

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI**

REGIONAL BENCH – COURT NO. III

Excise Appeal No. 42212 of 2015

(Arising out of Order-in-Original No.10/2015 (CE) dated 22.07.2015 passed by Commissioner of Central Excise, Chennai-III Commissionerate, 26/1, Mahatma Gandhi Road, Nungambakkam, Chennai 600 034)

M/s. Renaatus Procon (P) Ltd.,

....Appellant

Kadappanthangal Village & Post,
Arcot Taluk,
Vellore District-632 506.

Versus

Commissioner of GST & Central Excise, ... Respondent

Chennai Outer Commissionerate,
Newry Towers, No.2054, I Block,
II Avenue, 12th Main Road,
Anna Nagar, Chennai-600 040.

WITH

Excise Appeal No. 41781 of 2016

(Arising out of Order-in-Original No.37/2016 (CE) dated 02.03.2016 passed by Commissioner of Central Excise, Chennai-III Commissionerate, 26/1, Mahatma Gandhi Road, Nungambakkam, Chennai 600 034)

M/s. Renaatus Procon (P) Ltd.,

....Appellant

Kadappanthangal Village & Post,
Arcot Taluk,
Vellore District-632 506.

Versus

Commissioner of GST & Central Excise, ... Respondent

Chennai Outer Commissionerate,
Newry Towers, No.2054, I Block,
II Avenue, 12th Main Road,
Anna Nagar, Chennai-600 040.

APPEARANCE:

Shri Raghavan Ramabadran, Advocate for the Appellant
 Shri M. Selvakumar, Authorized Representative for the
 Respondent

CORAM:

HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)
HON'BLE MR. M. AJIT KUMAR, MEMBER (TECHNICAL)

FINAL ORDER Nos.40738-40739/2025

DATE OF HEARING: 11.02.2025
DATE OF DECISION: 16.07.2025

Per: Shri P. Dinesha

Both these appeals filed by Appellant-Assessee involve an identical issue arising out two separate Orders-in-Original and hence, with the consent of both sides, both the appeals were heard together and are being disposed of by this common order.

2. The issue in these appeals involves the determination of classification of 'Bricks' manufactured by them. The case of the Revenue is that the Bricks manufactured by the Assessee are only concrete/cement bricks whereas the claim of the Assessee is that they manufactured only 'Sand Lime Bricks' [SLB, for short]; the resolving of the above

issue leads to the allowance or denial of benefit of Notification No.1/2011 – CE dated 01.03.2011.

3. It appears that there was an investigation carried out by the Central Excise team and based on the outcome of investigation, a Show Cause Notice No.44/2014 dated 04.08.2014 for the period April 2013 to May 2014 was issued proposing to reject the bricks manufactured and cleared by the Assessee declared under sub-heading 6810 11 90 of Central Excise Tariff Act, 1994 and reclassify the same under sub-heading 6810 11 10 of Central Excise Tariff Act, thereby deny the benefit of Notification claimed, apart from demanding Excise Duty at 12% *ad valorem* apart from appropriate rate of interest and penalties. It appears from the SCN that the Commissioner issuing the same has relied upon various documents, referred to definition as appearing in various dictionaries, invoices raised in some cases by the Assessee, the declaration of the Assessee in its application for obtaining certificate of registration, batching report, lab test on AAC blocks test certificate issued by National Test House (SR), Government of India, Taramani, Chennai; lab test report issued by public Works department, Tamil Nadu, Comprehensive Strength Test Report issued by Head of the

Department, Civil College of Engineering, Anna University, Chennai, and Second Annual Report of the Assessee for the Financial Year 2012–13. Further, references are also made to copy of Purchase order, Central Excise invoices, printed catalogue, brochure, materials, and company's website. For the subsequent period also i.e. June 2014 to March 2015, SCN No.22/2015 dated 06.07.2015 was issued proposing *inter-alia* to reject the classification declared, re-classify the same, to recover differential duty along with applicable interest and to impose penalty under Section 11AC of the Central Excise Act, 1944.

4. From the record, it appears that the Assessee filed its comprehensive reply to the above SCNs seriously agitating the re-classification of the bricks proposed by the Revenue and also trying to justify its stand as to manufacturing SLB alone and denying the manufacture of 'Concrete Bricks'. In its reply, the Assessee has tried to explain the ingredients that were used in the manufacture of what was claimed by it as 'Sand Lime Bricks', the process of autoclaving at elevated temperature and steam curing and the products are known in the market as 'AAC SLB' as the manufacturing process is done using Autoclave. Further, reliance was

placed on HSN Explanatory Notes to Chapter 68 of HSN 6810 claimed to cover sand lime articles that are steam treated in autoclave. It was explained that the process of AAC was not only applicable for concrete blocks but could be applied even on bricks of every composition as well and, merely because the process of AAC was used would not render the products as cement/concrete bricks *per se*. In addition, it appears that the Assessee relied in support on dictionary meanings which according to them, suggested that what was manufactured by them was only 'SLB' and not 'Concrete Blocks/Bricks'. Referring to the test reports, it was also explained that the same was inconclusive inasmuch as there was no conclusion drawn by the experts and hence, the same cannot be considered to be suggesting that what was manufactured was not SLB.

5. The Original Authority having considered the explanation of the Assessee and also after hearing their representative, *vide* Order-in-Original No.10/2015-CE dated 22.07.2015 and Order-in-Original No.37/2016-CE dated 02.03.2016 however, confirmed the proposals made in the SCNs and the said orders have been assailed in these Appeals filed before us.

6. Heard Shri Raghavan Ramabadran, Ld. Advocate for the Appellant-Assessee and Shri M. Selvakumar, Ld. Assistant Commissioner for the Respondent-Revenue.

7. We have carefully considered the documents placed on record and we have also considered the judicial pronouncements relied upon before us. Having heard the rival contentions, the only issue that arises for our consideration is, "whether the goods manufactured by the Appellant is SLB or Concrete/Cement Brick?"

8. Shri Raghavan Ramabadran, Ld. Advocate took us through the process of manufacture of bricks in question. He would submit that the ingredients which are essential for manufacture of the bricks in question are mainly Sand [72.6%], Lime [5.8%], apart from Gypsum [2.6%] and Cement [10~13%] on weight basis, which is only added as additive/binder. Further, the proportion of Lime is relatively small but however, its role is very relevant. The most important step in the manufacture of SLB is the mixing of lime and sand which chemically react between themselves then adequate water is added to bring the materials to a

consistency so that they react and hold together when moulded. This operation would determine the quality of brick; the curing causes a chemical process between Lime and Sand to form Calcium Silicate which acts as a binding agent to hold the rest of the sand together and thus, the raw material is limited practically to hydrated Lime and Sand; small quantity of Cement and Gypsum are added to give effective chemical bonding only. Cement is not at all a substitute for Lime and the same would not result in similar chemical reaction. SLB consists essentially of sand which is bound together by Hydrated Calcium Silicate; the common form of silica, i.e. quarry's sand which is chemically inactive at ordinary temperatures under the conditions involved in the manufacture fine Sand is reduced to an amorphous condition and under the circumstances, the silica has the power to take up water and become quite active chemically so that it can bind well with Lime. Hence, mere presence of Cement that too in a small quantity does not make the SLB a concrete brick. The essential ingredients of a concrete brick are Sand and Cement that bind together to form a brick to which some quantity of Lime is also added whereas, in the case on hand, Sand and Lime chemically react to bind together which results in the brick.

9. He would also explain that the first step in the manufacture of SLB is the mixing of Sand and Lime, the plasticity enables lime to envelope the sand grains; the most important step is the mixing of lime and sand and this operation usually determines the quality of the brick, the coarse sand should evenly distribute throughout the mass in order that the proportion of voids shall be minimum. Further, the reaction that takes place at different stages in the processes are that when lime reacts with water which process is called hydrating or slaking of lime results in calcium hydroxide or hydrated lime which is an exothermic reaction where heat is generated during the process. When the slaked lime is mixed with sand and cured and autoclaved, Calcium Silicate is obtained. In the final product namely Bricks, sand grains are held together by lime silicate. The mixture of lime and sand is pressed into the form of a brick, pressing serves not only to give the brick its final size and shape, but performs several other functions; bringing sand and lime into intimate contact with each other facilitates the required chemical combination. The resultant Bricks are then hardened by means of steam in hardening chambers which are called autoclaves, besides pressing.

The freshly pressed bricks are hard inside the autoclaves at temperatures in an atmosphere of saturated steam with pressure; the hydro-thermal hardening process takes several hours which provokes a Silicate reaction on the surface of the sand gains which stimulates the desired hardening process.

10. By drawing reference to the allegations in the Orders-in-Original, Shri Raghavan Ramabadran would draw our attention to the reply filed by the Appellant wherein they have meticulously replied/explained their stance and hence, the allegations in the Orders-in-Original are bereft of any evidence. With regard to the invoices relied upon by the Commissioner, our attention was drawn to the reply that majority of the invoices contain clearly AAC blocks (SLB) which is not at all considered by the Original Authority which, according to him contain the correct classification. He would further contend that in any case when tariff entry is used in a scientific or a technical sense, the words used to understand a product in common parlance or commercial parlance cannot be used to interpret the tariff entry and, in this regard, he places reliance on a decision of Hon'ble Supreme Court in **Akbar Badruddin Jiwani Vs Collector**

of Customs – 1990 (47) ELT 161 (SC). He would also rely on an order of Delhi Tribunal in the case of **Sand Plast (India) Ltd. Vs CCE Delhi** - 2019 (24) G.S.T.L. 737 (Tri.-Del.) wherein, according to him, an almost similar issue is considered and the decision has been given in favour of the taxpayer.

11. Without prejudice to the above, he would also submit that the Revenue has not justified the invoking of extended period of limitation in its demand for the period April 2013 to July 2013 since nothing was suppressed and that there is not even a whisper about the same in the SCNs. He would thus pray for setting aside of the impugned orders and allow the Appeals.

12. *Per contra*, Shri M. Selvakumar learned Assistant Commissioner relied on the findings of the Original Authority. He invited our attention to the specific paragraphs in the impugned order wherein the Commissioner has after considering the arguments and explanation of the Appellant, given a very detailed and speaking order justifying the classification of bricks in question as 'Cement brick' under CETH 6810 1110 and

hence, the demand of differential excise duty is very much in order. He would accordingly pray for dismissing of the Appeals.

13. Having heard the rival contentions, we have carefully perused the documents placed on record. Heading 6810 refers to '*Articles of cement, of concrete or of artificial stone whether or not reinforced*'. At 6810 1110 against triple '-', "*Cement bricks*" is mentioned. This makes one believe that the predominant or essential ingredient of the brick is Cement. Against this, the claim of the Appellant is that the predominant and essential material they use are Sand & Lime and hence, there is a doubt regarding re-classification attempt at the very threshold. Further, the Central Excise Tariff as understood, is based on Harmonised System of Nomenclature, it is therefore essential to look at the HSN Notes and to follow the interpretative Rules for proper classification. Accordingly, the corresponding HSN Note for the Tariff Heading 6810 rates as under:

- a) *This heading also covers bricks, tiles and other sand lime article made from a pasty mixture of sand, lime and water; after pressure-moulding, these articles are steam-treated for several hours under high*

pressure in horizontal autoclaves, at a temperature of around 140 C. These products, which may be white or artificially coloured are used for much the same purposes as ordinary bricks, tiles, etc.,

- b) When lumps of quartz of various sizes are introduced into the mixture, artificial stone type products are obtained. Lightweight and porous sand-lime sheets for insulating purposes are also made by adding a metallic powder to the mixture, so that gases are given off; such sheets, however, are not pressure-moulded, but cast before insertion in the autoclave.*

14. When the product contains Water, Sand and Lime, then as per the above, the same is required to be classified under 6810; as per Rule 2(b) of GRI of the Tariff Schedule, any reference in the heading to a material or substance shall be taken to include a reference to mixture or combination of that material or substance with other materials or substance. Applying this, it may be possible that the mixture of Sand & Lime requires classification as 'SLB' under sub-heading 68101190 and hence, the same may stand out of or would not fit into the classification as

'Cement bricks' for the reason that the product in question is not a mixture of Sand & Cement or Lime & Cement but rather a mixture of Sand and Lime with Cement as additive. It is also a matter of record that this claim regarding the 'mixture' is undisputed.

15. Further, we find that the Commissioner has relied on the statement of competitors in the industry which, according to us is misplaced since they are not the experts in the field. We find that the Revenue has not denied the contentions of the Appellant regarding the manufacturing process and the fact that the machine for manufacture of AAC Block/Brick and SLB are one and the same, the same machinery is used in the mass production of SLB. Nomenclature of AAC Block making machine would not *ipso facto* mean that the same could not be used in the manufacture of SLB. Use of modern technology for ease of production would not make it a cement/concrete brick. Ideally, the Revenue should have taken up the issue by going a step further by getting at least final and conclusive report/s from the expert in the field instead of referring to incomplete reports, which do not lead us anywhere. This assumes relevance since it is the case of the Department

that the Appellant manufactured 'Concrete Bricks' and hence wanted to change the declared classification. There is also no examination as to the ingredients of Concrete brick *vis-à-vis* SLB. In any case, there being no evidence made available to justify the re-classification as 'Cement Brick/Block', we have to reject the Revenue's attempt to re-classify the goods in question under CETH 68101110 as 'Cement Brick'.

16. In view of the above discussions, we are of the *prima facie* view that what was manufactured by the Appellant is only SLB and hence, the denial of benefit of notification *supra* was uncalled for. We therefore do not approve the findings in the impugned orders and the attempted re-classification for which reason, we set aside the same.

17. Resultantly the Appeals stand allowed with consequential benefits, if any, as per law.

(Order pronounced in open court on 16.07.2025)

(M. AJIT KUMAR)
Member (Technical)

(P. DINESHA)
Member (Judicial)