



आयुक्त(अपील)का कार्यालय,
Office of the Commissioner (Appeal),
 केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद
Central GST, Appeal Commissionerate, Ahmedabad
 जीएसटी भवन, राजस्वमार्ग, अम्बावाड़ी अहमदाबाद 380015.
 CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
 ☎ 07926305065- टेलीफैक्स 07926305136



DIN : 20211164SW000000F9F5

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/CEXP/90/2021 / 14590 र 14594
- ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-003-APP-62/2021-22**
 दिनांक Date : **24-11-2021** जारी करने की तारीख Date of Issue 30.11.2021
 आयुक्त (अपील) द्वारा पारित
 Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals)
- ग Arising out of Order-in-Original No. **08/C.Ex./OA/NRM/2020-21** दिनांक: **05.01.2021** issued by
 Assistant Commissioner, CGST & Central Excise, Division Himmatnagar, Gandhinagar
 Commissionerate
- ध अपीलकर्ता का नाम एवं पता Name & Address of the **Appellant / Respondent**

M/s Santro Tiles Ltd
 AT & Po: Dalpur, Ta-Prantij,
 N.H. No.8, Sabarkantha, Gujarat

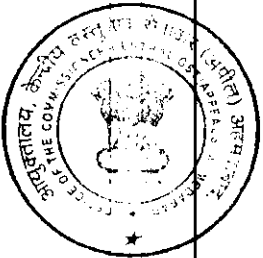
कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

Any person aggrieved by this Order-In-Appeal 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 अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीन 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, 4th 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 हानिकार खाने 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 प्रक्रिया 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.



(क) 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।

(A) 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.

(ख) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

(B) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

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 वित्त अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

(c) 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 ईए-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 मुख्य शीर्ष 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.

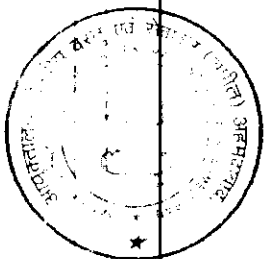
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

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

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

(क) उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलों के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में 2nd माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद-380004

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd floor, Bahumali Bhawan, Asarwa, Girdhar Nagar, Ahmedabad : 380004. in case of appeals other than as mentioned in para-2(i) (a) above.



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 पढ़ी 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 Appellate 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 शुल्कअधिनियम 1970 यथासंशोधित की अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूलआदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रतिपर रु.6.50 पैसे कान्यायालय 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 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 और 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.

- (40) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण(सिस्टेट),के प्रतिअपीलो के मामले में कर्तव्यमांग(Demand) एवं दंड(Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिकतम पूर्व जमा 10 करोड़ रुपए है।(Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

केन्द्रीय उत्पाद शुल्क और सेवाकर के अंतर्गत, शामिल होगा "कर्तव्य की मांग"(Duty Demanded)-

- (i) (Section) खंड 11D के तहत निर्धारित राशि;
- (ii) लिया गलत सेनवैट क्रेडिट की राशि;
- (iii) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि.

⇒ यह पूर्व जमा 'लंबित अपील' में पहले पूर्व जमा की तुलना में, अपील दाखिल करने के लिए पूर्व शर्त बना दिया गया है.

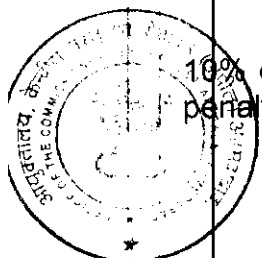
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

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

- (ciii) amount determined under Section 11 D;
- (civ) amount of erroneous Cenvat Credit taken;
- (cv) amount payable under Rule 6 of the Cenvat Credit Rules.

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।

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."

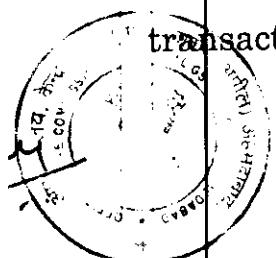


ORDER-IN-APPEAL

The present appeal has been filed by M/s. Santro Tiles Limited, Dalpur, Taluka : Prantij, District : Sabarkantha (hereinafter referred to as the appellant) against Order in Original No. 08/C.Ex./OA/NRM/2020-21 dated 05-01-2021 [hereinafter referred to as "*impugned order*"] passed by the Assistant Commissioner, CGST, Division- Himmatnagar, Gandhinagar Commissionerate [hereinafter referred to as "*adjudicating authority*"].

2. Briefly stated, the facts of the case is that the appellant are holding Central Excise Registration No. AAHCS3818CEM001 and are engaged in the manufacture of Vitrified Tiles, which is chargeable to central excise duty under Section 4A of the Central Excise Act, 1944 (hereinafter referred to as CEA, 1944). During the course of audit of the records of the appellant, it was observed that the appellant had cleared broken tiles on the basis of weight (M.T) instead of number of tiles. Accordingly, the tiles appeared to be chargeable to central excise duty under the provisions of Section 4 of the CEA, 1944 and not under Section 4A. It appeared that there is no requirement of affixation of MRP on broken tiles as per the Legal Metrology Act, 2009 or the rules made there under. It, therefore, appeared that the appellant had incorrectly declared their goods to be valued under Section 4A even though the broken tiles were sold by weight and not by numbers. The correct valuation was to be done on the transaction value as per Section 4 of the CEA, 1944. The total duty not paid was amounting to Rs.11,416/- for the period from April, 2016 to June, 2017.

2.1 It was further observed during the course of the audit that the appellant had cleared goods to buyers, who by their name appear to be builders, developers, hotels etc. These buyers are in the nature of institutional buyers. It appeared that the assessable value should be the transaction value under Section 4 of the CEA, 1944 and not MRP as per



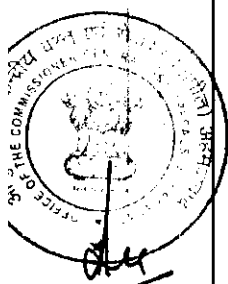
Section 4A of the CEA, 1944. The duty not paid was amounting to Rs.2,59,178/- for the period from April, 2016 to June, 2017.

2.2 It was also observed during the course of the audit that the appellant had availed services of manpower recruitment. However, they had short paid the service tax amounting to Rs.44,579/- on the expenses made on manpower services during the period F.Y. 2016-17.

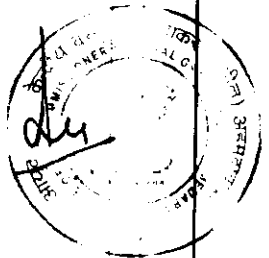
2.3 The appellant, were, therefore, issued a SCN bearing No. 292/2019-20 dated 08.06.2020 from F.No. VI/1(b)-434/IA/C-VIII/AP-53/18-19 proposing recovery of the Central Excise duty amounting to Rs.11,416/- and Rs.2,59,178/- under Section 11A(4) of the CEA, 1944 along with interest under Section 11AA of the CEA, 1944. Penalty was also proposed under Section 11Ac 91) (c) of the CEA, 1944. It was also proposed to recover the Service Tax amounting to Rs.44,579/- under the proviso to Section 73 (1) of the Finance Act, 1994 along with interest under Section 75. Penalty was also proposed under Section 78(1) of the Finance Act, 1994.

3. The said SCN was adjudicated vide the impugned order and the demand for Central Excise duty amounting to Rs.11,416/- and Rs.2,59,178/- was confirmed along with interest. The excise duty amounting to Rs.11,416/- and interest thereon amounting to Rs.3,850/- paid by the appellant was appropriated. Penalty of Rs.11,416/- and Rs.2,59,178/- was imposed under Section 11AC (1) (c) of the CEA, 1944 and the penalty amounting to Rs.1,712/- paid was appropriated. Service Tax amounting to Rs. 44,759/- was also confirmed along with interest and the Service Tax amounting to Rs.44,579/- and interest thereon amounting to Rs.23,500/- were appropriated. Penalty of Rs.44,579/- was imposed under Section 78(1) of the Finance Act, 1994 and the penalty amounting to Rs.6,687/- paid was appropriated.

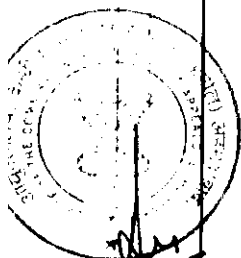
4. Being aggrieved with the impugned order, the appellant firm has filed the instant appeal on the following grounds:



- i) Broken Tiles are exempted from duty vide Notification No. 52/1995-CE dated 16.03.1995. It is a settled issue that broken glazed tiles are not excisable and merely because the same are sold in the market cannot be the factor to consider the goods to be excisable. They rely on the decision in the case of Orient Ceramics Industries – 1993 (67) ELT 426 (Tri-Del.). The decision in the said case was maintained by the Hon'ble Supreme Court – 1999 (112) ELT A 168 (SC). This decision is squarely applicable to their case.
- ii) The finding of the adjudicating authority that they had cleared the broken tiles under Sr.No.59 of Notification No. 49/2008-CE and that exemption under Notification No. 52/1995-CE is subject to the condition that they apply to the JAC is not correct.
- iii) Though no duty was required to be paid while clearing broken tiles, they had paid duty. Since the payment was unwarranted, they request refund of the said amounts.
- iv) The demand is hit by limitation of time. The demand notice for the period pertaining to 2016-17 and 2017-18 (up to June, 2017) was issued on 08.06.2020. The adjudicating authority has admitted the fact that they had declared the clearance of broken tiles in the relevant ER-1 returns mentioning Notification No. 49/2008-CE. Therefore, the question of suppression of facts does not arise.
- v) They rely on the decision in the following cases : 1) Mahindra & Mahindra Ltd- 2018 (11) GSTL 126 (Bom); 2) Amway India Enterprises Pvt Ltd – 2017 (3) GSTL 69 (Tri.-Del); 3) Standard Alkali – 2018 (362) ELT 277 (Tri.-Mumbai); 4) Krishak Bharti Co-operative Ltd – 2019 (24) GSTL 368 (Tri.-Del).
- vi) Regarding the allegation of clearance of tiles to institutional buyers, it is submitted that they had cleared the goods only to traders and not to any institutional buyer as specified in Rule 3 of the Legal Metrology (Packaged Commodities) Rules, 2011. They submit sample copies of the invoices for verification.



- vii) The departmental officers, in the audit report, have not mentioned the name of the institutional buyers to whom they had made clearance during the relevant period. It was only a presumption that they had cleared the goods to institutional buyers without any verification of the facts from the records. They had appraised the adjudicating authority and supplied copies of the relevant invoices, who, however, failed to consider the facts and irrefutable evidences in the impugned order.
- viii) They rely on the decision in the case of : I) Aditya Enterprises – 2020 (35) GSTL 406 (Tri.-Del); II) Bhandari Caterers – 2019 (29) GSTL 489 (Tri.-Del); III) Sharma Fabricators & Erectors Pvt Ltd – 2017 (5) GSTL 96 (Tri.-All.); IV) Everest Insulators Pvt Ltd – 2018 (14) GSTL 291 (Tri.-All).
- ix) The demand is also hit by limitation of time as the clearance were within the knowledge of the department. Their records were audited by the department from time to time. Nothing was suppressed by them.
- x) Regarding the short payment of Service Tax on Manpower supply service, they submit that it was due to calculation error by the concerned clerk and they had paid the Service Tax along with Interest and penalty @ 25% within 30 days of the receipt of the impugned order.
- xi) Regarding penalty imposed under Section 11AC (1) (C) of the CEA, 1944 in respect of broken tiles, it is submitted that there was no suppression of facts involved. The adjudicating authority has not given any grounds for imposing penalty or even discussed a single line in the impugned order.
- xii) In respect of the clearance to institutional buyers, the penalty has been imposed without discussing the fact and circumstances which leads to imposition of penalty.
- xiii) They rely on the decision in the case of Uniworth Textiles Ltd – 2013 (288) ELT 161 (SC); Steel Case Ltd – 2011 (21) STR 500 (Guj) and Liberty Whiteware Ltd – 2017 (358) ELT 422 (Tri.-Del).

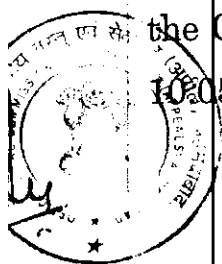


5. Personal Hearing in the case was held on 28.10.2021 through virtual mode. Shri M.H. Raval, Consultant, appeared on behalf of the appellant for the hearing. He reiterated the submissions made in appeal memorandum and in additional written submission dated 28.10.2021.

6. I have gone through the facts of the case, submissions made in the Appeal Memorandum, and submissions made at the time of personal hearing and material available on records. It is observed that the appellant had in written submission as well as in additional written submission submitted that they are not disputing demand in respect of short payment of service tax amounting to Rs.44,579/- in respect of manpower recruitment service under reverse charge. They have admittedly paid the amount alongwith interest and penalty. The same is also appropriated in the impugned order. Hence, I find that there are two issues before me for decision, which are as under :

- I. Whether the valuation of Broken Tiles is to be done in terms of Section 4A or Section 4 of the Central Excise Act, 1944 ?
- II. Whether the appellant had cleared tiles to Institutional buyers as alleged by the department and, therefore, the provisions of Section 4 of the Central Excise Act, 1944 are applicable in the case.

7. As regards the issue whether valuation of broken tiles is to be done in terms of Section 4A or Section 4 of the Central Excise Act, 1944, I find that the appellant has contended that Broken tiles are not excisable and have in support relied upon the decision of the Hon'ble Tribunal in the case of Orient Ceramics Industries – 1992 (65) ELT 426 (Tri.-Del), wherein it was held that broken tiles are not excisable. The Hon'ble Tribunal had also held that merely because of its sale in market for a nominal price that cannot be a factor to consider the goods to be marketable. I also find that the above decision of the Hon'ble Tribunal, which was affirmed by the Hon'ble Supreme Court, is no more relevant to the issue as Section 2(d) of the Central Excise Act, 1994 was amended by the Finance Act, 2008 dated 10.05.2008 and Explanation was inserted, which reads as under :

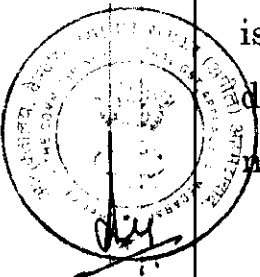


"Explanation : For the purposes of this clause, "goods" includes any article, material or substance which is capable of being bought and sold for a consideration and such goods shall be deemed to be marketable".

7.1 In view of the above explanation to Section 2 (d), which defines excisable goods, even broken tiles which are bought and sold for a consideration is covered within the ambit of excisable goods. Therefore, the contention of the appellant in this regard is without merit.

7.2 The appellant have also contested the demand on the grounds of limitation. The demand notice for the period pertaining to F.Y. 2016-17 and F.Y. 2017-18 (upto June, 2017) was issued on 08.06.2020. They had declared the clearance of the goods in their ER-1 returns and this fact has also been recorded in the impugned order. I find that the adjudicating authority has in para 29 of the impugned order recorded his finding that "*I find that the said assessee has declared in the ER-1 the broken tiles cleared under Notification no 49/2008-CE (NT) Sr.No 59*". I find that the said notification prescribes the goods to which the provisions of Section 4A of the Central Excise Act, 1944 are applicable and it also prescribes the abatement in respect of the said goods. Since the appellant have declared the goods 'Broken Tiles' in their ER-1 returns and also declared that the same are cleared under the above said notification, it cannot be alleged that there was any suppression of fact or mis-statement on the part of the appellant. Therefore, I find that the extended period of limitation cannot be invoked for demanding duty.

7.3 Section 11A (1) (a) of the Central Excise Act, 1944 was amended by the Finance Act, 2016 and the normal period of limitation was amended to two years from 14.05.2016 instead of the earlier one year. I find that the demand notice was issued on 08.06.2020 for the period F.Y. 2016-17 and F.Y. 2017-18 (upto June, 2017), therefore, the demand for the entire period is beyond the normal period of limitation of two years. Consequently, the demand in respect of the Broken Tile confirmed vide the impugned order is not sustainable.



8. Regarding the issue of clearance of Tiles allegedly to Institutional buyers, I find that the department has contended that the valuation under Section 4A of the Central Excise Act, 1994 would not apply in respect of clearance to institutional buyers and the value of the goods in such cases is required to be determined as per Section 4 of the Central Excise Act, 1944. I find that the provisions of Section 4A of the Central Excise Act, 1944 is applicable only to those goods in respect of which it is required under the provisions of the Legal Metrology Act, 2009 to declare the retail price on the package of such goods. Exclusions are provided under Rule 3 of the Legal Metrology (Packaged Commodities) Rules, 2011, the relevant part of which is reproduced as under :

“ 3. Applicability of this Chapter – The provisions of this Chapter shall not apply to, -

(a).....

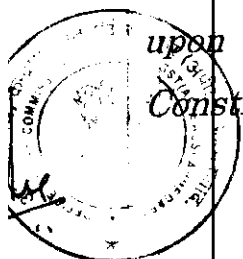
(b) Packaged commodities meant for industrial consumers or institutional consumers.

Explanation :- For the purpose of this rule, -

“institutional consumer” means the institutional consumer like transportation, Airways, Railways, Hotels, Hospitals or any other service institutions who buy packaged commodities directly from the manufacturer for use by the institution’

“industrial consumer” means the industrial consumer who buy packaged commodities directly from the manufacturer for use by that industry”.

8.1 I find that it is not a matter of dispute that the provisions of Section 4A are not applicable to goods sold to ‘institutional consumer’. However, before excluding the buyers from the purview of Section 4A of the Central Excise Act, 1944, it has to be first established that the buyers are ‘institutional consumers. I find that in the SCN issued to the appellant, it has been stated that “ *During the course of the audit, it was observed that the assessee has cleared goods to the buyers who by their name appear to be builders, developers, hotels etc.*” I further find that the adjudicating authority has in the impugned order recorded his finding that “*one sheet containing the sales of institutional buyer (2016-17) attached in relied upon documents shows name of buyer i.e. Jai Amber Developer, Karan Construction etc proves institutional buyer, not traders*”.

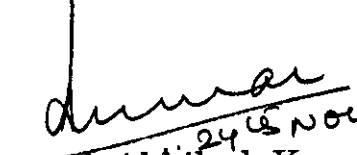


8.2 In view of the above, I find merit in the contention of the appellant that it is only the assumption and presumption of the audit officers without verification of facts. Merely going by the name of the buyer, without causing any verification of their status as institutional consumers, cannot form the basis for concluding that the buyers are institutional consumers. I find that no evidence or material has been adduced either in the notice or the impugned order to substantiate the contention that the appellant had sold goods to institutional consumers. In the absence of any such evidence to establish that the buyers are institutional consumers, I am constrained to hold that the demand raised in this regard is without any basis and, hence, is not sustainable.

9. In view of the above, I set aside the impugned order for being not legal and proper and allow the appeal filed by the appellant.

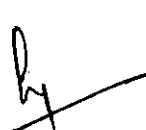
10. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

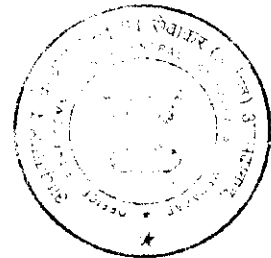
The appeal filed by the appellant stands disposed off in above terms.


(Akhilesh Kumar)
Commissioner (Appeals)

Date: .11.2021.

Attested:


(N.Suryanarayanan. Iyer)
Superintendent(Appeals),
CGST, Ahmedabad.



BY RPAD / SPEED POST

To

M/s. Santro Tiles Limited,
Dalpur, Taluka : Prantij,
District : Sabarkantha

Appellant

The Assistant Commissioner,
CGST & Central Excise,
Division- Himmatnagar
Commissionerate : Gandhinagar

Respondent

Copy to:

1. The Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Commissioner, CGST, Gandhinagar.
3. The Assistant Commissioner (HQ System), CGST, Gandhinagar.
(for uploading the OIA)
- ✓ 4. Guard File.
5. P.A. File.

