

**IN THE CUSTOMS, EXCISE AND SERVICE TAX
APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI**

APPEAL NOS: E/1146 & 1183/2010

[Arising out of Order-in-Appeal No: PKS/10-11/BEL/2010 dated 23rd April 2010 passed by the Commissioner of Central Excise (Appeals), Mumbai – III.]

For approval and signature:

**Hon'ble Shri C J Mathew, Member (Technical)
Hon'ble Shri Ajay Sharma, Member (Judicial)**

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1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982? : Yes
 2. Whether it should be released under Rule 27 of CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? : Yes
 3. Whether Their Lordships wish to see the fair copy of the Order? : Seen
 4. Whether Order is to be circulated to the Departmental authorities? : Yes
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Commissioner of Central Excise
Belapur

... *Appellant*

versus

Super Tiles and Marbles Pvt Ltd
Subodh Mody

... *Respondents*

Appearance:

Shri Ajay Kumar, Additional Commissioner (AR) for appellants

Shri T Viswanathan and Ms Anjali Hirawat, Advocates for respondents

CORAM:

Hon'ble Shri C J Mathew, Member (Technical)
Hon'ble Shri Ajay Sharma, Member (Judicial)

Date of hearing: 28/12/2018
Date of decision: 28/12/2018

ORDER NO: A/88286-88287 / 2018

Per: C J Mathew

Appeals of Revenue lie against order-in-appeal no. PKS/10-11/BEL/2010 dated 23rd April 2010 of Commissioner of Central Excise (Appeals), Mumbai-III which has set aside the orders of the original authority for recovery of duty arising from classification of 'interlocking paver blocks' under heading no. 68101990 of the First Schedule to the Central Excise Tariff Act, 1985, and the consequent eligibility for concessional rate of duty under notification no. 10/2006-CE dated 1st March 2006. It is noted that the impugned order found in favour of the present respondents in the background of earlier decision of the Tribunal in their own matter.

2. Learned Authorised Representative argued at length on the non-applicability of the decision of the Tribunal that was relied upon in the impugned order by pointing out that, in another appeal, the Tribunal had remanded the matter back for fresh determination. He further contended that the decisions cited by Learned Counsel for respondents

had been erroneously relied upon by the first appellate authority on the premise of value as precedent even though in the decision referred to in his arguments, the discarding by the Tribunal had deprived that claim.

3. We, therefore, proceed to evaluate the applicability. In *Commissioner of Central Excise, Thane-II v. Conwood Pre-Fab Pvt Ltd [2009 (241) ELT 396 (Tri.-Mumbai)]*, the Tribunal had allowed the benefit of the said notification. Appeal of Revenue is pending before the Hon'ble High Court of Bombay. Therefore, it was not any doubt about classification that led the Tribunal to remand the matter back and the submission of Learned Authorised Representative on that score fails to be convincing. By all accounts, the issue of classification of the products manufactured by the appellant stands settled till, and if, set aside by the court competent to do so.

4. For this reason, we find no justification for interference with the orders of the first appellate authority. Appeals of Revenue are dismissed.

(Pronounced in Court)

(Ajay Sharma)
Member (Judicial)

(C J Mathew)
Member (Technical)