IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH: KOLKATA

REGIONAL BENCH – COURT NO. 2

Excise Appeal No. 75993 of 2018

(Arising out of Order-in-Original No. 27/COMMR/CGST & CE/HWH/Adjn/2017-18 dated 26.12.2017 passed by the Commissioner of Central Tax, G.S.T. Howrah Commissionerate, M.S. Building, Custom House, 15/1, Strand Rd., Kolkata – 700 001)

M/s. Omkar Infracon Private Limited **: Appellant**
11, James Hickey Sarani, 1st Floor,
Kolkata – 700 069

VERSUS

Commissioner of Central Tax, G.S.T. and C.Ex., **: Respondent**
Howrah Commissionerate,
M.S. Building, Custom House, 15/1, Strand Rd.,
Kolkata – 700 001

WITH

Excise Appeal No. 75991 of 2018

(Arising out of Order-in-Original No. 27/COMMR/CGST & CE/HWH/Adjn/2017-18 dated 26.12.2017 passed by the Commissioner of Central Tax, G.S.T. Howrah Commissionerate, M.S. Building, Custom House, 15/1, Strand Rd., Kolkata – 700 001)

Sandeep Khandelia, Director, **: Appellant**
M/s. Omkar Infracon Private Limited
11, James Hickey Sarani, 1st Floor,
Kolkata – 700 069

VERSUS

Commissioner of Central Tax, G.S.T. and C.Ex., **: Respondent**
Howrah Commissionerate,
M.S. Building, Custom House, 15/1, Strand Rd.,
Kolkata – 700 001

AND

Excise Appeal No. 75992 of 2018

(Arising out of Order-in-Original No. 27/COMMR/CGST & CE/HWH/Adjn/2017-18 dated 26.12.2017 passed by the Commissioner of Central Tax, G.S.T. Howrah Commissionerate, M.S. Building, Custom House, 15/1, Strand Rd., Kolkata – 700 001)

Shankar Saraf, Director, **: Appellant**
M/s. Omkar Infracon Private Limited
11, James Hickey Sarani, 1st Floor,
Kolkata – 700 069

VERSUS

Commissioner of Central Tax, G.S.T. and C.Ex., **: Respondent**
Howrah Commissionerate,
M.S. Building, Custom House, 15/1, Strand Rd.,
Kolkata – 700 001

APPEARANCE:

Shri Samir Chakraborty, Senior Advocate,
Shri H.K. Pandey, Advocate,
Shri Abhijit Biswas, Advocate,
for the Appellant(s)

Shri Debapriya Sue, Authorized Representative,
For the Respondent

CORAM:

HON'BLE SHRI R. MURALIDHAR, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NOs. 77507-77509 / 2025

DATE OF HEARING: 25.09.2025

DATE OF DECISION: 26.09.2025

ORDER: [PER SHRI K. ANPAZHAKAN]

The captioned appeals are filed against the Order-in-Original No. 27/COMMR/CGST & CE/HWH/Adjn/2017-18 dated 26.12.2017 passed by the Ld. Commissioner of Central Tax, G.S.T. Howrah Commissionerate, M.S. Building, Custom House, 15/1, Strand Rd., Kolkata, wherein the Ld. Commissioner has confirmed a differential central excise duty demand of Rs.2,67,83,024/- against M/s. Omkar Infracon Private Limited (hereinafter referred to as the appellant no. 1 / appellant-company), along with interest thereon. The Ld. Commissioner also imposed a penalty of Rs.2,67,83,024/- upon the appellant no. 1 in terms of Section 11AC of the Central Excise Act, 1944 read with Rule 25 of the Central Excise Rules, 2002. Penalties, each of Rs.75.00 lakhs, were also imposed on Shri Sandeep Khandelia and Shri Shankar Saraf (hereinafter referred to as the appellant nos. 2 and 3 respectively), both of whom are directors of the appellant-company, in terms of Rule 26(1) of the said Rules read with Section 38A of the Act. Aggrieved against the confirmation of duty, interest and penalties, the appellants have filed these appeals.

2. The facts of the case are that during the period from April 1, 2013 to August 31, 2016, the appellant-company manufactured bricks falling under the Central Excise tariff heading 68159910 by availing the benefit of Exemption Notification No. 1/2011-CE dated March 1, 2011, as amended, upon satisfying the conditions laid down therein. Accordingly, the appellant cleared the said goods upon payment of concessional rate of duty in terms of the said notification.

2.1. Pursuant to an investigation initiated by the Anti Evasion Unit of the erstwhile Central Excise, Kolkata-II Commissionerate in March 2016, search operations were undertaken and, inter alia, statements of the directors and employees of the appellant-company were recorded under Section 14 of the Central excise Act.

2.2. Upon completion of the investigation, a Show Cause Notice dated 09.03.2017 was issued to the appellants alleging that the appellant no. 1 has wrongly named the goods manufactured by them as "Sand Lime Bricks/Broken Sand Lime Bricks" and wrongly availed the benefit of Exemption Notification No. 1/2011-CE dated March 1, 2011. In the Notice, it has been alleged that the actual nomenclature of the goods manufactured by the appellant is "Fly Ash Bricks" which is not eligible for the exemption as provided under the said notification. On the basis of the said allegation of misdeclaration, central excise duty amounting to Rs. 2,67,83,024/- (including education cess and secondary & higher education cess), has been demanded. The two directors of the company, viz. appellant nos. 2 and 3, were also made co-noticees and called upon to show cause as to why penalty under Rule 26(1) of the said Rules should not be imposed upon each of them.

2.3. On adjudication, the Ld. Commissioner, vide the impugned order herein, has confirmed the demand of central excise duty of Rs. 2,67,83,024/- along with interest and penalties. Aggrieved against the confirmation of duty, interest and penalties, the present appeals have been filed.

3. During the course of hearing, the appellants submitted that the Ld. Commissioner has proceeded on a patently erroneous premise that fly ash bricks and sand lime bricks are different products under the Central Excise Tariff. It is their stand that sand lime bricks is a type of fly ash bricks; the appellant submits that there is no tariff sub-heading in the Central Excise Tariff, including under Chapter 68 or 69 thereof, which provides classification of sand lime bricks as a tariff item in contradistinction to fly ash bricks; that it is because of this reason that the said notification, while exempting sand lime bricks thereunder, refers to such sand lime bricks being classifiable either under Chapter 68 or 69 of the Central Excise Tariff. The appellant points out that this the Ld. Commissioner completely failed to appreciate.

3.1. The appellants further submitted that the issue is no longer res integra, as this Tribunal has already decided the very same issue in favour of the appellant vide *Final Order Nos. 77257-77258/2025 dated 13.08.2025 in the case of Commissioner of C.G.S.T. & C.EX, Howrah v. M/s. Aum Bricks & Pavers Pvt. Ltd. & anr.,* wherein this Bench has held that the sand lime bricks is a type of fly ash bricks and both are classifiable under the Central Excise tariff heading 68159910 and the same are eligible for availing the benefit of Exemption Notification No. 1/2011-CE dated March 1, 2011.

3.2. Accordingly, the appellants prayed for setting aside the demands of central excise duty, along with interest, and the penalties imposed on them, as confirmed in the impugned order.

4. On the other hand, the Ld. Authorized Representative of the Revenue reiterated the findings in the impugned order.

5. Heard both sides and perused the appeal records.

6. We observe that the appellant-company manufactures sand lime bricks, which is a type of fly ash bricks. It is seen that both sand lime bricks and fly ash bricks are classifiable under the Chapter 68 only. We find that there is no other tariff sub-heading available in the Central Excise Tariff which provides classification of sand lime bricks. It is because of this reason that the said Notification No. 1/2011-CE dated March 1, 2011, while exempting sand lime bricks, refers to such sand lime bricks being classifiable either under Chapter 68 or 69 of the Central Excise Tariff. Thus, we find that the exemption under the said notification is available to sand lime bricks whether the same is classified under Chapter 68 or 69.

6.1. We also find the issue is no longer res integra, as this Tribunal has already decided the very same issue in favour of the appellants. While dismissing the appeal filed by the revenue, this Bench, in the case of *Commissioner of C.G.S.T. & C.EX, Howrah v. M/s. Aum Bricks & Pavers Pvt. Ltd. & anr vide Final Order*

Nos. 77257-77258 of 2025 dated 13.08.2025 in Excise Appeal No. 78203 of 2018 & anr., has held that the sand lime bricks is a type of fly ash bricks and both are classifiable under the Central Excise tariff heading 68159910 and the same are eligible for availing the benefit of Exemption Notification No. 1/2011-CE dated March 1, 2011. The relevant part of the above said decision has been reproduced below: -

> *"2. The Learned AR submits that the Respondent assessee has classified their goods under CET 6901 0010. Since the Bricks are made of 'fly ash', the same are classifiable under 68159910. Therefore, in view of the erroneous classification of the goods, the Respondent has been claiming exemption under Notification No. 01/2011-CX dated 01/03/2011, which is not permissible. The second appellant has deliberately classified the goods so as to claim the ineligible exemption. Therefore, he prays that the impugned Order may be set aside and the Revenue's appeals may be allowed.*
>
> *3. The Learned Counsel appearing on behalf of the Respondents submits that the Notification No. 01/2011-CE dated 01/03/2011 grants exemption for the bricks falling under Chapter 68 or Chapter 69. The description given therein is sand-lime bricks. There is no specification as to what should be the percentage of sand and lime etc. in order to avail the exemption. Therefore, he justifies the exemption granted under Notification No. 01/2011-CE dated 01/03/2011. He has also relied upon the decision of CESTAT, New Delhi in the case of Sand Plast (India) Ltd. Vs. Commissioner of Central Excise, Delhi-II-2019 (24) G.S.T.L. 737 (Tri.-Del.) In this case, the issue was as to whether the fly ash bricks would fall under CET 68159910 or not. Tribunal after going through the various rules of interpretation has concluded that the goods would fall under 68109990.*
>
> *4. We find that irrespective of as to whether the goods fall under Section 68 or 69, under both the Chapters 'bricks' are mentioned and the same are covered by the exemption granted by Notification No. 01/2011-CE dated 01/03/2011. Therefore, we do not find any reason to interfere with the considered decision of the Commissioner (Appeals). Accordingly, we dismiss both the appeals filed by the Revenue."*

6.2. Thus, by relying on the decision cited supra, we hold that the sand lime bricks manufactured by the appellant are classifiable under the Central Excise tariff heading 68159910 and the same are eligible for the benefit of Exemption Notification No. 1/2011-CE dated March 1, 2011. Accordingly, we hold that the demand of central excise duty of Rs. 2,67,83,024/- confirmed in the impugned order is not sustainable.

6.3. As the demand of duty is not sustained, the question of demanding interest or imposing penalty does not arise and hence, we set aside the same.

6.4. We also find that penalties, each of Rs.75.00 lakhs, have been imposed on the appellant nos. 2 and 3, who are Directors of the appellant-company / appellant no. 1, under Rule 26(1) of the said Rules read with Section 38A of the Act. As the offence alleged against them is not sustained, we hold that no penalty is imposable on them. Accordingly, we set aside the penalties imposed on the Directors of the appellant company, i.e., the appellant nos. 2 and 3 herein.

7. In view of the above findings, we set aside the impugned order and allow the appeals filed by the appellants, with consequential relief, if any, as per law.

(Order pronounced in the open court on **26.09.2025**)

Sd/-
(R. MURALIDHAR)
MEMBER (JUDICIAL)

Sd/-
(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd