

भारत सरकार  
GOVERNMENT OF INDIA  
प्रधान मुख्य आसुत का कार्यालय  
OFFICE OF THE PRINCIPAL CHIEF COMMISSIONER  
केन्द्रीय वस्तु एवं सेवा कर , कोलकाता क्षेत्र  
CENTRAL GOODS AND SERVICES TAX AND CENTRAL EXCISE, KOLKATA ZONE  
केन्द्रीय वस्तु एवं सेवा कर भवन, दुसरा तल, 180, शांतिपल्ली, आर. बी. कनेक्टर, कोलकाता - 700 107  
GST Bhawan (2<sup>nd</sup> Floor), 180 Shanti Pally, R. B. Connector, Kolkata - 700 107  
Phone No. 033-2441-6797/6842; Fax No. 033- 2441-6834/6798

F. No. V (30)183/Pr. CCO/CGST&CX/RTI/Aug-19/Kol

Date: 19.08.2019

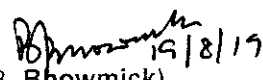
To  
The CPIO,  
Office of the Commissioner,  
CGST & CX, Howrah Commissionerate & Appeals-II Commissionerate.

Sub: RTI Applications both dated 09.08.2019 filed by Shri Atanu Majumder under Right to Information Act 2005 -reg.

Please find enclosed herewith an RTI application dated 09.08.2019 which has been received by the undersigned on 14.08.2019 and has subsequently been registered at this office vide Regn. No.13/RTI/CGST &CX/CC/ KOL/2019-20 dated 14.08.2019.

The information sought by the RTI applicant is in reference to an Order-in-Appeal passed by the Commissioner (Appeals-II), Kolkata setting aside the Order-in-Original that was passed by the Joint Commissioner, CGST & C.Ex, Howrah Commissionerate. Hence, the RTI application is being transferred to you under section 6 (3) of the RTI Act, 2005 with request to provide the requisite information directly to the Applicant.

Encl: As Above.

  
(B. Bhowmick)  
CPIO & Assitant Commissioner,  
CCO, Kolkata Zone

APPLICATION FOR SEEKING INFORMATION  
UNDER SECTION 6(1) OF THE RIGHT TO INFORMATION ACT, 2005

Date: 9<sup>th</sup> August, 2019

To  
The Respected Central Public Information Officer (CPIO),  
Office of the Principal Chief Commissioner of CGST & C.Ex., Kolkata ZONE,  
GST Bhawan; 180 Rajdanga Main Road; Shantipally,  
KOLKATA - 700 107

Dear Sir,

I am a citizen of India.

It is on record available as a matter of legal interest in general that Hon'ble COMMISSIONER (APPEALS-II), KOLKATA in the ORDER-IN-APPEAL No. 696-698 / HWH/ CE/ 2018-19 Dated 22.02.2019 has allowed the appeals against revenue & set aside the Order-in-Original No. 89/JC/CGST & CX/ HWH/ Adjn./ 2018 dated 23.10.2018 passed by the Joint Commissioner, CGST & C.Ex., Howrah Comm'te being void & illegal.

In this regard, copy of the said ORDER-IN-APPEAL Dated 22.02.2019 passed by the Hon'ble COMMISSIONER (APPEALS-II), KOLKATA is attached as 'ANNEXURE-A' for ready reference please.

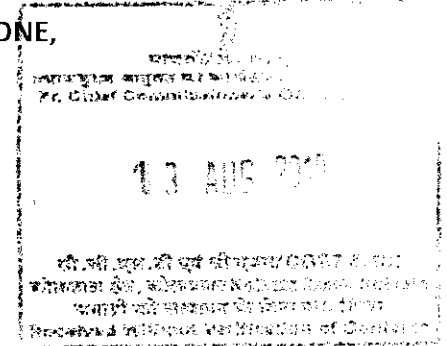
Now, reference to above, please provide the short information specified below:

Information required:

Please provide photo copies of the relevant file note-sheets of complete review action ACCEPTING / NOT ACCEPTING the subject decision i.e. the ORDER-IN-APPEAL No. 696-698 / HWH/ CE/ 2018-19 Dated 22.02.2019 passed by the Hon'ble Commissioner (Appeals-II), Kolkata as the case may be.

- To the best of my knowledge and belief, the above information does not relate to section 8 & 9 of the RTI Act, 2005 which are exempted from disclosure.
- Whether the information sought concern the life and liberty of a person? NO.

MOST URGENT  
Suppl (RTI)  
Pl. send copy to  
DC (Review) and  
collect the  
information/docs  
if at all  
available  
under RTI  
Act  
14/8



Suppl (RTI)  
The matter has been  
discussed today. Pl. also  
for the application to Hon'ble  
& Appeal-II Committee  
19/8

4. Details of fees paid: Fees of Rs. 10/- for the application plus fees of Rs. 40/- for documents – totaling to Rs. 50/- paid. Fees payment Document in this regard is also attached.
5. Additional fees for providing photocopies of the information, if any further required as per law, would be paid promptly on receipt of written direction from the Department in this regard please.

**Documents attached:**

- (i) Fees payment document &
- (ii) Copy of the ORDER-IN-APPEAL No. **696-698 / HWH/ CE/ 2018-19 Dated 22.02.2019** as above [ ANNEXURE-A].

*Atanu Majumdar*

ATANU MAJUMDAR

(Applicant)

Account Officer, Omkar Infracon Pvt Ltd.

11, James Hickey Sarani (Dacres Lane) ; 1<sup>st</sup> Floor,

Kolkata- 700 069 ; Contact telephone number: 033 2262-4441/42 ; 4060-5305

E-mail address : < atanu@omkarinfracon.com >

Recd on  
26/3/19



ANNEXURE - A

**GOVERNMENT OF INDIA**

**MINISTRY OF FINANCE: DEPARTMENT OF REVENUE**

**OFFICE OF THE COMMISSIONER OF CGST & C. EX., APPEALS-II COMMISSIONERATE, KOLKATA  
169, A. J. C. BOSE ROAD, BAMBOO VILLA, 3<sup>RD</sup> & 4<sup>TH</sup> FLOOR, KOLKATA - 700014.**

**Order-in-Appeal No. 696-698/HWH/CE/2018-19**

**Dated: - 22.02.2019**

[Passed by **Dr. N. K. Soren, Commissioner of CGST & Central Excise, Appeals - II Commissionerate, Kolkata** arising out of Order-in-Original No. 89/JC/CGST & CX/HWH/Adjn/2018 dated 23.10.2018 passed by the Joint Commissioner, CGST & Central Excise, Howrah Commissionerate].

**Name and Address of the Appellants:**

**Represented by**

1	M/s. Omkar Infracon Pvt. Ltd. Mouza & P.O. Barunda, Bagnan, Howrah - 711302	Shri P. K. Chattopadhyay, Consultant and Shri Partha Paul, Manager
2	Shri Sandeep Khandelia, Director of M/s. Omkar Infracon Pvt. Ltd., 11, James Hickey Sarani (Dacres Lane), 1 <sup>st</sup> Floor, Kolkata - 700069	
3	Shri Shankar Saraf, Director of M/s. Omkar Infracon Pvt. Ltd., 11, James Hickey Sarani (Dacres Lane), 1 <sup>st</sup> Floor, Kolkata-700069	

**Name and Address of the Respondents:**

**Represented by**

1	Joint Commissioner, CGST & Central Excise, Howrah Commissionerate	-----
2	Joint Commissioner, CGST & Central Excise, Howrah Commissionerate	
3	Joint Commissioner, CGST & Central Excise, Howrah Commissionerate	

**PREAMBLE**

**Any person deeming aggrieved by this Order may make:**

A revision Application under Sec.35EE of the CEA'44 to the Central Govt. and may address it to the Jt. Secretary, Revision Application, Govt. of India, Ministry of Finance, Department of Revenue, Hudco Vishala Bldg., 14, B-Wing, 6<sup>th</sup> Floor, Bhikaji Cama Place, New Delhi-110066 within three months from the date of the communication of Order-in-Appeal to the applicant if the issue related to the first proviso to Sub-Section (1) of Section 35B viz.

- loss of goods in transit from a factory to warehouse or to another factory or from a warehouse to another or during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse,
- Rebate of duty of excise on goods exported.
- Goods exported outside India (except to Nepal or



Bhutan)

without payment of duty:

The application shall be made in Form E.A.8 in duplicate and shall be verified in the manner as specified in Rule 9 read with Rule 10 of Central Excise (Appeals) Rules, 2001 and shall be accompanied by fee of:

- (i) Rupees two hundred where the amount of duty and interest demanded, fine or penalty levied by any C.Ex. Officer in the case which the application relates is one lakh rupees or less and
  - (ii) Rupees one thousand, where the amount of duty and interest demanded, fine or penalty levied by any C.Ex. Officer in case to which the application relates is more than one lakh rupees only in terms of sub-Section 3 of Sec.35EE of the CEA'44.
2. (a) In any other case, an appeal against this order shall lie before the Customs, Excise, and Service Tax Appellate Tribunal, Regional Bench at Kolkata, Bamboo Villa, 7<sup>th</sup> Floor, 169, A.J.C.Bose Road, Kolkata-700014, 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 which should be filed within three months from the date of communication of the order sought to be appealed against in terms of Sub-Sec. (b) of Sec.35B of the CEA'44 or section 86 of the Finance Act, 1994.
- (b) The appeal in the Appellant Tribunal should be filed in Form E.A.3 or ST-5, as the case may be, in quadruplicate and accompanied by four copies of the order appealed against (one of which shall be certified copy only) and four copies (at least one of which shall be certified copy only) also of the order of the Adjudicating Authority.
- (c) Under Section 35B(6), or section 86 of the Finance Act, 1994 the appeal should be accompanied by a fee of:-
- (i) Rs. 1,000/- (Rupees One thousand only) where the amount of duty demanded and penalty levied by any Central Excise Officer in the case to which the appeal is five Lakhs rupees or less.
  - (ii) Rs. 5,000/- (Rupees Five thousand only) where the amount of duty demanded and penalty levied by any Officer in the case to which the appeal is more than five Lakhs rupees but not exceeding fifty Lakhs.
  - (iii) Rs. 10,000/-- (Rupees Ten thousand only) where the amount of duty and penalty levied by any Central Excise Officer in the case to which the appeal relate is more than fifty Lakhs.

Fee should be paid through a crossed Bank Draft in favour of the Assistant Registrar of the Bench of the Tribunal on a branch of any nationalized Bank of the place where the Bench is situated and the demand draft shall be attached to form of an appeal.

- (d) The appeal should be presented to the Registrar or -the officer authorized on the behalf by the registrar, in this office of Customs, Excise, and Service Tax Appellate Tribunal or be sent by Registered post addressed to the Registrar or such other concerned officer.

3. One copy each of the appeal or application as the case may be and the order appealed against and the order of adjudicating authority shall also bear a Court Fee Stamp as prescribed under Schedule item 6 of the Court Fee Act, 1870, as amended.

4. Attention is invited to CESTAT (Procedure) Rules, 1982.



V(CX)2/XAP - 547/HWH/18  
V(CX)2/XAP - 549/HWH/18  
V(CX)2/XAP - 550/HWH/18

**1. Appellant: M/s. Omkar Infracon Pvt. Ltd., Mouza & P.O.  
Barunda, Bagnan, Howrah - 711 302.**

**Vs.**

**Respondent: Joint Commissioner of CGST & Central Excise,  
Howrah Commissionerate.**

**2. Appellant: Shri Sandeep Khandelia, Director of  
M/s. Omkar Infracon Pvt. Ltd., 11, James  
Hickey Sarani (Dacres Lane), 1st floor,  
Kolkata - 700 069.**

**Vs.**

**Respondent: Joint Commissioner of CGST & Central Excise,  
Howrah Commissionerate.**

**3. Appellant: Shri Shankar Saraf, Director of M/s. Omkar  
Infracon Pvt. Ltd., 11, James Hickey Sarani  
(Dacres Lane), 1st floor, Kolkata - 700 069.**

**Vs.**

**Respondent: Joint Commissioner of CGST & Central Excise,  
Howrah Commissionerate.**

1. The above cited appellants have filed appeal against Order-in-Original (in short OIO) No. 89/JC/CGST & CX/HWH/Adjn/2018 dated 23.10.2018 passed by the Joint Commissioner of CGST & Central Excise, Howrah Commissionerate. In terms of Section 36B of the Central Excise Act, 1944, M/s. Omkar Infracon Pvt. Ltd. [hereinafter referred to as the "Appellant No. 1"] have made pre - deposit of Rs.3,95,949/- being 7.5% of Central Excise duty involved in the instant case, vide GAR - 7 Challan No. 50005 dated 11.12.2018, Shri Sandeep Khandelia, Director of M/s. Omkar Infracon Pvt. Ltd. [hereinafter referred to as the "Appellant No. 2"] have made pre - deposit of Rs.75,000/- being 7.5% of penalty imposed, vide GAR - 7 Challan No. 50006 dated 11.12.2018 and Shri Shankar Saraf, Director of M/s. Omkar Infracon Pvt. Ltd. [hereinafter referred to as the "Appellant No. 3"] have also made pre - deposit of Rs.75,000/- being 7.5% of penalty imposed, vide GAR - 7 Challan No. 50007 dated 11.12.2018. Since all the appeals pertain to the same OIO, I am inclined to take up all the 03 (three) appeals for decision on merit, vide a common Order.



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2. The Appellant No. 1 is registered with the Department for the manufacture of Fly Ash Bricks. The Department had observed that they had manufactured and cleared the impugned goods by wrongly availing the benefit of *Notification No. 01/2011 - CE dated 01.03.2011 (Sl. No. 78)* during the period from 01.09.2016 to 30.06.2017 by describing the impugned goods as 'Sand Lime Bricks/Broken Sand Lime Bricks', resulting in evasion of Central Excise duty totaling to Rs.52,79,308/- and consequent contravention of the provisions of Rule 4 read with Rules 6, 8, 11 and 12 of the Central Excise Rules, 2002 read with *Notification No. 01/2011 - CE dated 01.03.2011*. Accordingly, Show Cause Notice was issued to them for recovery of Central Excise duty totaling to Rs.52,79,308/- from the Appellant No. 1 along with appropriate interest and imposition of penalty.
3. After considering the submissions, the lower authority confirmed the subject demand of Rs.52,79,308/- and ordered for recovery of the same from the Appellant No. 1 along with appropriate interest. Penalty of Rs.52,79,308/- was also imposed on the Appellant No. 1 while penalty of Rs.10,00,000/- each was imposed on both the Appellant No. 2 and the Appellant No. 3. Aggrieved, the instant appeals were filed.
4. In their relevant grounds of appeal, the Appellant No. 1 has *inter alia*, contended that:-
  - (i) When there is no dispute of the fact that Sand as predominant major input (more than 50% by weight) and required quantity of Lime were used in the making of the bricks in question throughout with use of some additives like cement that again contains Lime, plus use of some minor percentage of Fly Ash compared to Sand in addition as per prevailing recommended practice in the industry to make Sand Lime Bricks - the lower authority has totally erred in holding that the bricks in question were 'Fly Ash Bricks' and not 'Sand Lime Bricks'. Such arbitrary conclusion has been arrived at without even any Laboratory Test or appreciation of the facts on record. On the contrary, they had justified the bricks to be 'Sand Lime Bricks' in all possible ways including production of Certificate from a qualified Chartered Engineer as well as furnishing of Chemical Test Report dated 11.09.2013 from National Test House (Eastern Region). None of the documents has been disputed by the Ld. Joint Commissioner in his impugned OIO. Further, the adjudicating authority misinterpreted the *Notification No. 01/2011 - CE dated 01.03.2011* to deny the benefit. This is because the lower authority erred when he failed to appreciate that they had acted fully in terms of the said Notification which granted concessional rate of duty for the 'Sand Lime Bricks', and they manufactured using Sand and Lime as raw materials all through from April, 2013 up to the material period of dispute and cleared the same in terms of *Notification No. 01/2011*.
  - (ii) The lower authority failed to appreciate:-
    - the legal position that *Notification No. 01/2011 - CE* had allowed the concessional rate of duty on 'Sand Lime Bricks' under Sl. No. 78 contained therein which could fall under Chapters 68 or 69 of the first schedule to the Central Excise Tariff Act;



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- their bricks being not Fly Ash Bricks but Sand Lime Bricks in the making of which use of Sand and Lime has not been denied. So classification of bricks - whether the bricks would be classified under this sub-heading or that sub-heading of the two Chapters 68 or 69 was never relevant for denying the benefit provided under Notification No. 01/2011;
- the condition of the benefit being non-availment of any Cenvat credit in respect of the inputs/input services used in making the said Sand Lime Bricks, was duly fulfilled by them and this has not been disputed;
- the bricks in question were already confirmed and certified by competent authorities justifying that the same were Sand Lime Bricks and were not Fly Ash Bricks proper in terms of Govt. of India's stand notified through the Environment & Forest Ministry in 2009, which was relied upon by the Chartered Engineer whose Certificate was adduced to the lower authority before adjudication.

So denial of applicability of the Notification in their case is devoid of any legal support.

- (iii) The lower authority has erred in not appreciating that the concessional duty paid by them within the material period under Notification No. 01/2011 - CE dated 01.03.2011 is legal, valid and upon due satisfaction of the conditions laid down in the said Notification. So there was no short paid duty which stands payable by them on the Sand Lime Bricks manufactured and cleared as 'Sand Lime (Fly Ash) Bricks' during the material period from their factory.
- (iv) In absence of any specific description and classification of Sand Lime Bricks in the Central Excise Tariff, they cleared the Sand Lime Bricks (containing some minor portion of Fly Ash compared to Sand) as Sand Lime (Fly Ash) Bricks with sub-heading 68 as the lower authority has erred in not appreciating that the SCN was issued on a totally erroneous premise that Fly Ash Bricks and Sand Lime Bricks are different products under the Central Excise Tariff. It was also not indicated either in the SCN or in the OIO as to which sub-heading of Chapters 68 or 69 of the Central Excise Tariff, 'Sand Lime Bricks' was to be classified. In fact, there is no tariff sub-heading in the Central Excise Tariff, including Chapter 68 or 69 thereof, which provides classification of Sand Lime Bricks as a tariff item in contradiction to Fly Ash Bricks which is classifiable under Chapter sub-heading 6815 99 10. This is because of the fact, as evident from commercial and/or technical literatures on the subject, Sand Lime Bricks is a type of Fly Ash Bricks. 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.
- (v) The Joint Commissioner has erred in not appreciating the position of settled and well known industry norms that Fly Ash Bricks are of the following types:-
- Clay Fly Ash Bricks,
  - Fly Ash - Sand Lime Bricks,
  - Cold Bonded Lightweight Fly Ash Bricks, Blocks and Tiles, and
  - Flux Bonded Fly Ash Bricks, Blocks and Tiles.



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Out of the said four types of Fly Ash Bricks, exemption under the said Notification has been granted to the extent contained therein in respect of "Fly Ash - Sand Lime Bricks" only. Copies of documents evidencing the same were submitted to the Joint Commissioner. They had also submitted an independent Chartered Engineer's Certificate confirming that their bricks were not Fly Ash Bricks proper. The said Certificate, having not been disputed by the Department, was required to be given due weightage but the same has not been so treated without assigning any reason.

- (vi) The adjudicating authority has erred in not appreciating the fact that they could not be denied benefit under the said Notification in respect of the said goods i.e. Sand Lime Bricks manufactured and cleared by them. It was required to be appreciated that Fly Ash Bricks classified under TSH 6815 99 10 is the genus of which Sand Lime Bricks is a species, which has been exclusively granted benefit under the said Notification. The contrary view taken in the OIO is bereft of any merit. As such, the purported allegation that Fly Ash Bricks covered by the Heading 6815 is not covered by the exemption under the said Notification is incorrect.
- (vii) The proceeding and confirming a demand proposed on such *ex-facie* erroneous premises of allegations under the subject SCN dated 27.04.2018 which was a mere periodical legacy of the earlier SCN dated 08.03.2017 only, was nothing but an attempt to sustain a misconceived and baseless SCN and wrongful demand of duty and other proposals contained therein. As an adjudicator, it was incumbent upon the Joint Commissioner to appreciate that no Laboratory test had been carried out nor was any expert's opinion sought or relied upon by Department to ascertain whether the said goods should be treated as Fly Ash Bricks to nullify the benefit provided by the Notification. So it is incomprehensible as to how the Ld. Lower authority could still arrive at the conclusion that the said goods were not Sand Lime Bricks but Fly Ash Bricks. It is evident that there is no evidence disclosed in the SCN or in the OIO as per the settled principles regarding classification of goods, to establish that the said goods were not Sand Lime Bricks, a type of Fly Ash Bricks, as known in common/trade parlance. In the absence of the tests enumerated by the Department having been carried out, the classification of the said goods by them as Sand Lime Bricks should be accepted and consequently the benefit under the said Notification cannot be denied in respect of the same.
- (viii) The onus is on the Department when it challenges the correctness of a classification made by an assessee, to establish its contention regarding the alleged correct classification of the product by legally valid and tenable evidence including the tests as required. This burden in the instant case has not been discharged by Department. Even the SCN does not contain any corroborative evidence. This is because no such corroborative evidence existed.
- (ix) The allegation that small quantity of lime was used and thus the subject bricks were not Sand Lime Bricks have been framed without appreciating that binding strength of lime did not rely upon the quantity used but the quality of the lime. Similar is the case with the purported allegation of the notice that use of cement



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/ in the manufacture of the said goods forestalled that the subject bricks were Sand Lime Bricks is also not based on any material or evidence whatsoever. It has not been appreciated that cement contains high percentage of limestone which contains lime. Technical literature and dictionaries clearly state the same. The untenability of the notice would be evident from the understanding of the Department that Fly Ash is not an ingredient of Sand Lime Bricks and use of Fly Ash itself established that the said goods are Fly Ash Bricks and not Sand Lime Bricks. This type of charge is *ex-facie* contrary to IS 4139-1989. It is specifically stated therein that the revision of the said Standard in 2004 was undertaken "to allow the use of Fly Ash" in the manufacture of Sand Lime Bricks.

- (x) The Ld. Joint Commissioner has not denied or disputed any of the records including Certificate of the Chartered Engineer. Yet he has compared a National Test House Report of 11.09.2015 with 3CA for F.Y. 2016 - 17 and has made a conclusion that there was no consumption of Aluminium Oxide ( $Al_2O_3$ ) in 3CA although the same was shown as 16.70% by mass in the bricks as shown in Test Report and thus the bricks in question was not Sand Lime Bricks but Fly Ash Bricks. The lower authority failed to appreciate that Aluminium Oxide ( $Al_2O_3$ ) was found as an ingredient of Sand Lime Bricks when the brick was analyzed under the chemical test of the brick matrix - separate procurement and consumption of such ingredients other than the required raw materials was not required. If water contained in a substance is chemically tested/analyzed, we get Hydrogen and Oxygen because Water is  $H_2O$ . So one need not require to procure and consume Hydrogen and Oxygen separately for use of water contained in the final goods which has been chemically tested. The said finding of the lower authority is thus not applicable and/or not relevant in the denial of the concessional rate available for the bricks under the said Notification.
- (xi) It was incumbent upon the lower authority to consider the aspect of cum-duty price and rework the alleged differential short duty paid excise duty as it is an undisputed fact that the assessable value of the said goods, as declared in the invoices, include the excise duty element too. That the OIO has been issued without application of mind is further evident from the fact that the demand is based on incorrect appreciation of the settled principles in this regard as well as ignoring the provisions of Section 12A and/or 12B of the Act.
- (xii) Being an unjustified demand especially where fresh classification dispute is a debatable issue, there can be no imposition of penalty upon them in this case. On the same premises, where demand itself is untenable, imposing of interest also stands unsustainable.
- (xiii) The Notification No. 01/2011 - CE allowed concessional rate of CE duty on Sand Lime Bricks of any Chapter 68 or 69 without any specific classification as regards its sub-heading of the CE Tariff. The CE Tariff never had any specific entry in it for Sand Lime Bricks and this fact stands admitted in Para 5.3 of the findings in the impugned OIO. The Notification has neither specified nor banned use of minor other additives required in making Sand Lime Bricks. So when use of Sand and Lime in making the Sand Lime Bricks remains undisputed, denial of the benefit under the said Notification is patently bad and illegal.



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5. In their grounds of appeal, which are similar, the Appellant No. 2 and Appellant No. 3 have *inter alia*, contended that:-

- (a) In total absence of any proposal of any penal action against them in the subject SCN dated 27.04.2018 and/or when no specific direction was given to them to show cause as to why some proposed penalty should not be considered from imposition on them, imposition of penalty under the subject OIO is patently *erroneous and bad in law*.
- (b) They had explained with facts evident on records too as to why the Sand Lime Bricks were lawfully cleared and supplied to buyers at the concessional rate of duty in terms of Notification No. 01/2011 - CE. In such an event, where there was no lack of transparency in the explanations/depositions put forth by them and where the classification dispute on Sand Lime Bricks was dragged into litigation afresh by Kolkata Tribunal (Hawrah Comm'ee) in departure from the Department's earlier stand, the lower authority has failed to appreciate that question of imposing personal penalty on a debatable issue does not arise under settled principle of law.
- (c) When there is no dispute about the fact that Sand as predominant major input (more than 50% by weight) and required quantity of Lime were used in the making of the bricks in question throughout the material period and when the lower authority had the National Test House (Eastern Region) Report dated 11.09.2013 confirming that Sand and Lime were used and present in making the subject bricks which were found as (Silicon) and (Calcium Oxide) as ingredients in the Laboratory Test certified by the said Govt. laboratory as well as Certificate dated 11.10.2017 by a qualified Chartered Engineer had confirmed as to why and how the bricks in question were Sand Lime Bricks, the Ld. Joint Commissioner should have appreciated that they did not have any malafide intent for which penalty could be imposed.
- (d) None of the above two confirmatory certifications supporting their stand has been disputed by the Ld. Joint Commissioner. Yet in contradiction of his stand, he traversed some extraneous route to whimsically deny the benefit to the Company and has even imposed penalty upon them.
- (e) Personal penalty has been imposed on them based on a purported demand confirmed against the Company. But there being no justified cause of demand against the Company, and in absence of any material justifying any wrongful action on their part especially where fresh classification dispute dragged here had been a debatable issue, there can be no imposition of penalty upon them in the instant case.

6. Shri P. K. Chattopadhyay, Consultant and Shri Partha Paul, Manager appeared on behalf of all the three appellants, during the course of Personal Hearing, and reiterated the grounds of appeal. They also filed a written submission in support of their contentions. They also submitted photocopies of Test Certificate from National Test House as well as Chartered Engineer's Certificate in this context. They further claimed that a similar case has already been decided by Commissioner (Appeals) vide Nos. 258 - 259/HWH/CE/2018 - 19 dated 31.08.2018.



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None appeared on behalf of the respondent.

7. I have carefully gone through the impugned OIO dated 23.10.2018 and have also perused the records of the case.
8. I find that the impugned demand has been raised on the premise that the Appellant No. 1 had manufactured and removed "Fly Ash Bricks" from their factory and resorted to availment of benefit of concessional rate of payment of duty as provided in Notification No. 01/2011 - CE dated 01.03.2011 by describing the impugned goods as "Sand Lime Bricks" resulting in short-payment of Central Excise duty during the material period.
9. I find that the lower authority has admitted at Para 5.3 of the impugned OIO that "Fly Ash Bricks" has been classified under TSH 6815 99 10 of the Central Excise Tariff Act, 1985 whereas "Sand Lime Bricks" does not find any mention in the Central Excise Tariff Act. It has also been admitted that only "Sand Lime Bricks" have been exempted from payment of Central Excise duty against Sl. No. 78 of Notification No. 01/2011 - CE dated 01.03.2011. I also find that the lower authority has admitted at Para 5.4 of the impugned OIO that "Sand Lime Bricks" also known as Calcium Silicate Bricks are covered by ISI Specification 4139 - 1989. It has also been admitted by the lower authority at Para 5.5.1 that "Fly Ash Bricks" are covered by ISI Specification 12894 - 2002.
10. I find that the Hon'ble Tribunal (Principal Bench) has observed at Paras 6 and 7 in the case of *Rajesh Gupta Vs. Commissioner of Central Excise, Delhi - II* [2015 (319) E.L.T. 805 (Tri. - Del.)] that -

"6. There is no dispute that sand lime bricks made from sand and lime and also known as calcium silicate bricks are covered by ISI specification 4139 - 1989 and are classifiable under Heading 6810 99 90 and the Heading 6815 99 10 specifically covers "bricks and tiles of fly ash." The exemption Notification No. 5/06-C.E. (Sl. No. 8) and 6/06-C.E., dated 1-3-2006 (Sl. No. 8) covered "sand lime bricks of Chapter 68 or 69" and prescribed nil rate of duty. W.e.f. 1-3-2011 by Notification No. 1/11-C.E., the rate of duty for sand lime of Chapter 68 or 69 became 1%. The fly ash bricks covered by heading 6815 are not covered for exemption under any notification. The point of dispute in this case is as to whether bricks manufactured by the appellant are sand lime bricks covered by Heading 6810 and are eligible the Notification No. 5/06-C.E., and 6/06-C.E., till 28-2-2011 and would attract 1% duty w.e.f. 1-3-2011 or whether the same are classifiable under Heading 6815 and accordingly not eligible for any exemption..... From ISI Standard IS 4139- 1989 for sand lime bricks, it is seen that these bricks, also called calcium silicate bricks, they derive their strength from formation of calcium silicate hydrates in crystallized form by the reaction of hydrated lime with active siliceous material and the materials such as ground sand containing mostly quartz, crystallize form of silicate react slowly and require prolonged autoclaving at elevated temperature and pressure of steam. These sand lime bricks are



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supposed to have certain physical characteristics as mentioned in Paras 7.1 and 7.2 of the ISI Standard. The fly ash bricks on the other hand are covered by ISI Standard IS 12894 - 2002 pertaining to pulverized fuel ash lime bricks. As per the forward to IS : 12894 - 2002, pulverized fuel ash lime bricks are obtained from the materials consisting of pulverized fuel in major quantity, lime and an accelerator acting as a catalyst, and pulverized fuel ash lime bricks are generally manufactured by inter-grinding or blending various raw materials which are moulded into bricks and are subjected to curing different temperatures and pressures and that pulverized fuel ash reacts with lime in presence of moisture to form calcium silicate hydrate which is a binder material and thus pulverized fuel ash lime bricks are a chemically bonded bricks. In terms of Paras 7.1, 7.2, 7.3 and 7.4 of the ISI specification IS 12894 - 2002 the fly ash bricks are supposed to have certain physical characteristics with regard to their comprehensive strength, drying shrinkage, efflorescence and water absorption.

7. In our order to prima facie view, when in the Central Excise Tariff there is no definition of a term in a tariff entry, its meaning as understood in the commercial parlance or trade parlance has to be adopted and for this purpose, one has to rely on the how the product is described in the ISI Standard, if any, for the same. In the present case no test has been carried out to ascertain as to whether the bricks, in question, conform to ISI standards for fly ash bricks or whether the same conform to the ISI Standard for sand lime bricks. In absence of such test, in our prima facie view it would not be correct to say that the bricks, in question, are fly ash bricks covered by Heading 6815."

11. I find that the ratio of the above cited judicial pronouncement is squarely applicable to the instant case. I also find that the Appellant No. 1 has furnished before me copies of Test Certificate dated 31.05.2017 issued by the National Test House (Eastern Region), Kolkata as well as a Chartered Engineer's Certificate dated 11.10.2017 in support of their contention that the bricks manufactured and cleared by them are "Sand Lime Bricks" and not "Fly Ash Bricks" as contended by Revenue. In addition, they have also submitted sample copies of Bills evidencing procurement of Sand and Lime by them in their factory for the purpose of manufacturing of "Sand Lime Bricks".

12. I find that no evidence has been furnished before me by Revenue to rebut the claim of the Appellant No. 1 that Sand and Lime which had been received by them in their factory premises had not been used in the manufacture of "Sand Lime Bricks". No cogent evidence has been furnished before me by Revenue in support of the allegation that the bricks manufactured by the Appellant No. 1 are actually "Fly Ash Bricks" instead of "Sand Lime Bricks" as claimed by them.

13. I find that the Appellant had submitted a Test Certificate dated 26.11.2013 issued by the National Test House (Eastern Region), Kolkata before the lower authority along with a Chartered Engineer's Certificate dated 11.10.2017 in the instant case, in support of their contention that they actually manufacture "Sand Lime Bricks". I find that the lower authority has proceeded to hold that the bricks manufactured and



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cleared by the Appellant No. 1 during the material period by observing at Paras 5.7 and 5.7.1 of the impugned OIO that -

- ✓ Although the Test Report of National Test House (Eastern Region), Kolkata shows that the bricks manufactured by the Appellant No. 1 constitutes Aluminium Oxide ( $Al_2O_3$ ), yet the details of raw materials consumed by them and reflected in their relevant 3CA Return pertaining to F.Y. 2016 - 17 shows no consumption of Aluminium Oxide ( $Al_2O_3$ ), which proves that the bricks manufactured by the Appellant No. 1 are actually "Fly Ash Bricks" and not "Sand Lime Bricks" as claimed by them.
- ✓ It has been stated by the Appellant No. 1 that they use Cement to manufacture the bricks, which proves that the said bricks derive their binding strength from cement and thus had the nature of Fly Ash Bricks since cement has very little role in "Sand Lime Bricks" as the comprehensive strength is derived from lime.
- ✓ Fly Ash has been used in the bricks manufactured by the Appellant No. 1 which again proves that the said bricks as actually "Fly Ash Bricks" and not "Sand Lime Bricks" as claimed by them.

14. I find that the fact of Sand/Silicon (as  $SiO_2$ ) being present to the extent of 58.84% in the bricks manufactured by the Appellant No. 1 and reflected in the Test Report dated 11.09.2013 of National Test House (Eastern Region), Kolkata has not been disputed by Revenue. That Sand/Silica comprises the main constituent of the bricks in question is therefore not in dispute. It is not the case of Revenue that Aluminium Oxide ( $Al_2O_3$ ) is not permitted to be used in the bricks being manufactured by the Appellant No. 1 more so when IS 4139 - 1989 pertaining to "Sand Lime Bricks" also has not placed any bar on such usage. I find that the lower authority has stated at Para 5.7.1 of the impugned OIO that the Appellant No. 1 has admitted that they use Cement in the bricks manufactured by them. That Aluminium Oxide ( $Al_2O_3$ ) along with Calcium Oxide (CaO) is a constituent of Cement cannot be denied by Revenue. The presence of both Calcium Oxide (CaO) as well as Aluminium Oxide ( $Al_2O_3$ ) in the bricks manufactured by the Appellant No. 1 is also confirmed by the said Test Report dated 11.09.2013 and the same has not been disputed by Revenue. I find that no cogent documentary evidence has been placed before me by Revenue that either Calcium Oxide (CaO) or Aluminium Oxide ( $Al_2O_3$ ) has been procured by the Appellant No. 1 from the market for the purpose of manufacture of the said bricks. Thus it can safely be concluded that the said Aluminium Oxide ( $Al_2O_3$ ) found in the bricks in question is nothing but an ingredient of Cement that has been used for manufacturing such bricks, and such usage of Cement is also corroborated by the figures pertaining to consumption of Cement as reflected by the Appellant No. 1 in their relevant 3CA Return, which too has not been disputed by Revenue. I also find that the Test Certificate dated 31.05.2017 as furnished before me by the Appellant No. 1 during the course of Personal Hearing also shows that the presence of Silica to be 59.86% by mass that proves Sand is the main constituent of the bricks manufactured by the Appellant No. 1, which in turn implies that the said bricks are indeed "Sand Lime Bricks". It is not the case of Revenue that the bricks being



manufactured by the Appellant No. 1 had been placed for requisite testing by them before an independent and reliable testing agency to support their contention that the bricks in question fall under the category of "Fly Ash Bricks" and not "Sand Lime Bricks". In absence of a conclusive testing report to prove that usage of Aluminium Oxide ( $Al_2O_3$ ) in bricks would render the same to be "Fly Ash Bricks", I find force in the contention of the Appellant No. 1 that they manufacture "Sand Lime Bricks" more so when the aspect of main ingredient of bricks (in this case, Silica/Sand) deciding the nature of the same, has not been disputed by Revenue. Hence, the contention of Revenue that the usage of Aluminium Oxide ( $Al_2O_3$ ) by the Appellant No. 1 in the bricks manufactured by them has resulted in classifying the same as "Fly Ash Bricks" is therefore not tenable.

15. I find that the Appellant No. 1 has admitted that they had been using Cement to manufacture the bricks in their factory. That Cement usage for manufacture of "Sand Lime Bricks" is a new industrial concept developed with the intent to use the binding property of Cement to advance the process of strength forming reactions while the mixture of sand, lime and water is still inside the compactor, cannot be denied by Revenue. As such, the observation of the lower authority at Para 5.7.1 of the impugned OIO that cement has very little role in the "Sand Lime Bricks" is not proper. I also find that no cogent evidence has been placed before me by Revenue to support their contention that usage of Cement in the bricks by the Appellant No. 1 itself qualifies that the said bricks are "Fly Ash Bricks" and not "Sand Lime Bricks" more so when the fact that the property of the said bricks being determined by Sand, the prime constituent of the same is not in dispute. In absence of any cogent and corroborative evidence to buttress the contention of Revenue in this context, I find force in the contention of the Appellant No. 1 that the bricks manufactured by them are actually "Sand Lime Bricks" and not "Fly Ash Bricks".

16. I find that the lower authority has observed that the usage of Fly Ash by the Appellant No. 1 in the bricks itself proves that the bricks manufactured by them are "Fly Ash Bricks". I find that the Appellant No. 1 has disputed the contention of Revenue by claiming that such contention is not in tune with the provisions of IS 4139-1989 pertaining to "Sand Lime Bricks" or "Calcium Silicate Bricks". Scrutiny of the relevant extract of the said IS 4139-1989 as amended in the year 2004, revealed that the same has categorically stated that -

*"Calcium silicate bricks derive their strength from the formation of calcium silicate hydrates in crystallized form by the reaction of hydrated lime with active siliceous materials. Such active materials include finely ground sand/siliceous rock and fly ash. The chemical reaction leading to formation of calcium silicate hydrates (and calcium aluminates in case of addition of fly ash) are carried out under autoclaving at elevated temperature and pressure of steam. Materials, such as, ground sand containing mostly quartz, the crystalline form of silica, react rather slowly and require prolonged autoclaving at high steam pressure. Limited quantity of fly ash may be used in the*



*Handwritten signature or mark.*



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It is clearly averred from the above specification as mandated by the Bureau of Indian Standards that usage of fly ash is permitted in "Sand Lime Bricks". Such legal provisions cannot be denied by Revenue.

I also find that the Appellant No. 1 has contended that Notification dated 03.11.2009 issued by the Ministry of Environment and Forests has specifically mandated that the content of Fly Ash in "Fly Ash Bricks" have to be minimum 50% by weight of total input materials. Scrutiny of the said Notification revealed that Para 2(1C) of the said Notification states that -

*"Minimum fly ash content for building materials or products to qualify as "fly ash based products" category shall be as given in the Table I below:*

Table I

Serial Number	Building Materials or Products	Minimum % of fly ash by weight
(1)	(2)	(3)
1.	Fly ash bricks, blocks, tiles, etc. made with fly ash, lime, gypsum, sand, stone dust etc. (without clay).	50% of total input materials.

It is clearly averred from the above provisions of Notification dated 03.11.2009 that it has indeed been specified therein that "Fly Ash Bricks" must contain minimum 50% by weight of total materials used. Such legal provisions cannot be denied by Revenue.

17. In view of the above cited legal provisions, the observation of the lower authority at Para 5.7.1 of the impugned OIO that Fly Ash is not an ingredient of "Sand Lime Bricks" is not proper more so when the fact that the bricks manufactured by the Appellant No. 1 in the instant case containing more than 50% by weight of total materials used has not been disputed by Revenue. Since the impugned bricks contain less than the mandated 50% by weight of total materials used, the contention of Revenue that the bricks manufactured by the Appellant No. 1 are "Fly Ash Bricks" is not tenable.

18. It is thus clear from the discussions above that the bricks manufactured by the Appellant No. 1 are undoubtedly "Sand Lime Bricks". Now I would come to the aspect of eligibility of availment of benefit of Notification No. 01/2011 - CE dated 01.03.2011 by the Appellant No. 1 in the instant case. For the sake of clarity, I prefer to reproduce below the provisions of Notification No. 01/2011 - CE ibid as prevalent during the material period:-

**"Effective rate of duty of 2% for specified goods when no Cenvat credit on inputs or input services availed. - In exercise of the powers conferred by sub-section (1) of section 5A of the Central Excise Act, 1944 (1 of 1944), the Central Government, on being satisfied that it is necessary in the public interest so to do,**



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hereby exempts the excisable goods of the description specified in column (3) of the Table below and falling under Chapter, Heading, sub-heading or tariff item of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), specified in the corresponding entry in column (2) of the said Table, from so much of the duty of excise leviable thereon under the said Central Excise Act, as is in excess of the amount calculated at the rate of 2% ad valorem:

Provided that the said excisable goods are manufactured from inputs or by utilizing input services on which appropriate duty of excise leviable under leviable under the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) or additional duty of customs under section 3 of the Customs Tariff Act, 1975 (51 of 1975) or service tax under section 66B of the Finance Act, 1994 (32 of 1994) has been paid and no credit of such excise duty or additional duty of customs on inputs or service tax on input services has been taken by the manufacturer of such goods (and not the buyer of such goods), under the provisions of the CENVAT Credit Rules, 2004.

Explanation. - For the purposes of this notification, appropriate duty or appropriate additional duty or appropriate service tax includes nil duty or nil service tax or concessional service tax, whether or not read with any relevant exemption notification for the time being in force.

TABLE

S. No.	Chapter or heading or sub-heading or tariff item of the First Schedule	Description of the excisable goods
(1)	(2)	(3)
78	68 or 69	Sand lime bricks

19. It is clearly averred from the above provisions of Notification No. 01/2011 - CE *ibid* that "Sand Lime Bricks" has been categorically mentioned against Sl. No. 78 of the said Notification for being eligible for concessional payment of Central Excise duty @2% adv. It is also mentioned that the said "Sand Lime Bricks" need not be classified under any particular sub-heading of the Central Excise Tariff Act, 1985. Rather they are only required to be classified either under Chapter 68 or under Chapter 69 of the said Tariff Act. In this case, I find that the Appellant No. 1 has classified their manufactured bricks i.e. "Sand Lime Bricks" under TSH 6815 99 10 which pertains to "Fly Ash Bricks" in the Central Excise Tariff Act, 1985. However, it is clear from the discussions in the foregoing paragraphs that the bricks manufactured by the Appellant No. 1 are actually "Sand Lime Bricks" and not "Fly Ash Bricks". Since "Sand Lime Bricks" do not find any mention in the Central Excise Tariff Act, 1985 despite the fact that "Sand Lime Bricks" have been categorically specified in Notification 01/2011 - CE *supra* for being eligible for concessional duty, it can safely be ascertained that the Appellant No. 1 has resorted to classifying their "Sand Lime Bricks" under TSH 6815 99 10 pertaining to "Fly Ash Bricks" for they were unable to classify them under any other TSH of Chapters 68 or 69 of the Tariff Act even though



they were eligible for availing the benefit of concessional payment of Central Excise duty as enshrined in *Notification No. 01/2011 - CE dated 01.03.2011*. It is not the case of Revenue that the Appellant No. 1 has resorted to availment of the benefit of Cenvat credit on either inputs or input services on the various raw materials used by them for manufacturing the impugned "Sand Lime Bricks" in their factory during the material period. Accordingly, I am of the considerate opinion that the Appellant No. 1 has rightly availed the benefit of *Notification 01/2011 - CE supra* since they have satisfied all the conditions of the said *Notification No. 01/2011 - CE* by way of - (i) not availing the benefit of Cenvat credit on either inputs or input services, (ii) manufacturing "Sand Lime Bricks" in their factory, and (iii) classifying them under Chapter 68 of the Central Excise Tariff Act, 1985. Hence, I do not find any merit in the demand raised in the instant case for recovery of Central Excise duty purportedly short-paid by them along with appropriate interest, which therefore deserves to be set aside. Consequently penalty imposed on the Appellant No. 1 in this context also deserves to be set aside.

20. Finally, I come to the aspect of imposition of penalty on both Appellant Nos. 2 and 3 in terms of Rule 26(1) of the Central Excise (No. 2) Rules, 2001 read with Section 38A of the Central Excise Act, 1944 and Rule 26 of the Central Excise Rules, 2002. I find that the impugned demand notice dated 27.04.2018 had only asked the Appellant No. 1 to show cause for the charges/allegations being brought against them by Revenue. Though copy of the impugned demand notice had been issued to the other two Appellants, no charges/allegations have been brought against them in the impugned demand notice for which they have also not been asked to show cause before the lower authority. This fact is further accentuated by the fact that both the Appellants have not submitted any defence replies before the lower authority as they were not required to submit any replies at all in the instant case. As such, I find it surprising as to how did the fact of the impugned demand notice seeking imposition of penalty on both Appellant Nos. 2 and 3 in terms of Rule 26(1) of the Central Excise Rules, 2002 has been recorded at Para 2.11 of the impugned OIO by the lower authority, based on which he has proceeded to impose penalty on both the said appellants.

21. I find that Rule 26(1) of the Central Excise Rules, 2002 as prevalent during the material period stated that -

*"Any person who requires possession of, or is in any way concerned in transporting, removing, depositing, keeping, concealing, selling or purchasing, or in any other manner deals with, any excisable goods which he knows or has reason to believe are liable to confiscation under the Act or these rules, shall be liable to a penalty not exceeding the duty on such goods or two thousand rupees, whichever is greater."*

It is therefore clearly averred from the above cited Rule that penalty in terms of Rule 26(1) can only be imposed on a person only if he has either received any goods or has in any way dealt in goods which he has the reason to believe are liable to confiscation. In the instant case, I do not find that the impugned goods which the Appellant No. 1



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has been alleged to have removed from their factory premises without payment of duty, had been held to be liable to confiscation by Revenue. Moreover, I find that no clear picture has been brought out in the impugned demand notice detailing the exact role played by each of the Directors for making them eligible for imposition of penalty under Rule 26(1) *supra*. Merely being a Director does not in any way makes a person eligible for penalty in terms of Rule 26(1) *supra* unless his specific role in this context is clearly identified and corroborated by credible and irrefutable evidence. In absence of any such evidence categorically implicating the person concerned, penalty imposed on both Appellant Nos. 2 and 3 in terms of Rule 26(1) *supra* is devoid of merit and hence not maintainable more so when it is clear from Para 19 above that the impugned demand itself has fallen through on merit.

22. In view of the discussions above, I set aside the impugned ~~MO~~ dated 25.10.2018 and allow all the 03 (three) appeals with consequential relief.

*N. K. Soren*  
22/11/19  
(Dr. N. K. SOREN)

Commissioner (Appeals - II)  
CGST & Central Excise, Kolkata



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F. No. V(CX)2/XAP - 549/HWH/18/

F. No. V(CX)2/XAP - 550/HWH/18/

Date:- 19.03.19

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To,

1. M/s. Omkar Infracon Pvt. Ltd.

Mouza & P.O. Barunda, Bagnan, Howrah-711302

2. Shri Sandeep Khandelia, Director of M/s. Omkar Infracon Pvt. Ltd., 11, James Hickey Sarani (Dacres Lane), 1<sup>st</sup> Floor, Kolkata-700069

3. Shri Shankar Saraf, Director of M/s. Omkar Infracon Pvt. Ltd., 11, James Hickey Sarani (Dacres Lane), 1<sup>st</sup> Floor, Kolkata-700069

*K. Jayadev*  
18/3/19

Superintendent of CGST & Central Excise,  
Appeals-II Commissionerate,  
Kolkata

C. No. As above/

Dated:

Copy forwarded for information and necessary action to:-

1. The Commissioner of CGST & Central Excise, Howrah Commissionerate;
2. Joint Commissioner, CGST & Central Excise, Howrah Commissionerate;
3. Guard File
4. Office Copy



Superintendent of CGST & Central Excise,  
Appeals-II Commissionerate,  
Kolkata



NATION  
TAX  
MARKET

**RTI MATTER**

**भारत सरकार GOVERNMENT OF INDIA**

**OFFICE OF THE COMMISSIONER OF CENTRAL TAX, HOWRAH GST COMMISSIONERATE**

**एम.एस. बिल्डिंग, 15/1, स्ट्रैंड रोड, कोलकाता- 700001**

**M.S. BUILDING, 2<sup>nd</sup> floor, 15/1, STRAND ROAD, KOLKATA- 700001**

**दूरभाष सं/PHONE NO. 033-2262-8490**

C. No. IV (16)51/RTI/CGST/HWH/AM/2019-20/7861-A

Date: 29.08.2019

To  
Shri Atanu Majumdar, Accounts Officer,  
Omkar Infracon Pvt. Ltd.,  
11, James Hickey Sarani (Dacres Lane), 1<sup>st</sup> Floor,  
Kolkata-700 069.

Sir,

**Sub:-** RTI application filed by Shri Atanu Majumdar under RTI Act, 2005- Furnishing of information & request for sending fees for supply of documents under the RTI Act - reg.

Please refer to your RTI application dated 09.08.2019 received by this office on 27.08.2019 from the CPIO & Assistant Commissioner, Pr.CCO, CGST & CX, Kolkata Zone, 180, Shantipally, Kolkata-700107, which has been registered under Registration No. 51/RTI/CGST/HWH/AM/2019-20.

The desired information as sought for in your above mentioned RTI application, in respect of Howrah CGST & CEX Commissionerate, as received from the section concerned i.e. H.Q. T&R Cell, Howrah CGST & CEX Commissionerate are mentioned point wise herein below :

**Reply:-** This is for your information that the Note Sheets of the relevant file [wherein the review, of Order-In-Appeal No. 696-698/HWH/CE/2018-19 dated 22.02.2019, has been done by the Committee of Commissioners] cannot not be provided in terms of Section 8(1)(j) of the RTI Act, 2005, since no larger public interest is involved.

However, copies of the Review Order [bearing No. 33/CGST & C.EX./HOWRAH/2019-20 dated 17.06.2019] is available and contain **pages 05**.

In this regard, it is to be intimated that in order to supply the copies of desired documents, you are requested to send fees for an amount of **Rs.10.00/- (Rs.2 per page x 05pages)** in the form of IPO/DD/Banker's Cheque/Cash payable to the Assistant Chief Accounts Officer of Howrah CGST & CEX. Commissionerate, Kolkata in terms of Section 7(3) (a) of RTI Act, 2005.

If you are aggrieved or dissatisfied with the reply, you are at liberty to prefer First Appeal within the stipulated time i.e. 30 (thirty) days from the date of receipt of this reply before **Shri Pradeep Kumar Bohra**, Additional Commissioner & 1<sup>st</sup> Appellate Authority under RTI Act, 2005, Central Tax, Howrah GST Commissionerate, M.S. Building (6th Floor), 15/1 Strand Road, Kolkata - 700 001.

Yours faithfully,

*(Signature)* 29/8/19  
(BINAY KRISHNA MANDAL)  
CPIO & ASSISTANT COMMISSIONER  
सीपीआईओ और सहायक कमिशनर,  
CENTRAL TAX केंद्रीय कर  
HOWRAH GST COMMISSIONERATE  
हावड़ा जीएसटी कमिशनरेट

C. No. As above/ 7862-A

Dated: 29 /08 /2019

Copy to the he CPIO & Assistgant Commissioner, Pr. CCO Office, CGST & C.Ex. Kolkata Zone, Kolkata, GST Bhawan, 2<sup>nd</sup> Floor, 180, Shanti Pally, R.B.Connector, Kolkata-700107 with reference to his letter under F.No.V(30)183/Pr.CCO/CGST & CX/RTI/August-19/Kol/14374 dated 19.08.2019 for his information please.

*(Signature)* 29/8/19  
CPIO & ASSISTANT COMMISSIONER  
सीपीआईओ और सहायक कमिशनर,  
CENTRAL TAX केंद्रीय कर  
HOWRAH GST COMMISSIONERATE  
हावड़ा जीएसटी कमिशनरेट

*(Signature)*