केंद्रीय कर आयुक्त (अपील)
O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,
केंद्रीय उत्पाद शुल्क भवन, 7th Floor, Central Excise Building,
सातवी मंजिल, पोलिटेकनिक के पास, Near Polytechnic,
आम्बावाडी, अहमदाबाद-380015 Ambavadi, Ahmedabad-380015
सत्यमेव जयते
☎ : 079-26305065 टेलेफैक्स : 079 - 26305136

रजिस्टर डाक ए .डी .द्वारा

23567 to 2360

क फाइल संख्या (File No.) : V2(69)14&15 /North/Appeals/ 2017-18

ख अपील आदेश संख्या (Order-In-Appeal No.): **AHM-EXCUS-002-APP- 388-389-17-18**

दिनांक (Date): **26-Mar-2018** जारी करने की तारीख (Date of issue): 9/4/2018

श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित

Passed by **Shri Uma Shanker ,** Commissioner (Appeals)

ग _____ आयुक्त, केंद्रीय उत्पाद शुल्क, (मंडल-III), अहमदाबाद उत्तर, आयुक्तालय द्वारा जारी मूल आदेश सं _____ दिनांक _____ से सृजित

Arising out of Order-In-Original No **1/AC/D/BJM/2017** **Dated: 26/05/2017** issued by: Assistant Commissioner Central Excise (Div-III), Ahmedabad North

घ अपीलकर्ता/प्रतिवादी का नाम एवम पता (Name & Address of the Appellant/Respondent)

M/s Khodiyar Ceramics (India) Ltd
M/s Shri Hasmukhbhai C Kamani,

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 an 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) (क) (i) केंद्रीय उत्पाद शुल्क अधिनियम 1994 की धरा अतत नीचे बताए गए मामलों के बारे में पूवोक्त धारा को उप-धारा के प्रथम परंतुक 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 |

A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, 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 हानि कारखाने से किसी भंडारगार या अन्य कारखाने में या किसी भंडारगार से दूसरे भंडारगार में माल ले जाते हुए मार्ग में, या किसी भंडारगार या भंडार में चाहे वह किसी कारखाने में या किसी भंडारगार में हो माल की प्रकिया के दौरान हुई हो |

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 मामले में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है |

Cont...2

(c) 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 डयूटी केडिट 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।

(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 दिनाँक 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 रूपये या उससे कम हो तो रूपये 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 अपीलः–
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35–बी/35–इ के अंतर्गतः–

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

(क) वर्गीकरण मूल्यांकन से संबंधित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठिका वेस्ट ब्लॉक नं. 3. आर. के. पुरम, नई दिल्ली को एवं

(a) the special bench of Custom, Excise & Service Tax Appellate Tribunal of West Block No.2, R.K. Puram, New Delhi-1 in all matters relating to classification valuation and.

(ख) 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 ओ–20, न्यू मैन्टल हास्पिटल कम्पाउण्ड, मेघाणी नगर, अहमदाबाद–380016.

(b) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at O-20, New Metal Hospital Compound, Meghani Nagar, Ahmedabad : 380 016. 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 न्यायाधिकरणें की गई अपील के विरूद्व 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

रेखाकिंत बैंक ड्राफ्ट के रूप में संबंध की जाये। यह ड्राफ्ट उस स्थान के किसी नामित सार्वजनिक क्षेत्र के बैंक की शाखा का हो जहाँ उक्त न्यायाधिकरण की पीठ स्थित है।

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. Registar 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 ओदश 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 हैं।

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 not withstanding 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 अनुसूचि–1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रू.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 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 in 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 उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट), के प्रति अपीलो के मामले में कर्तव्य मांग (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 सेवा कर 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. 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:
(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.

इस सन्दर्भ में 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

This order covers **2 appeals** filed against **Order-in-original No.1/AC/BJM/2017 dated 26/05/2017** (hereinafter referred to as 'the impugned order') passed by the Assistant Commissioner, Central Excise, Division-III, Ahmedabad-II (hereinafter referred to as 'the adjudicating authority'). The appeals have been filed by

(i) M/s Khodiyar Ceramics (India) Pvt. Ltd., Kerala G.I.D.C., Near Bavla Ahmedabad (hereinafter referred to as 'the appellant') and

(ii) Shri Hasmukhbhai C. Kamani, Director, Project Manager, M/s Khodiyar Ceramics (India) Pvt. Ltd., Kerala G.I.D.C., Near Bavla Ahmedabad (hereinafter referred to as 'the Director')

2. Briefly stated, the facts of the case are that on the basis of intelligence to the effect that the appellant, who was holding Central Excise registration ECC No.AAECK2492BEM001 that was surrendered in the month of May, 2014 had mis-declared the product **'Acid Resistant Tiles' (Fossil Tiles) / Fossil Beams** falling under CETH 69010030 / 69010090 of the first Schedule to the Central Excise Tariff Act, 1985 (CETA, 1985) as **'Acid Resistant Bricks' (Fossil Bricks)** falling under CETH 69010010 of CETA, 1985, **availing wrong exemption under Notification No. 12/2012-CE dated 17/03/2012**, a team of Central Excise Preventive officers visited the factory premises of the appellant on 10/06/2015 and conducted searches and verification under Panchnama proceedings in the presence of the Director. In a statement dated 10/06/2015, the Director had accepted that as per IS 4457 standards, a brick measuring thickness 20mm or below is considered as tiles which is not exempted from Central Excise duty, which was corroborated by two buyers as per statement dated 27/08/2015 of Shri Prakash V. Salian, working Administrative Manager and authorized signatory of M/s Anchor Refractories Pvt. Ltd., Malad (West), Mumbai and statement dated 06/08/2015 of Shri Vijay Amrutbhai Patel, Proprietor of M/s Corrocare Industries, Vatva, Ahmedabad. It was again corroborated by the Director in his statement dated 03/03/2016 that thickness was the main criterion to differentiate between Tiles and Bricks and that the Bricks have thickness more than 20mm and Tiles are of thickness of 20mm or less. A Show Cause Notice F.No. V.69/15-30/OA/2016 dated 14/07/2016 ('the SCN') was issued demanding Central Excise duty amounting to **₹33,74,937/- for the period of F.Y.2011-12 to 2015-16 (up to 08/06/2015)**, under Section 11A(4) of the Central Excise Act, 1944 (CEA, 1944) along with interest under Section 11AA of CEA, 1944; proposing to appropriate **₹5,00,000/-** paid by the appellant; proposing confiscation of excisable goods valued at ₹3,18,53,685/- cleared by the appellant during the period of 2011-12 to 2015-16 (up to 08/06/2015) under Rule 25(1) of CEA, 1944 and proposing to impose penalty on the appellant under Rule 25(1) of Central Excise Rules, 2002 (CER, 2002) read with Section 11AC of CEA, 1944. Penalty was also proposed to be imposed on the Director under Rule 26 of CER, 2002.The SCN was decided by the adjudicated authority in the impugned order confirming the demand and interest; dropping confiscation and imposing **penalty** of **₹16,87,468/-** on the appellant under Rule

25(1) of CER, 2002 read with proviso to Section 11AC (1) (c) of CEA, 1944. A **penalty** of **₹10,00,000/-** has been imposed on the Director under Rule 26 of CER, 2002.

3. Being aggrieved by the impugned order, the appellant has preferred the instant appeal mainly on the following grounds:

i. There was two jurisdictional errors made by the adjudicating authority by passing the impugned order only on the basis of forward of IS 4457:2007 and para 4.2 of the same India Standard, namely (i) that this Indian Standard nowhere defines or lays down specifications of bricks, tiles, beams or similar products of siliceous earths and (ii) that even in the foreword of IS 4457:2007, it is nowhere clarified or laid down that only product of thickness of more than 20mm was to be treated as bricks and a product upto the thickness of 20mm was to be treated as tiles. The thickness of a product of Chapter 69 was not an important criterion but it is the intended use for which a product was manufactured. This most relevant test for consideration is lost sight of in the impugned order. The Tariff does not define the terms like bricks, blocks and tiles and therefore, the only test that was relevant for deciding whether a product was brick or tile was the common parlance test. It is settled legal position by virtue of judgments of Hon'ble Supreme Court in cases like Atul Glass Ltd. – 1986 (25) ELT 473 (SC); DCM Ltd. – 1980 ELT (J383) and Indian Cable Co. Ltd. – 1994 (74) ELT 22 (SC) that in commodity taxation, in the absence of any definition of commodity under the Statute, the test to be applied is how the people purchasing and selling, trading, dealing and using such commodity calls or describes or identifies the same. The appellant submits that the goods manufactured and cleared are 'acid bricks' because these were used for the purpose of providing resistance and protection in power plants, DM plants, chemical house, steel plants, chemical tanks and such purposes. Goods of similar thickness are imported in the country as bricks and no additional Customs duty is levied on such imports as could be seen from the data of imports in India. The law about invocation of extended period of limitation is well settled. Only in a case where the assessee knew that certain information was required to be disclosed and yet the assessee deliberately did not disclose such information, the case would be that of suppression of facts. Section 4 of CEA, 1944 provides that when no duty was paid on any goods and the duty was demanded after clearance of the goods from the factory, then the money recovered by the manufacturer from the buyer would have to be considered as cum-duty price as the manufacturer would not be in a position to recover any amount as excise duty from its customers if duty was paid or payable after transaction of sale was concluded and the money for sale of the goods was also recovered by the manufacturer. The appellant relies on the decision of Larger Bench of the Tribunal in the case of Sri Chakra Tyres vs CCE (Madras) – 1999 (108) ELT 361 and the decision of Hon'ble Supreme Court in the case of Dugar Tetenal India Ltd. – 2008 (224) ELT 180 (SC). Penalty is a quasi-judicial matter and therefore, it could be justifiably imposed only when Revenue specifically alleged and proved by evidence that the assessee was guilty of dishonesty. In the instant case, no specific ground or reason is disclosed in the order for justifying imposition of penalty as held in Hindustan Steel Limited – 1978 ELT (J159).

ii. In a decision of the Tribunal in the case of Z.U. Alvi vs CCE, Bhopal – 2000 (36) RLT 721, the Tribunal has held that when an employee of a manufacturer was dealing with the goods in his official capacity as an employee was covered under Rule 209A of the said Rules. The appellant relies on the decision in the cases of Anilkumar Saxena vs Commissioner – 2001 (129) ELT 351 and Man Industries India Ltd. – 2004 (175) ELT 435 and Dayaram Agarwal – 2007 (218) ELT 33 and pleads that there was no evidence showing that the Director had any knowledge or reason to believe that any goods were liable to confiscation under the CEA or CER and hence the penalty imposed on the Direct is without jurisdiction and without authority of law.

iii. The demand is barred by limitation. It is an uncontroverted fact that the appellant had never obtained Central Excise registration for the said project and hence the question of filing ER-1 returns does not arise, let alone intentionally misdeclaring the nature of goods with intent to evade duty. Laying claim to some exemption, whether admissible or not, is a matter of belief of an assessee and does not amount to mis-declaration and the appellant relied on Northern Plastics Ltd. vs Collector of Customs & Central Excise – 1998 (101) E.L.T. 549 (SC). In the case of Pahwa Chemicals Private Limited vs CCE, Delhi – 2005 (189) ELT 257 it has been held that mere failure to declare without a positive act does not amount to willful mis-declaration or suppression. The appellant relies on a catena of judgments to contest the invoking of extended period. In the case of Shapoorji & Palonji Co. Ltd. vs CCE, Mumbai – 2016 (344) ELT 1132 (Tri. – Mumbai), Hon'ble Tribunal in the same factual background has held that demand of Excise duty invoking extended period of limitation is not sustainable. The department had taken a stance before Hon'ble High Court of Madras in the case of L&T vs UOI – 2006 (198) ELT 177 (Mad.) that if RMC was manufactured at project site, benefit of exemption from payment of Excise duty under Notification No. 4/97-CE would be available to the assessee. When the demand was not sustainable, there can be no question of payment of any interest by the appellant under Section 11AA. Reliance is placed on Pratibha Processors vs UOI – 1996 (88) ELT 12 (SC). Similarly, no penalty is imposable in the present case because it is settled law that penal statutes must be strictly construed and must be applied with precision. Penalty in the present case has been imposed without discharging the burden of proof regarding the short payment by reason of collusion or willful misstatement or suppression of facts. *Mens rea* is an essential requirement for attracting penalty under Section 11AC of CEA, 1944 as held in CCE, Chandigarh-I vs. Pepsi Foods Ltd. – 2010 (260) ELT 481 (SC) and Dillon Oil and Fats Pvt. Ltd. vs CCE, Ludhiana – 2009 (243) ELT 248 (Tri.-Ahmd.). The appellant had acted in a *bona fide* based on the understanding of the exemption provided under the Notification supported by decisions of various High Courts and especially without intent to evade duty. In cases where a genuine interpretational issue is involved, no penalty can be imposed as held in Fibre Foils Ltd. vs CCE, Mumbai-IV – 2005 (190) ELT 352 (Tri.-Mumbai) and catena of other decisions against the imposing of penalty. The appellant had adopted a *bona fide* interpretation that concrete mixed at site would be eligible for benefit of exemption under the Notifications.

4. Personal hearing was held on 22/02/2018 that was attended by Shri Paresh M. Dave, Advocate. The learned Advocate reiterated the grounds of appeal and made additional written submissions. He stated that they have always called it "Brick" even if >20mm are considered as tiles. The learned Advocate pointed out to paragraph 11 of the SCN, where the Standards do not say that files are only >20mm. He also took me through paragraph (iv) of the grounds of appeal in support of the plea that the department was aware of the specifications of the products and there was no scope to invoke larger period.

5. I have carefully gone through the facts of the case on records and submissions made by the appellant as well as by the Director in the grounds of appeals. The primary dispute is whether the exemption claimed by the appellant under Notification No. 12/2012 –CE dated 17/03/2012 for the goods namely 'Acid Resistant Tiles' (Fossil Tiles) / 'Beams' falling under CETH 69010030 / 69010090 of the CETA, 1985 was availed fraudulently by mis-classifying the same as 'Acid Resistant Bricks' (Fossil Bricks) falling under CETH 69010010 of CETA, 1985, as the exemption benefit was available only to

Fossil Bricks falling under CETH 69010010 of CETA, 1985. The adjudicating authority has adopted the criterion for classifying 'Acid Resistant Tiles' by relying on Indian Standards Ceramic Unglazed Vitreous Acid Resistant Tiles – Specification 4457:2007 which specifies that 'Acid Resistant Tiles' are of **'20, 15, 12, 10, 8 mm or any thickness as reported by the manufacturer, *provided it is less that 20mms'***. Thus the criterion for '**Acid Resistant Tiles**' as relied upon by the adjudicating authority is that **it should be of a thickness of 20mm or less**. The appellant has contested the denial of the exemption benefit on the basis of thickness, stating that the forward of IS 4457:2007 only clarifies that tiles restricted upto a thickness of 20mm have only been covered in this revisions but this clarification does not mean that a product of thickness in excess of 20mm was not tiles and the correct criteria is the usage of the product and the manner it is identified in the market. The appellant has also claimed that the terms bricks, blocks and tiles are not defined in the tariff and **the only test for deciding was the common parlance test**. The appellant has not produced any definition or alternate standards to counter or contradict the criterion adopted for classification in the impugned order. Also as regards the common parlance test, the appellant has not adduced any evidence in support of its claim. On the other hand, the investigation has adduced evidence by way of the statement of the Director recorded on 10/06/2015 accepting the said standard on the basis of thickness. Further, in the statements recorded at the buyers end, the authorized persons the buyers have categorically stated that thickness is the main criterion to differentiate between tiles and bricks whereby Bricks are of thickness of more than 20mm and tiles of thickness 20mm or less. Thereafter, investigation had confronted the Director with all the buyers statements, whereupon in his statement of 03/03/2016, the Director had confirmed the veracity of the Panchnama dated 10/06/2016, his own statement dated 10/06/2016 and all the statements of the buyers and he also reiterated his acceptance of the standard specifying thickness of 20mm or less for 'Acid Resistant Tiles'. None of these statements recorded under Section 14 of CEA, 1944 has been retracted or refuted at any point in time. Thus investigation has succeeded in corroborating that the accepted common parlance in the market for 'Acid Resistant Tiles' is that it should be of 20mm or less of thickness. Therefore, the said specification based on thickness, specifying that the thickness for 'Acid Resistant Tiles' should be 20mm or less remains unchallenged and this criterion is liable to be upheld as valid and correct. In view of the above, the demand raised and confirmed on the basis of the said standard for 'Acid Resistant Tiles' is correct and sustainable. As regards the invoking of extended period, it is an admitted fact by the Director that even after surrender of Central Excise registration in May 2014, the appellant had been clearing all sizes including size below 20mm thickness classifying the same as fossil bricks falling under CETH 69010010 of CETA, 1985 and availed benefit of exemption under Notification No. 12/2012 –CE dated 17/03/2012. When the appellant had reason to believe, as per the market parlance and as per the above referred standards that goods with thickness of 20mm or less cannot be

classified under CETH 69010010 of CETA, 1985, the surrender of registration, the failure to follow statutory procedures, failure to file returns etc. was by way of mis-declaration and suppression of facts with intent to evade duty. The appellant has argued that the department was aware of the specifications of the products manufactured when it was holding Central Excise registration and hence extended period of demand could not be invoked. However, the fact remains that the Central Excise registration was for manufacture of Acid proof Bricks, Tiles and Beams of various sizes falling under Chapter 69 of CETA, 1985. On surrender of the said registration, the implication was that the appellant was only manufacturing Acid proof Bricks, whereas the Preventive team of the department in raids subsequent to the surrender of registration detected that the appellant was misdeclaring Tiles as Bricks. Thus there was a deliberate act on part of the appellant to misclassify Fossil Tiles as Fossil Bricks to wrongly avail the benefit of the exemption benefit under Notification No. 12/2012 –CE dated 17/03/2012. Further, it also remains a fact that even before surrender of the registration, the appellant had cleared Tiles of 20mm or less in the guise of Bricks, suppressing the facts and misclassifying the product. Therefore, the invoking of extended period and the imposition of penalty are legally sustainable in the present case. As regards, the penalty on the Director, the same is also sustainable because as per his own admission, he had reason to believe that the impugned goods were Tiles and not Bricks and hence had a pivotal role in the *modus operandi* resulting in duty evasion and contravention of provisions by the appellant. In view of the above findings, the appeals filed by the appellant as well as the Director are rejected.

7. **दोनों अपीलोंका निपटारा उपरोक्त तरीकेसे किया जाता हैं।**
Both the appeals stand disposed of in above terms.

(उमा शंकर)
आयुक्त (अपील्स-१)

Date: 26 / 03 / 2018

Attested

(K. P. Jacob)
Superintendent (Appeals-I)
Central Excise, Ahmedabad.

By R.P.A.D.
To

1) M/s Khodiyar Ceramics (India) Pvt. Ltd.,
Kerala G.I.D.C., Near Bavla, Ahmedabad.

2) Shri Hasmukhbhai C. Kamani, Director, M/s Khodiyar Ceramics (India) Pvt. Ltd.,
Kerala G.I.D.C., Near Bavla, Ahmedabad.

Copy to:

1. The Chief Commissioner of C.G.S.T., Ahmedabad.
2. The Commissioner of C.G.S.T., Ahmedabad-III.
3. The Additional Commissioner, C.G.S.T.(System), Ahmedabad-III.
4. The Deputy Commissioner, C.G.S.T. Division: V, Ahmedabad.
5. Guard File.
6. P.A.