**

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अंतर्गत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अवर सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली : 110001 को की जानी चाहिए।

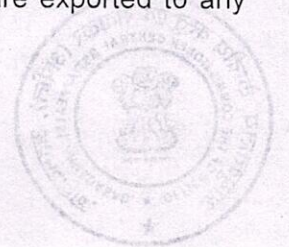
(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4<sup>th</sup> Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid :

(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रकिया के दौरान हुई हो।

(ii) In case of any loss of goods where the loss occur in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse.

(ख) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामलों में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

(b) In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.



- (ग) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।  
(c) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

ध अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में दित्त अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

(d) Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

(1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक से तीन मास के भीतर मूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्ष के अंतर्गत धारा 35-इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर-6 चालान की प्रति भी होनी चाहिए।

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

(2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख से ज्यादा हो तो 1000/- की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-  
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35- षोबी/35-इ के अंतर्गत:-

Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में दूसरा मंजिल, बहुमाली भवन, असारवा, अहमदाबाद, गुजरात 380016

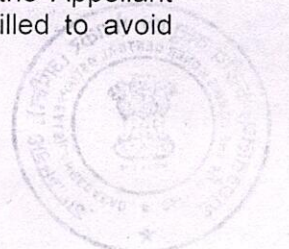
To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2<sup>nd</sup> floor, Bahumali Bhavan, Asarwa, Ahmedabad-380016 in case of appeals other than as mentioned in para-2(i) (a) above.

(2) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 की धारा 6 के अंतर्गत प्रपत्र इ.ए-3 में निर्धारित किए अनुसार अपीलीय न्यायाधिकरणों की गई अपील के विरुद्ध अपील किए गए आदेश की चार प्रतियाँ सहित जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहां रूपए 1000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए 5000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहां रूपए 10000/- फीस भेजनी होगी। की फीस सहायक रजिस्टार के नाम से रेखांकित बैंक ड्राफ्ट के रूप में संबंध की जाये। यह ड्राफ्ट उस स्थान के किसी नामित सार्वजनिक क्षेत्र के बैंक की शाखा का हो

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of Central Excise(Appeal) Rules, 2001 and shall be accompanied against (one which at least should be accompanied by a fee of Rs.1,000/-, Rs.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / refund is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asstt. Registrar of a branch of any nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated

(3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल आदेश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है।

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner notwithstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.



(4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रु.6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall bear a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

(5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

Attention is invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

(6) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सीस्टेट) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1984 की धारा 34 के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 24) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1984 की धारा 23 के अंतर्गत सेवाकर को भी लागू की गई है, द्वारा निश्चित की गई पूर्व-राशि जमा करना अनिवार्य है, बशर्ते कि इस धारा के अंतर्गत जमा की जाने वाली अपेक्षित देय राशि दस करोड़ रूपए से अधिक न हो

केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत " माँग किए गए शुल्क " में निम्न शामिल है

- (i) धारा 11 डी के अंतर्गत निर्धारित रकम
- (ii) सेनवैट जमा की ली गई गलत राशि
- (iii) सेनवैट जमा नियमावली के नियम 6 के अंतर्गत देय रकम

→ आगे बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम, 2014 के आरम्भ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्जी एवं अपील को लागू नहीं होंगे।

For an appeal to be filed before the CESTAT, it is mandatory to pre-deposit an amount specified under the Finance (No. 2) Act, 2014 (No. 25 of 2014) dated 06.08.2014, under section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under section 83 of the Finance Act, 1994 provided the amount of pre-deposit payable would be subject to ceiling of Rs. Ten Crores,

Under Central Excise and Service Tax, "Duty demanded" shall include:

- (i) amount determined under Section 11 D;
- (ii) amount of erroneous Cenvat Credit taken;
- (iii) amount payable under Rule 6 of the Cenvat Credit Rules.

→ Provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.

(6)(i) इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

(6)(i) In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."

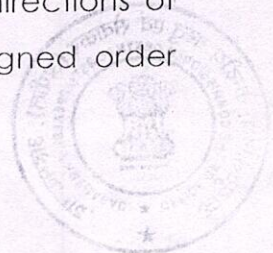
II. Any person aggrieved by an Order-in-Appeal issued under the Central Goods and Services Tax Act, 2017/Integrated Goods and Services Tax Act, 2017/ Goods and Services Tax (Compensation to States) Act, 2017, may file an appeal before the appropriate authority.



**ORDER-IN-APPEAL**

M/s. Somanji Ceramics Limited (erstwhile known as 'SPL Limited'), 14-GIDC Industrial Estate, Kadi, Dist-Mehsana (henceforth referred as "appellant") has filed the present appeal against the Order-In-Original No.AHM-CEX-003-ADC-JN-004-19-20 dated 27.06.2019 (henceforth referred as "impugned order") passed by the Additional Commissioner, Central GST & CX, Gandhinagar (henceforth, "adjudicating authority").

2. The facts of the case, in brief, are that the appellant is a manufacturer of Floor and Wall Tiles falling under Chapter 69 of the Central Excise Tariff Act, 1985 and having Central Excise Registration for the same. During the course of audit of records of the appellant, it was observed that they are also manufacturing glazing material/paste classifiable under SH No.3207.90 of the Central Excise Tariff Act, 1985 which was used captively for manufacture of glazed tiles. It was observed that the appellant has not filed any classification list in respect of said product for its captive consumption and hence said product was not eligible for exemption under Notification No.67/95 as the same is used for the manufacture of broken tiles on which no duty was paid. It was observed that the appellant had captively consumed glazing material/paste weighing 115.23 MT valued at Rs.32,93,325/- in manufacturing broken tiles which were cleared during the period from May,1999 to February,2000 on which exemption under Notification No.67/95 CE dated 16.03.1995 is not eligible and hence a show cause notice dated 03.06.2004 was issued to them for demanding and for recovering Central Excise duty amounting to Rs.5,26,993/- under Section 11AC(1) of the Central Excise Act, 1944 alongwith interest and imposition of penalty under Section 11AC of the Act. It was decided under Order-In-Original No.2/Addl. Commr.(A.R.M.)/2005 dated 19.01.2005 by the Additional Commissioner, Central Excise, Ahmedabad-III confirming duty along with interest and penalty. Being aggrieved with the order, appeal was preferred against said OIO dated 19.01.2005 before the Commissioner (Appeal). The appellate authority has decided the matter vide OIA No.620/2005(620-A-III)CE/DK/Commr(A) dated 18.10.2005 remanding the case to the adjudicating authority to decide afresh after considering submissions made by the appellant, particularly the applicability of extended time limit. Acting upon the directions of Commissioner Appeals' order dated 18.10.2005, the impugned order



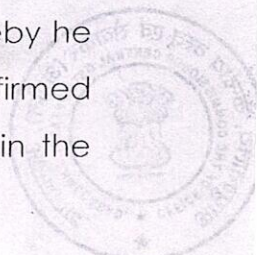
was passed confirming the duty amount along with interest and penalty.

3. Aggrieved, the appellant preferred this appeal contesting *inter alia*, that after culmination of Final Audit Report No.263/2000, the department under letter dated 09.10.2000 directed to debit duty involved without averment of suppression of fact with intent to evade duty. However, in the show cause notice there were allegations of suppression of fact with intent to evade duty invoking larger period of limitation; that the issue of captive consumption using modvatable input is governed by rule 57D of MODVAT Rules; that in the para 13 and 13.1, the adjudicating authority erroneously used post amended Notification No. 67/95 i.e. substituted part of Notification No.31/2001 CE dated 01.06.2001 and hence the order is without authority of law; that right from the first day the appellant claimed benefit of exemption under notification supra; that issue is covered under impugned notification and post amendment, the issue got covered by Rule 57D of CER,1994. With reference to extended period of limitation under Section 11A(1) of the C.Ex.Act, they cited case law of Champher Drugs & Liniments 1989 (40) ELT 276(SC), 1994 (74) ELT 9 (SC), 1995 (78) ELT 401(SC), and 1995 (75) ELT 721(SC) etc and stated that the impugned order is non-speaking on the same, etc.,

4. In the Personal Hearing held on 20.03.2020, Shri NJ Bhatt, Advocate reiterated the submissions of appeal memorandum. He stated that there was no suppression in the case and entire information was available with the department. He also submitted copy of judgment in case of CCE Rajkot v/s Diamond Tiles Ltd reported in 2002 (140) ELT 464 (Tri-LB).

5. I have carefully gone through the facts of the case available on records, grounds of appeal in the Appeal Memorandum, oral and written submissions made at the time of personal hearing.

5.1. It is observed that the adjudicating authority, following the directions of Commissioner Appeals' order dated 18.10.2005, decided the matter afresh under impugned order dated 27.06.2019 whereby he has confirmed duty along with interest and penalty. He has confirmed the demand of duty on glazing material/paste used captively in the



manufacture of broken tiles and held it recoverable denying the benefit of Notification No.67/95 CE dated 16.03.1995 by invoking extended period under Section 11A(1) of the Central Excise Act,1944.

5.2. The issue before me to decide is whether exemption under Notification No.67/95 CE dated 16.03.1995 is available or not on glazing material/paste manufactured and used captively in the manufacture of broken tiles cleared from factory of the appellant without payment of duty. Secondly, whether the demand is hit by limitation. The provisions contained in Notification No.67/95 CE dated 16.03.1995 is reproduced below:

**Capital goods and inputs captively consumed within the factory of production**

In exercise of the powers conferred by sub-section (1) of section 5A of the Central Excises and Salt Act, 1944 (1 of 1944), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts -

(i) capital goods as defined in rule 57Q of the Central Excise Rules, 1944 manufactured in a factory and used within the factory of production;

(ii) goods specified in column (2) of the Table hereto annexed (hereinafter referred to as 'inputs') **manufactured in a factory and used within the factory of production in or in relation to manufacture of final products specified in column (3) of the said Table;**

from the whole of the duty of excise leviable thereon which is specified in the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) :

Provided that nothing contained in this notification shall apply to inputs used in or in relation to the manufacture of final products (other than those cleared either to a unit in a Free Trade Zone or to a 100% Export Oriented Undertaking or to a unit in an Electronic Hardware Technology Park or to a unit in a Software Technology Parks), which are exempt from the whole of duty of excise leviable thereon or are chargeable to 'Nil' rate of duty.

*Explanation.* - For the purposes of this notification 'inputs' does not include -

(i) packaging materials in respect of which any exemption to the extent of the duty of excise payable on the value of the packaging materials is being availed of for packaging any final products;

(ii) packaging materials or containers, the cost of which is not included in the assessable value of the final products under section 4 of the Central Excises and Salt Act, 1944 (1 of 1944).

TABLE

S.No.	Description of inputs	Description of final products
(1)	(2)	(3)
1.	All goods falling within the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), other than the following,	All goods falling within the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), other than the



namely, -	following, namely, -
(i) goods classifiable under any heading of Chapter 24 of the Schedule to the said Act;	(i) goods classifiable under any heading of Chapter 24 of the Schedule to the said Act;
(ii) goods classifiable under heading Nos. 36.05 or 37.06 of the Schedule to the said Act;	(ii) goods classifiable under heading Nos. 36.05 or 37.06 of the Schedule to the said Act;
(iii) goods classifiable under sub-heading Nos. 2710.11, 2710.12, 2710.13 or 2710.19 (except Natural gasoline liquid) of the Schedule to the said Act;	(iii) woven fabrics classifiable under Chapter 52 or Chapter 54 or Chapter 55 of the Schedule to the said Act.
(iv) high speed diesel oil classifiable under heading No. 27.10 of the Schedule to the said Act.	

[Notification No. 67/95-C.E., dated 16-3-1995]

6. As provided above, goods manufactured in a factory and used within the factory of production in or in relation to manufacture of final products specified therein are exempted from whole of Excise duty. However, said exemption is not available to inputs used in or in relation to the manufacture of final products which are exempt from the whole of duty of excise leviable thereon or are chargeable to 'Nil' rate of duty. It is undisputed fact that glazing material/paste were manufactured by the appellant within the factory of production and the same were used captively in the manufacture of tiles including broken tiles and also the fact that said broken tiles were cleared by the appellant without payment of duty. In view of the proviso to notification supra, which stipulates that "exemption is not available to inputs used in or in relation to the manufacture of final products which are exempt from the whole of duty of excise leviable thereon or are chargeable to 'Nil' rate of duty", it is alleged that so far as clearance of broken tiles are concerned, the same were cleared without payment of Excise duty and hence exemption is not available on glazing material/paste which were used in manufacturing the same. In this context, I observe that during the process of manufacturing tiles, the possibility of damage is normal and cannot be ruled out. Damage to tiles/breaking of the same occurs at the end of manufacturing stage as well as during sorting, packing etc, which are the process required before clearance from factory takes place. Normally, the incidence of



breaking of tiles takes place during these stages. At the stage of manufacturing as well as post manufacturing activities i.e. sorting/packaging etc, breaking of tiles occurs which are integral part of the process. Looking to such integral part of process of this industry, breaking of tiles is a normal incidence happening frequently. Broken tiles comes into existence unintentionally, discontinuation of which is beyond the control of the manufacturer/producer. Further, this is not a case wherein manufacturer is engaged in manufacturing exclusively exempted goods. In such a situations, the contention of the department by which exemption available under Notification No.67/95 is denied to the appellant citing the phrase "*exemption is not available to inputs used in or in relation to the manufacture of final products which are exempt from the whole of duty of excise leviable thereon or are chargeable to 'Nil' rate of duty*" does not seems in the true spirit of the intention of notification supra. More explicitly, it can be said that such phrase of the notification supra is not applicable to the goods which immersed unintentionally as damaged goods like tiles in broken condition having no market value.

7. It is also an undisputed fact that glazing material/paste were manufactured by the appellant within the factory of production and used captively in the manufacture of tiles including broken tiles. This is not a case that glazing material/paste were manufactured were used in broken tiles only. Since majority of glazing material/paste are being used in sound tiles and some part of the same are used in broken tiles, the main allegations of the department that classification list were not filed in respect of said intermediate goods used in manufacturing breaking tiles - is not fully correct. In fact, declaration of classification list of intermediate products(glazing material/paste) was equally important for use of the same in respect of sound tiles also.

8. It is contested by the appellant that the issue of captive consumption using modvatable input is governed by rule 57D of erstwhwile MODVAT Rules. I reproduce below said Rule 57 D for ease of reference;

**Rule 57D: Credit of duty not to be denied or varied in certain circumstances.**





57D (1) Credit of specified duty shall not be denied or varied on the ground that part of inputs contained in any waste, refuse or by-product arising during the manufacture of final product whether or not such waste refuse or by-product is exempted from the whole of the duty of excise leviable thereon or chargeable to nil rate of duty is not specified as final product under Rule 57A.

(2) Credit of specified duty shall not be denied or varied in the case any intermediate product have come into existence during the course of manufacture of final product or inputs are used in the manufacture of capital goods as defined in Rule 57Q and such intermediate product or capital goods are not chargeable to duty of excise.

Plain reading of the above rule, makes it clear that credit of specified duty on inputs/parts of inputs contained in waste, refuse or by-product as well as used in intermediate product – shall not be denied. Thus, above provision, allows MODVAT credit on inputs used in waste refuse or by-product as well as used in intermediate products. Same way, eligibility of exemption under Notification No.67/95 CE dated 16.03.1999 to glazing material/paste used in broken tiles not having market value, cannot be denied, the same not being the intention of the notification supra. Since the tiles has not been damaged intentionally and are not having commercial value, denial of exemption on intermediate goods i.e. glazing material/paste used in clearance of such broken tiles is not in true spirit of the notification supra.

9. Now, coming to the issue of limitation the appellant has contested that in letter dated 09.10.2000 of the department, no averments were made on the issue of "suppression of fact with intend to evade tax". However, in the show cause notice, allegations on suppression of fact were made and extended period was invoked which is 'contradiction within'. In this context, I observe that under letter dated 09.10.2000, the issue of ineligible exemption as well as the fact of non filing of classification in respect of the period from May 1999 to February,2000 was pointed out to the appellant well within normal time limit prescribed, the show cause notice would have been issued in time within normal



period of limitation. However, the show cause notice is issued ~~on 03.06.2004~~ on 03.06.2004, invoking extended period. It is also observed that the appellant had not filed any classification list/declaration under Rule 173B of the Central Excise Rules. It is further observed that since the demand is held to be not sustainable on merits, the issue of limitation is of no relevance.

10. In view of the observations above, the impugned order is not sustainable in the eyes of law to which I set aside and allow the appeal filed by the appellant.

11. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

The appeal filed by the appellant stands disposed of in above terms.

*Akhil Kumar*  
(Akhil Kumar) 21st April, 2020.

Commissioner, CGST (Appeals)  
Date:



Attested

*(Signature)*  
(D.A. Parmar)  
Superintendent  
Central Tax (Appeals)  
Ahmedabad.

By R.P.A.D.

To,

M/s. Somani Ceramics Limited (erstwhile known as 'SPL Limited'), 14-GIDC Industrial Estate, Kadi, Dist-Mehsana

Copy to:

1. The Principal Chief Commissioner of Central Tax, Ahmedabad Zone.
2. The Commissioner of Central Tax, Gandhinagar.
3. The Additional Commissioner, Central Tax (System), Gandhinagar.
4. The Asstt./Deputy Commissioner, CGST Division- Kadi.
5. Guard File.
6. P.A. File

