


GUJARAT APPELLATE AUTHORITY FOR ADVANCE RULING GOODS AND SERVICES TAX D/5, RAJYA KAR BHAVAN, ASHRAM ROAD, AHMEDABAD – 380 009.	
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ADVANCE RULING (APPEAL) NO. GUJ/GAAAR/APPEAL/2021/ 11
(IN APPLICATION NO. Advance Ruling/SGST&CGST/2020/AR/16

Date:08.03.2021

Name and address of the appellant	:	M/s. Dipakkumar Ramjibhai Patel (Shree Mahalaxmi Cement products and Timber), Highway Road, Khimana, Banaskantha, Gujarat-385555.
GSTIN of the appellant	:	24AKFPP3403K1ZA
Advance Ruling No. and Date	:	GUJ/GAAR/R/20/2020 dated 02.07.2020
Date of appeal	:	31.08.2020
Date of Personal Hearing	:	15.12.2020
Present for the appellant	:	Shri Sameerbhai Siddhapuria, Advocate

The appellant M/s. Dipakkumar Ramjibhai Patel (Shree Mahalaxmi Cement products and Timber), is a proprietorship concern, engaged in manufacturing of Fly Ash Bricks and Fly Ash Blocks falling under SH 6815 of the First Schedule to the Customs Tariff Act, 1962.

2. The appellant had filed an application for Advance Ruling on date 22.01.2019 before the Gujarat Authority for Advance Ruling (herein after referred to as the 'GAAR'), wherein they gave the details of the raw materials used in the manufacture of 'Fly Ash Bricks' and 'Fly Ash Blocks' as under:

- (a) Cement (5% to 20%).
- (b) Fly Ash (40% to 60%).
- (c) Sand (35% to 55%).
- (d) Lime (5% to 20%).
- (e) Water- (As per requirement).

3. The appellant had also submitted that the above products are manufactured from the mixer which is prepared by mixing the aforesaid raw materials in desired proportion, that the HSN code of both the products is 68159910 and that they are paying GST @ 5% on 'Fly Ash Bricks' and 12% on 'Fly Ash Blocks' till notification No:24/2018-Central Tax(Rate) date 31.12.2018. The appellant had also enclosed copies of Sales invoice in respect of Fly Ash Bricks and Fly Ash Blocks. They have submitted the following question for the purpose of advance ruling:

“Whether supply of Fly Ash Bricks and Fly Ash Blocks are covered under Chapter heading 68159090 and liable to taxed @ 5% and @ 12% respectively under the GST Act?”

4. After going through the application for Advance Ruling of the appellant, their submission as well as the records of the case, the GAAR

found as under:

- (i) That 'Fly Ash Bricks' is specifically covered under Tariff item no.68159910 whereas 'Fly Ash Blocks' are covered under the Tariff item no. 68159990(others) of the First Schedule to the Customs Tariff Act, 1975(51 of 1975).
- (ii) That both Fly Ash Bricks and Fly Ash Blocks appear at Sr. No.177 in Schedule-II of the Notification No:01/2017-Central Tax(Rate) dated 28.06.2017 on which the applicable rate of GST is 12% (6% SGST + 6% CGST).
- (iii) Notification No:01/2017-Central Tax(Rate) dated 28.06.2017 has been amended vide Notification No.41/2017-Central Tax (Rate) dated 14.11.2017 (effective from 15.11.2017) wherein the entry 'Fly Ash Bricks' was omitted from Sr.No.177 in Schedule-II of above Notification. As per Notification No.41/2017-Central Tax (Rate) dated 14.11.2017 (effective from 15.11.2017), Sr.No.225A was inserted after Sr.No.225 in Schedule-I of Notification No.01/2017-Central Tax(Rate) dated 28.06.2017 which reads as under:

S.No.	Chapter/Heading/Sub-heading/Tariff item	Description of goods
225A.	6815	<i>Fly ash bricks or fly ash aggregate with 90 percent or more fly ash content” ;</i>

- (iv) Notification No:01/2017-Central Tax(Rate) dated 28.06.2017 was further amended vide Notification No:24/2018-Central Tax (Rate) dated 31.12.2018 (effective from 01.01.2019) wherein Sr.No.177 of Schedule-II of said notification was omitted. Also, Sr.No.225A of Schedule-I of Notification No.01/2017-Central Tax(Rate) dated 28.06.2017 was amended to read as follows:

S.No.	Chapter/Heading/ Subheading / Tariff item	Description of goods
225A	66020000	<i>Walking sticks including seat sticks.</i>
225B	6815	<i>Fly ash bricks or fly ash aggregate with 90 per cent or more fly ash content; Fly ash blocks”;</i>

- (v) That since the 'Fly Ash Bricks' manufactured by the applicant are containing Fly Ash content of only 40 to 60%, the same will not be covered under the Sr.No.225B of Schedule-I of Notification No.01/2017-Central Tax(Rate) dated 28.06.2017(as amended) and since the 'Fly Ash Bricks' manufactured by the applicant does not find mention in any of the Schedules of the said notification from 15.11.2017 onwards, the same would be covered under Sr.No.453 of Schedule-III of Notification No:01/2017-Central Tax(Rate) with effect from 15.11.2017 onwards and would be chargeable to GST of 18%(9% SGST + 9% CGST). Sr.No.453 of Schedule-III of the said notification reads as under:

S.No.	Chapter/Heading/Sub-heading / Tariff item	Description of goods
453	Any Chapter	Goods which are not specified in Schedule I, II, IV, V or VI

5. Based on the above, the GAAR vide Advance Ruling No. GUJ/GAAR/R/20/2020 dated 02.07.2020, has ruled as follows –

- (1) The product 'Fly Ash Bricks' manufactured and supplied by Dipakkumar Ramjibhai Patel (M/s. Mahalaxmi Cement products and Timber) are classifiable under Tariff item No.68159910 of the First Schedule to the Customs Tariff Act, 1975(51 of 1975). Applicability of GST rate on the said product would be 12% GST (6% SGST + 6% CGST) upto 14.11.2017 and 18% GST (9% SGST + 9% CGST) with effect from 15.11.2017 as per Notification No:01/2017-Central Tax(Rate) dated 28.06.2017 (as amended from time to time) issued under the CGST Act, 2017
- (2) The product 'Fly Ash Blocks' manufactured and supplied by Dipakkumar Ramjibhai Patel (M/s. Mahalaxmi Cement products and Timber) are classifiable under Tariff item No.68159990 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975). Applicability of GST rate on the said product would be 12% GST (6% SGST + 6% CGST) upto 31.12.2018 and 5% GST (2.5% SGST + 2.5% CGST) with effect from 01.01.2019 as per Notification No:01/2017-Central Tax(Rate) dated 28.06.2017 (as amended from time to time) issued under the CGST Act, 2017.

6. Aggrieved with the aforesaid ruling, the appellant has filed the present appeal on 31.08.2020. The appellant has submitted as under:

- (i) They are a proprietary concern duly registered under the Central/Gujarat/Integrated Goods and Services Tax Act, 2017 and is engaged in the manufacturing and selling of Fly Ash Bricks and Fly Ash Blocks.
- (ii) As per the manufacturing process of the Fly Ash Bricks submitted by the appellant, Fly Ash Bricks are made using the waste of thermal power plant. The ash of burnt coal is used as an input, thus reinforcing the idea of turning waste into wealth. In India itself, the annual generation of fly ash is expected to be around 200 million tonnes.
- (iii) They are manufacturing Fly Ash Bricks from the mixer prepared of the following raw materials in desired proportion with the use of machinery such as Cement (5% to 20%), **Fly Ash (40% to 60%)**, Sand (35% to 55%), Lime (5% to 20%) and Water – (as per requirement).
- (iv) Fly Ash Bricks are standard size of the bricks i.e. 230mm x 110mm x 70mm, are sound, compact and uniform in shape, size and colour, have smooth rectangular faces with sharp and square corners, are free from visible cracks, warpage, flaws and organic matter, are economical & environment friendly and are 28% lighter than ordinary clay bricks.

- (v) Fly Ash Bricks are: (a)of cement colour and are cast in moulds hence are always of uniform shape (b) have a very smooth finish, hence plaster is not required on the bricks to create a smooth surface (c) are lighter in weight and less costly than Clay bricks: (d)are made of waste materials which come from the combustion of coal in thermal power plants.
- (vi) Clay bricks: (a)vary in colour from burnt red to light brown depending on the type of clay used for manufacture of the bricks.(b)are handmade, causing slight difference in their shape and size (c) require plastering, as they are more porous than Fly Ash Bricks (d)are made of clay, which is collected from fertile land or the top soil.
- (vii) The above comparison shows why Fly Ash Bricks are more preferable than Clay bricks.
- (viii) The advantages of Fly Ash Bricks are : (a)They are light in weight, hence are very suitable for multi-floored buildings because as the height of the buildings increase, the stress and tension on the foundation and structure increases and with light bricks, this stress and tension is reduced manifold.(b)they absorb less heat and considering the Indian climate, are better compared to clay bricks.(c) Production of Fly Ash Bricks requires no fossil fuel and hence does not lead to the emission of greenhouse gases.(d) Production of clay bricks damages the top-soil whereas there is no pollution or environmental damage in the manufacturing process of Fly Ash Bricks, hence it has been put into the white category of products. (e) Fly Ash Brick does not demand the use of local agricultural soil, which in case of clay bricks is very often extracted from the farms leading to loss of fertile soil and losses to farmers.(f) In opinion of many construction workers and supervisors, the Fly Ash Brick building requires less water during construction. This is a very significant advantage in a country that faces water shortages practically every year.
- (ix) After introduction of the GST regime, the product Fly Ash Bricks and Fly Ash Blocks were classified under Notification No. 1/2017 (CGST-Rate) dated 28.06.2017 at Sr. no. 177 as under for the period from 1.7.2017 to 14.11.2017:

Serial No	Chapter Heading	Description of Goods	GST Rate
177	6815	<i>Fly Ash Bricks and Fly Ash Blocks</i>	12%

- (x) As per amendment made by Notification No. 41/2017 – Central Tax (Rate) dated 14.11.2017, “Fly Ash Bricks” were omitted from the entry 177 of schedule II & new entry 225A has been inserted in schedule I for “Fly Ash Bricks” which read as under:

Serial No	Chapter Heading	Description of Goods	GST Rate
225A	6815	<i>Fly ash bricks or fly ash aggregate with 90 percent or more fly ash content</i>	5%

- (xi) The entry 225A of Schedule I was further amended vide notification no 24/2018 Central Tax (Rate) dated 31.12.2018 wherein Entry No.177 of Schedule II was omitted and entry 225A of Schedule I was amended to read as follows:

Serial No	Chapter Heading	Description of Goods	GST Rate
225A	66020000	Walking sticks including seat sticks	5%
225B	6815	Fly ash bricks or fly ash aggregate with 90 percent or more fly ash content; "Fly ash blocks";	5%

- (xii) The appellant had filed an application for advance ruling on 22.01.2019 under the GST Acts seeking ruling on the correct rate of tax of Fly Ash Bricks and Fly Ash Blocks and had contended before the learned advance ruling authority that Fly Ash Bricks and Fly Ash Blocks are covered by entry 225B of Schedule I after 01.01.2019 and liable to 5% under the GST Act.
- (xiii) The learned advance ruling authority has held that Fly Ash Blocks have been classifiable under entry 225B of Schedule I after 01.01.2019 and liable to 5% whereas Fly Ash Bricks are classifiable under Entry 453 of the Schedule III and liable to 18% after 01.01.2019. The only reason given by the learned advance ruling authority for rejecting classification of 'Fly Ash Bricks' under the Entry No.225B of Schedule-I is that the Fly Ash Bricks manufactured and sold by the appellant is containing less than 90% of fly ash. The appellant has submitted that the learned advance ruling authority has grievously erred in rejecting the classification of Fly Ash Bricks under the entry No.225B of Schedule-I of the rate notification No.1/2017-Central Tax(Rate) of the GST Act.
- (xiv) That the GST rate notifications are based on Harmonized System of Nomenclature (herein after referred to as "the HSN") and it is well settled that where a tariff or Schedule is based on HSN then the classification has to be made in accordance with the HSN and the explanatory notes thereto. Reference is invited to the judgement of Hon. Supreme Court in the case of Collector Of Central Excise v/s Wood Craft Products Ltd 1995 (77) ELT 23 (SC) wherein it is observed as under:

"12. It is significant, as expressly stated, in the Statement of Objects and Reasons, that the central excise tariffs are based on the HSN and the internationally accepted nomenclature was taken into account to "reduce disputes on account of tariff classification".

Accordingly, for resolving any dispute relating to tariff classification, a safe guide is the internationally accepted nomenclature emerging from the HSN. This being the expressly acknowledged basis of the structure of central excise tariff in the Act and the tariff classification made therein, in case of any doubt the HSN is a safe guide for ascertaining the true meaning of any expression used in the Act. The ISI Glossary of Terms has a different purpose and, therefore, the specific purpose of tariff classification for which the internationally accepted nomenclature in HSN has been adopted, for enacting the Central Excise Tariff Act, 1985, must be preferred, in case of any

difference between the meaning of the expression given in the HSN and the meaning of that term given in the Glossary of Terms of the ISI.”

It was concluded by Hon. Supreme Court as under:

“19. We are of the view that the Tribunal as well as the High Court fell into the error of overlooking the fact that the structure of the central excise tariff is based on the internationally accepted nomenclature found in the HSN and, therefore, any dispute relating to tariff classification must, as far as possible, be resolved with reference to the nomenclature indicated by the HSN unless there be an express different intention indicated by the Central Excise Tariff Act, 1985 itself. The definition of a term in the ISI Glossary, which has a different purpose, cannot, in case of a conflict, override the clear indication of the meaning of an identical expression in the same context in the HSN. In the HSN, block board is included within the meaning of the expression "similar laminated wood" in the same context of classification of block board.”

(xv) The respected Advance Ruling Authority has also not taken into consideration the classification of Fly Ash Bricks while interpreting the Entry 225B of Schedule I of Notification 1/2017 which clearly speaks that Fly Ash Bricks are covered by the entry 225B of Schedule I of the notification no.1/2017 Central Tax (Rate) of the GST Act and has wrongly taken reference of Custom tariff though the entry 225B of Schedule I of the rate notification no.1/2017 Central Tax (Rate) of the GST Act is expressly cover Fly Ash Brick under HSN 6815.

(xvi) Reference may also be made to the judgement of Hon. Supreme Court in the case of Reckitt Benckiser (India) Ltd. v/s Commissioner, Commercial Taxes (2015) 7 SCC 126 wherein the following observations have been made:

“8. The basic controversy, therefore, which arose before the High Court was whether the above items fell within the sub-Heading 3808.10.91. In this connection, we find that Kerala VAT Act is aligned with Customs Tariff which in turn is aligned with HSN and consequently each product in question was required to be seen in the context of HSN Code and judgments based thereon.”

(xvii) The appellant therefore relies upon HSN heading 6815 which describes as under: “Fly ash bricks or fly ash aggregate with 90 per cent or more fly ash content; Fly ash Blocks.”

(xviii) The entry was inserted in the Schedule I w.e.f. 15th November 2017 by notification no 41/2017 Central Tax (Rate) Dt:- 14/11/2017 in consonance of the minutes of the GST Council suggested as follows (please refer page 19 point no 19.2 of minutes of meeting):

19.2 The Hon’ble Minister from Odisha stated that at Sr. No.40 of Annexure II of the Agenda Notes to agenda item 6(i), the rate of tax on fly ash bricks was rightly proposed to be reduced from 12% to 5%. He suggested that fly ash aggregates, which were chip like products and consumed almost 90% of fly ash, should also be covered in this entry and should be charged to tax at the rate of 5%. Shri TuhinKanta Pandey, Principal Secretary (Finance), Odisha, suggested that fly ash aggregates should be classified under Chapter Heading 68 15. The Secretary suggested that rate of tax on fly ash aggregate with 90% or more fly ash content, falling under Chapter Heading 6815 may be reduced to 5%.The Council agreed to the suggestion.”

- (xix) Therefore, on going through the GST Council Minutes, it seems that the intention was to tax fly ash bricks irrespective of the content of fly ash at the rate of 5% and fly ash aggregate at the rate of 5% if the fly ash content was more than 90%. Therefore, the council has made Recommendations for Changes in GST/IGST Rate and clarifications in respect of GST Rate on certain goods as per discussions in the 23rd GST Council Meeting held on 10th November, 2017 for the product in question. The recommendation is as under:

S. No.	Chapter/Heading/ Sub-heading/ Tariff item	Description	Present GST Rate	GST Rate Recommended
44	6815	(a) Fly ash bricks	12%	5%
		(b) Fly ash aggregate with 90% or more fly ash content	18%	5%

- (xx) It can be seen from the recommendation of the council that Fly Ash Bricks and fly ash aggregate with 90% or more fly ash content are differently classified in the recommendation by council @ column 3 @ (a) and (b). The respected advance ruling authority has erroneously applied the condition of 90% or more fly ash content to the product in question i.e. Fly Ash Bricks while giving advance ruling order. The condition of 90% or more fly ash content is applicable to the aggregate of fly ash and not applicable to the Fly Ash Bricks. Hence, advance ruling order is required to be modified to the extent of classification made of Fly Ash Bricks under entry 453 of Schedule III of notification no 1/2017 Central Tax (Rate) Dt:- 28/06/2017 and required to be held that the Fly Ash Bricks are covered by entry 225B of Schedule I of the rate notification no.1/2017 Central Tax (Rate) of the GST Act.
- (xxi) The appellant is manufacturing and selling Fly Ash Bricks which consists of fly ash between 40% to 60% and the advance ruling authorities have wrongly applied condition of 90% or more fly ash content to the Fly Ash Bricks. Without bonding component bricks cannot be manufactured. Fly Ash does not have any bonding component and it is impossible to manufacture Fly Ash Bricks which are having more than 90% of fly ash content. Therefore, the entry 225B of Schedule I of notification no. 1/2017 Central Tax (Rate) become redundant though it specifically covers Fly Ash Bricks if the view of the respected advance ruling authorities is accepted.
- (xxii) The appellant therefore wants to rely upon interpretation made by Wikipedia of word Fly Ash Bricks according to which Fly Ash Bricks comprises of fly ash content less than 60% and therefore, the stand taken by the respected advance ruling authorities of 90% or more fly ash content as an ingredient based on the custom tariff is erroneous and required to be modified in the present appeal. Other than the appellant, the major manufacturers of India who are manufacturing Fly Ash Bricks are using less than 60% of fly ash content. The appellant has attached extract of web site of Fly Ash Bricks manufacturer for ready reference and therefore, the advance ruling order is required to be modified in the present appeal by holding that Fly

Ash Bricks are covered by entry 225B of Schedule I of notification no 1/2017 Central Tax (Rate) Dt:- 28.06.2017.

(xxiii) In the alternative, they further rely upon the general rules of interpretation of the Customs tariff which have been borrowed for the purpose of interpreting GST rate notification by clause (iv) of the Explanation to the rate notification issued under the GST Acts. Rule 2(a) of the general rules of interpretation which is relevant for the present purpose reads as under:

2. (a) Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished articles has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this rule), presented unassembled or disassembled.”

(xxiv) They submit that in any case if in taxing statutes two views are possible then the view in favour of the assessee should be adopted. Reference is invited in this regard to the following judgements of this Hon. Court:

- (a) Mauri Yeast India Pvt. Ltd. v/s State of Uttar Pradesh and Another (2008) 5 SCC 680;
- (b) Commissioner of Income Tax v/s Kullu Valley Transport Co. Pvt. Ltd. AIR 1970 SC 1734.

(xxv) Hence, presuming for the sake of argument that the classification of Fly Ash Bricks are as affirmed by the learned advance ruling authority is a possible view, even then since the classification as being canvassed by the appellant is also possible, the contention of the appellant is required to be accepted.

(xxvi) They submit that Fly Ash Bricks are more environment friendly than clay brick which is known as building bricks under the GST Act. The building bricks are made of clay and clay are collected from the farms which leads to loss of fertile soil and also losses to farmers. Whereas Fly Ash Bricks are manufactured from waste i.e. fly ash mainly generated from thermal power plant. Moreover, Fly Ash Brick required less water during construction and therefore it is also useful in saving water. Building bricks are classifiable under HSN 6904 and are liable to 5% GST. Therefore, Fly Ash Bricks may also be required to be classified at par with building bricks. The higher rate of GST on Fly Ash Bricks may decline the use of the same in the industry which may cause to the environment in long perspective. Therefore, the advance ruling order is required to be modified in the present appeal by holding that Fly Ash Bricks are covered by entry 225B of Schedule I of notification no 1/2017 Central Tax (Rate) Dt:- 28.06.2017.

(xxvii) The learned advance ruling authority has erred in holding that Fly Ash Bricks is covered by entry No.453 of Schedule-III of Notification No.1/2017-Central Tax(Rate) dated 28.06.2017 and liable to 18% after 01.01.2019 by rejecting classification of Fly Ash Bricks under the entry 225B of Schedule-I of Notification No.1/2017-Central Tax(Rate) dated 28.06.2017.

(xxviii) Respected advance ruling authorities has passed advance ruling order on 02.07.2020 in case of the appellant which is received by the appellant on 09.07.2020. The appellant is required to file an appeal within 30 days as per provision of section 100(2) of the GST Act. Therefore, last date to file an appeal is 09.08.2020. The appellant is relying upon the notification no 35/2020 Central Tax Dt: -03.04.2020 and notification no.55/2020 Central Tax Dt: -27.06.2020 which speaks that any appeal which is required to be filed between 20/03/2020 to 30/08/2020 can be filed on or before 31/08/2020.

7. The appellant has concluded his submission by requesting as under:

- (a) The appeal may please be admitted for regular hearing by condoning delay in view of notification no.35/2020 & 55/2020 of Central Tax.
- (b) The impugned order passed by the learned Advance ruling authority in so far as it holds that Fly Ash Bricks is covered by entry 453 of Schedule III of notification no 1/2017 Central Tax (Rate) dated 28.06.2017 and liable to 18% after 01.01.2019 may please be set aside /modified;
- (c) It may please be held that “Fly Ash Bricks” is covered under the entry 225B of Schedule I of notification no.1/2017 Central Tax (Rate) dated 28.06.2017 and therefore taxable at the rate of 2.5% CGST + 2.5% SGST;

8. The appellant has submitted an email on 16.12.2020 attaching a copy of Test Result dated 15.12.2020 issued by Mukesh A.Patel Civil Engineering Laboratory, Gandhinagar in respect of the sample product ‘Fly Ash Brick’ of Shree Mahalaxmi Cement Products & Timber, in support of their contention that the Fly Ash Bricks manufactured by them contain 60% fly ash content. The said Test Result shows that the proportion of Fly Ash:Sand:Cement in the said product of the appellant is in the proportion of 60:34:06.

FINDINGS :-

9. We have considered the submissions made by the appellant in the appeal filed and at the time of personal hearing as well as evidences available on record. We have also gone through the Ruling given by the GAAR.

10. The Advance Ruling was sought for by the appellant for appropriate classification and applicable rate of Goods and Services Tax for the products: (i) Fly Ash Bricks and (ii) Fly Ash Blocks. The Advance Ruling Authorities have passed the Advance Ruling in respect of classification of the said products along with their applicable rates of GST, vide order dated 02.07.2020. The appellant has not challenged the Advance Ruling given in respect of the product ‘Fly Ash Blocks’. Therefore, the issue involved in this case is limited to the proper classification of the product ‘Fly Ash Bricks’ and the applicable rate of Goods and Services Tax on the said product.

11. Further, as per the submission of the appellant, we find that the appellant has received the copy of Order of Advance Ruling No.GUJ/GAAR/R/ 20/2020 dated 02.07.2020 on 09.07.2020. As per the

provisions of Section 100(2) of the CGST Act, 2017, the appellant was required to file the appeal within a period of 30 days of receipt of the said order i.e. on or before 07.08.2020. However, they have filed the appeal on 31.08.2020 i.e. 24 days after the due date. The appellant has submitted that the reason for the delay is that their advocate Shri Samir I.Siddhpuriya (to whom the appellant handed over the papers to file the present appeal) was hospitalized from 25.07.2020 to 08.07.2020 in Simmer Hospital(Surat) due to Pneumonia, was quarantined in the hospital between 08.08.2020 to 23.08.2020 as he had visited Covid-19 ward in the said hospital and that the advocate's son was hospitalized from 24.8.2020 onwards due to fever and infection. They have also relied upon Notification No.35/2020-Central Tax dated 03.04.2020 and Notification No.55/2020-Central Tax dated 27.06.2020 which speaks that any appeal which is required to be filed between 20.03.2020 and 30.08.2020 can be filed on or before 31.08.2020 and has requested to admit their appeal for regular hearing by condoning delay in filing appeal in view of the aforesaid notifications. We, therefore, find it necessary to go through the provisions of the aforementioned notifications. Notification No.35/2020-Central Tax dated 03.04.2020 reads as under:

“G.S.R.....(E).– In exercise of the powers conferred by section 168A of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereafter in this notification referred to as the said Act), read with section 20 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), and section 21 of Union Territory Goods and Services Tax Act, 2017 (14 of 2017), in view of the spread of pandemic COVID-19 across many countries of the world including India, the Government, on the recommendations of the Council, hereby notifies, as under,-

*(i) where, any time limit for completion or compliance of any action, by any authority or by any person, has been specified in, or prescribed or notified under the said Act, **which falls during the period from the 20th day of March, 2020 to the 29th day of June, 2020**, and where completion or compliance of such action has not been made within such time, then, the time limit for completion or compliance of such action, **shall be extended upto the 30th day of June, 2020**, including for the purposes of—*

(a) completion of any proceeding or passing of any order or issuance of any notice, intimation, notification, sanction or approval or such other action, by whatever name called, by any authority, commission or tribunal, by whatever name called, under the provisions of the Acts stated above; or

(b) filing of any appeal, reply or application or furnishing of any report, document, return, statement or such other record, by whatever name called, under the provisions of the Acts stated above;

but, such extension of time shall not be applicable for the compliances of the provisions of the said Act, as mentioned below –

(a) Chapter IV;

(b) sub-section (3) of section 10, sections 25, 27, 31, 37, 47, 50, 69, 90, 122, 129;

(c) section 39, except sub-section (3), (4) and (5);

(d) section 68, in so far as e-way bill is concerned; and

(e) rules made under the provisions specified at clause (a) to (d) above;

(ii) where an e-way bill has been-----”

11.1 The aforesaid notification was amended vide Notification No.55/2020-Central Tax dated 27.06.2020 wherein the following amendments was made in the first paragraph, in clause(i)-

“(i) for the words, figures and letters “29th day of June, 2020”, the words, figures and letters “30th day of August, 2020” shall be substituted;

(ii) for the words, figures and letters “30th day of June, 2020”, the words, figures and letters “31st day of August, 2020” shall be substituted.”

11.2 Therefore, after the amendment, the relevant portion of Notification No.35/2020-Central Tax dated 03.04.2020 reads as under:

“(i) where, any time limit for completion or compliance of any action, by any authority or by any person, has been specified in, or prescribed or notified under the said Act, which falls during the period from the 20th day of March, 2020 to the 30th day of August, 2020, and where completion or compliance of such action has not been made within such time, then, the time limit for completion or compliance of such action, shall be extended upto the 31st day of August, 2020, including for the purposes of—

(a) completion of any proceeding or -----

(b) filing of any appeal, reply or application or furnishing of any report, document, return, statement or such other record, by whatever name called, under the provisions of the Acts stated above;”

11.3 As per the provisions of Notification No.35/2020-Central Tax dated 03.04.2020(as amended), any appeal which was required to be filed between 20.03.2020 and 30.08.2020 can be filed on or before 31.08.2020. We find that the appellant was required to file the appeal in the present case, on or before 07.08.2020, but has filed the same on 31.08.2020 i.e. within the time limit provided in the aforementioned notification. In view of the above, we find that there is no delay on the part of the appellant in filing the said appeal which has been filed by them within the time limit prescribed in the Notification No.35/2020-Central Tax dated 03.04.2020(as amended).

12. Now, the issue that needs to be discussed is the proper classification of the product ‘Fly Ash Bricks’ and the applicable rate of Goods and Services Tax on the said product. As per explanation (iii) and (iv) of Notification No.1/2017-Central Tax (Rate) dated 28.06.2017, “Tariff item”, “sub-heading” “heading” and “Chapter” shall mean respectively a tariff item, sub-heading, heading and chapter as specified in the Customs Tariff Act, 1975(51 of 1975). Further, it has been provided that the rules for the interpretation of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), including the Section and Chapter Notes and the General Explanatory Notes of the First Schedule shall, so far as may be, apply to the interpretation of this notification. As submitted by the appellant, the Hon’ble Supreme Court has held in the case of Wood Craft Products Ltd. [1995 (77) ELT 23 (SC)] that any dispute relating to tariff classification must, as far as possible, be resolved with reference to the nomenclature indicated by the HSN unless there be an express different intention indicated by the Central Excise Tariff Act, 1985 itself.

13. Therefore, in order to examine the classification of the product ‘Fly Ash Bricks’, it will be useful to refer to Chapter Heading 6815 of the Customs Tariff Act, 1975(51 of 1975). Chapter Heading 6815 in Customs Tariff Act, 1975(51 of 1975) reads as under:

Chapter/ Heading/ Sub- heading/ Tariff Item	Description of goods	Unit
(1)	(2)	(3)

6815	ARTICLES OF STONE OR OF OTHER MINERAL SUBSTANCES (INCLUDING CARBON FIBRES, ARTICLES OF CARBON FIBRES AND ARTICLES OF PEAT), NOT ELSEWHERE SPECIFIED OR INCLUDED.	
6815 10 -	<i>Non-electrical articles of graphite or other carbon.</i>	
68151010	Graphite filter candle.	Kg.
68151020	Non-electrical articles of graphite	Kg.
68151090	Other	Kg.
68152000	Articles of peat	Kg.
	<i>- Other articles :</i>	
68159100	Containing magnesite, dolomite or chromite	Kg.
681599	Others	
68159910	Bricks and tiles of fly ash	Kg.
68159920	Sanitary wares, kitchen wares and other made up articles of fly ash.	Kg.
68159990	Other	Kg.

14. On going through the above details, it is found that 'Fly Ash Bricks' are specifically covered under the sub-heading 68159910 and reads as 'Bricks and tiles of fly ash'. In view of the fact that there is a specific entry for 'Fly Ash Bricks' as mentioned above, it does not appear necessary to refer to the chapter notes or Explanatory notes in HSN. Even otherwise, the classification is not in dispute since the appellant themselves have stated in their submission that their product 'Fly Ash Bricks' falls under Chapter Heading 6815 of the Customs Tariff Act, 1975(51 of 1975).

15. Further, on going through the entry of the above item in the Notification No.01/2017-Central Tax(Rate) dated 28.06.2017, we find that 'Fly Ash Bricks' appears at Sr.No.177 in Schedule-II of the said notification on which the applicable rate of GST is 12% (6% SGST + 6% CGST). The same reads as under:

S.No.	Chapter/Heading/ Subheading/Tariff item	Description of goods
177.	6815	Fly Ash Bricks and Fly Ash Blocks.

16. Notification No:01/2017-Central Tax(Rate) dated 28.06.2017 has been amended vide Notification No.41/2017-Central Tax (Rate) dated 14.11.2017 (effective from 15.11.2017) wherein the following amendment has been made in respect of Sr.No.177 of Schedule-II of said notification.

“(xix) in S. No. 177, in column (3), the words, “Fly ash bricks” shall be omitted;”

Further, the following entry has been inserted vide Notification No: 41/2017-Central Tax (Rate) dated 14.11.2017 in Schedule-I of Notification No:01/2017-Central Tax(Rate) dated 28.06.2017 which reads as under:

(xxvi) after S. No. 225 and the entries relating thereto, the following serial number and the entries shall be inserted, namely:-

S.No.	Chapter/Heading/ Subheading / Tariff item	Description of goods
225A.	6815	<i>Fly ash bricks or fly ash aggregate with 90 percent or more fly ash content” ;</i>

17. Notification No:01/2017-Central Tax(Rate) dated 28.06.2017 has been further amended vide Notification No:24/2018-Central Tax (Rate) dated 31.12.2018 (effective from 01.01.2019) wherein the following amendment has been made in respect of Sr.No.177 of Schedule-II of said notification:

“(v) S. No. 177 and the entries relating thereto, shall be omitted;”

Further, the following amendment has also been made vide Notification No:24/2018-Central Tax (Rate) dated 31.12.2018 in Schedule-I of Notification No:01/2017-Central Tax(Rate) dated 28.06.2017 as under:

(vi) for S. No. 225A and the entries relating thereto, the following serial numbers and entries shall be substituted, namely:

S.No.	Chapter/Heading/ Subheading/ item	Description of goods
225A	66020000	Walking sticks including seat sticks.
225B	6815	Fly ash bricks or fly ash aggregate with 90 per cent or more fly ash content; Fly ash blocks”;

On going through the Notification No.01/2017-Central Tax(Rate) dated 28.06.2017 and the various notifications amending it, it is found as under:

- (i) that ‘Fly Ash Bricks’ find mention in Sr.No.177 of Schedule-II of Notification No.01/2017-Central Tax(Rate)till 14.11.2017 on which GST liability is 12%(6% SGST + 6% CGST).
- (ii) that ‘Fly Ash Bricks’ find mention at Sr.No.225A of Schedule-I of the above notification albeit with a condition that it should contain 90% or more fly ash content w.e.f. 15.11.2017 till 31.12.2018.
- (iii) that aforesaid entry of ‘Fly Ash Bricks’ appearing at Sr.No.225A has been shifted to Sr.No.225B in Schedule-I of the above notification w.e.f 01.01.2019 and remains unchanged till date.
- (iv) That ‘Fly Ash Bricks’ do not find any specific mention under any other entry in any of the Schedules-I, II, IV, V or VI of Notification No.01.2017-Central Tax(Rate) dated 28.06.2017(as amended from time to time) till date.

18. The appellant has contended that since Building bricks(clay bricks) are classifiable under HSN 6904 and are liable to 5% GST, therefore, Fly Ash Bricks should also be required to be classified at par with building bricks as the higher rate of GST on Fly Ash Bricks may decline the use of the same in the industry and effect the environment in long perspective. In this regard, we find that although ‘Building Bricks’ (clay bricks) are covered under Schedule-I of Notification No.01/2017-Central Tax(Rate) dated 28.06.2017 (on which GST liability is 5%) from 01.07.2017 itself, as stated by the appellant, we find that ‘Fly Ash Bricks’ also find mention at

Sr.No.225A of Schedule-I of the above notification w.e.f. 15.11.2017(on which GST liability is 5%) albeit with a condition that it should contain 90% or more fly ash content w.e.f. 15.11.2017 till 31.12.2018 and in Sr.No.225B of Schedule-I of the above notification w.e.f. 01.01.2019 to till date. Further, since the above entry lays down the condition that only 'Fly Ash Bricks' with 90% or more fly ash content can be covered under entry of Sr.No.225B of Schedule-I of Notification No.01/2017-Central Tax(Rate) dated 28.06.2017(as amended from time to time) and since the appellant, in their submissions, have specifically stated that the percentage of fly ash content in the 'Fly Ash Brick' manufactured and supplied by them contain 60% fly ash i.e. much less than the proportion of 90% 'fly ash content' mentioned in the aforementioned entry No.225B, the 'Fly Ash Bricks' manufactured and supplied by the appellant gets automatically excluded from the said entry. We also find this to be the sole reason why the Advance Ruling Authority have not ruled/held that the 'Fly Ash Bricks' manufactured and supplied by the appellant fall under Sr.No.225B of Schedule-I of Notification No.01/2017-Central Tax(Rate) dated 28.06.2017(as amended from time to time).

19. The appellant has also contended that : (i) the Advance Ruling authorities have not taken into consideration the classification of Fly Ash Bricks while interpreting the Entry 225B of Schedule-I of Notification No.01/2017-Central Tax(Rate) which clearly speaks that 'Fly Ash Bricks' are covered by Entry 225B of Schedule-I of Notification No.01/2017-Central Tax(Rate) of the GST Act. (ii) the Advance Ruling authorities has wrongly taken reference of Customs Tariff through the entry 225B of Schedule-I of Notification No.01/2017-Central Tax(Rate)of the GST Act is expressly cover Fly Ash Brick under HSN 6815. In this regard, we find that there is no dispute with regard to the classification of 'Fly Ash Bricks' which is undoubtedly classified under the Heading '6815' (specific sub-heading 68159910) of the Customs Tariff Act, 1975(51 of 1975). There is also no dispute on the fact that 'Fly Ash Bricks' classified under Heading '6815' of the Customs Tariff Act, 1975(51 of 1975) finds mention at Sr.No.225B of Schedule-I of Notification No.1/2017-Central Tax (Rate) dated 28.06.2017. The only dispute is with regard to the condition envisaged under the Column 'Description of goods' corresponding to the Sr. No.225B above, which specifically states that it covers only '**Fly ash bricks or fly ash aggregate with 90 per cent or more fly ash content**' which also means that 'Fly Ash Bricks' classified under Heading '6815' of the Customs Tariff Act, 1975(51 of 1975) having less than 90% fly ash content does not get covered under the said entry. Since the appellant have themselves submitted that the 'Fly Ash Bricks' manufactured and supplied by them contain only 60% fly ash content and the copy of the Test Result dated 15.12.2020 submitted by them also shows the fly ash content therein as 60%, their aforementioned product will automatically get excluded from Sr.No.225B of Schedule-I of Notification No.1/2017-Central Tax (Rate) dated 28.06.2017(as amended from time to time).

20. The appellant has also relied on the judgement of Hon. Supreme Court in the case of Reckitt Benckiser (India) Ltd. v/s Commissioner, Commercial Taxes (2015) 7 SCC 126 wherein the following observations have been made:

"8. The basic controversy, therefore, which arose before the High Court was whether the above items fell within the sub-Heading 3808.10.91. In this connection, we find that Kerala VAT Act is aligned with Customs Tariff which

in turn is aligned with HSN and consequently each product in question was required to be seen in the context of HSN Code and judgments based thereon.”

The appellant have stated that, therefore, they rely upon HSN heading 6815 which describes as under: “Fly ash bricks or fly ash aggregate with 90 per cent or more fly ash content; Fly ash Blocks”:

20.1 In this regard, we find that the above judgement is applicable only to those cases where there is a dispute with regard to the classification of a product i.e. where the product can be classified under two different headings of the Customs Tariff Act, 1975. Since, there is no such dispute with regard to classification of ‘Fly Ash Bricks’ as discussed in the foregoing paras, the said judgement is not applicable in the present case.

21. The appellant has contended that the entry was inserted in the Schedule I w.e.f. 15th November 2017 by Notification no 41/2017 Central Tax (Rate) Dt:-14/11/2017 in consonance of the minutes of the GST Council, and according to the GST Council Minutes, it seemed that the intention was to tax fly ash bricks irrespective of the content of fly ash at the rate of 5% and fly ash aggregate at the rate of 5% if the fly ash content was more than 90%; that the council has made Recommendations for Changes in GST/IGST Rate and clarifications in respect of GST Rate on certain goods as per discussions in the 23rd GST Council Meeting held on 10th November, 2017 and the recommendation was as under:

S. No.	Chapter/Heading/ Sub-heading/ Tariff item	Description	Present GST Rate	GST Rate Recommended
44	6815	(a) Fly ash bricks	12%	5%
		(b) Fly ash aggregate with 90% or more fly ash content	18%	5%

21.1 The appellant has further contended that as per the recommendation of the council, Fly Ash Bricks and fly ash aggregate with 90% or more fly ash content are differently classified, but the advance ruling authority has erroneously applied the condition of 90% or more fly ash content to the product in question i.e. Fly Ash Bricks while giving advance ruling order; that the condition of 90% or more fly ash content is applicable to the aggregate of fly ash and not applicable to the Fly Ash Bricks, hence, advance ruling order is required to be modified to the extent of classification made of Fly Ash Bricks under Entry 453 of Schedule III of notification no 1/2017 Central Tax (Rate) Dt:- 28/06/2017 and required to be held that the Fly Ash Bricks are covered by entry 225B of Schedule I of the rate notification no.1/2017 Central Tax (Rate) of the GST Act.

21.2 In this regard, it is to mention that it may be a fact that ‘Fly Ash Bricks’ and ‘Fly Ash aggregates’ were differently classified as per the recommendations of the Council for changes in GST/IGST rate and classification in respect of GST rate as stated by the appellant. However, it is also a fact that the Government vide it’s Notification No.41/2017-Central Tax(Rate) dated 14.11.2017(which amended Notification No.01/2017-Central Tax(Rate) dated 28.06.2017) omitted ‘Fly Ash Bricks’ from Sr.No.177 of Schedule-II of Notification No.01/2017-Central Tax(Rate) dated 28.06.2017 and inserted Sr.No.225A in Schedule-I of No.01/2017-Central Tax(Rate) dated 28.06.2017 w.e.f. 15.11.2017 which read as under:

S.No.	Chapter/Heading/ Subheading/Tariff item	Description of goods
225A.	6815	<i>Fly ash bricks or fly ash aggregate with 90 percent or more fly ash content” ;</i>

21.3 We also find that Notification No.01/2017-Central Tax(Rate) dated 28.06.2017 was further amended vide Notification No.24/2018-Central Tax(Rate) dated 31.12.2018 wherein Sr.No.177 of Schedule-II of Notification No.01/2017-Central Tax(Rate) dated 28.06.2017 was omitted and Sr.No.225A of Schedule-I was amended to read as under:

S.No.	Chapter/Heading/ Subheading/ Tariff item	Description of goods
225A	66020000	<i>Walking sticks including seat sticks.</i>
225B	6815	<i>Fly ash bricks or fly ash aggregate with 90 per cent or more fly ash content; Fly ash blocks”;</i>

21.4 We, therefore find, that had it been the intention of the GST council to classify ‘Fly Ash Bricks’ and ‘Fly Ash aggregates’ separately, ‘Fly Ash Bricks’ would have been separately mentioned in Sr.No.225B above, in the same way as ‘Fly Ash Blocks’ has been mentioned in the said entry. Moreover, it is also seen that the conditions envisaged in the above entry remains unchanged even after an intervening period of more than 2 years after the initial insertion of the aforementioned entry. It therefore appears that the Government intends to give benefit of the aforementioned entry only to those manufacturers who manufacture ‘Fly Ash Bricks’ which contain 90% or more fly ash content. Further, since the ‘description of goods’ corresponding to the Sr.No.225B of Schedule-I of Notification No.01/2017-Central Tax(Rate) dated 28.06.2017(as amended from time to time) specifically mentions ‘**Fly ash bricks or fly ash aggregate with 90 per cent or more fly ash content**’, it obviously means that it covers only; (a) ‘Fly Ash Bricks’ with 90% or more fly ash content OR (b) ‘Fly ash aggregates’ with 90% or more fly ash content. It can therefore be easily inferred from the above that the said entry excludes ‘Fly Ash Bricks’ containing less than 90% fly ash content. In short, from a plain reading of the description under the column ‘description of goods’ corresponding to the Sr.No.225B, it can be derived that the said entry covers three products as under:

- (i) ‘Fly Ash Bricks’ with 90% or more fly ash content.
- (ii) ‘Fly Ash Aggregate’ with 90% or more fly ash content.
- (iii) ‘Fly Ash Blocks’.

Further, since the appellant has specifically mentioned that the ‘Fly Ash Bricks’ manufactured and supplied by them contains only 60% fly ash content and the copy of the Test Result dated 15.12.2020 submitted by them also shows the fly ash content therein as 60%, i.e. less than 90% fly ash content, it automatically gets excluded from Sr. No.225B above.

22. The appellant has also contended that without bonding component, bricks cannot be manufactured; that Fly Ash does not have any bonding

component and it is impossible to manufacture Fly Ash Bricks which are having more than 90% of fly ash content and therefore, the entry 225B of Schedule I of notification no.1/2017 Central Tax (Rate) become redundant though it specifically covers Fly Ash Bricks if the view of the advance ruling authorities is accepted. The appellant has further contended that as per Wikipedia, Fly Ash Bricks comprises of fly ash content less than 60% and therefore, the stand taken by the advance ruling authorities of 90% or more fly ash content as an ingredient based on the custom tariff is erroneous and required to be modified in the present appeal; that the major manufacturers of India who are manufacturing Fly Ash Bricks are using less than 60% of fly ash content and therefore, the advance ruling order is required to be modified in the present appeal by holding that Fly Ash Bricks are covered by entry 225B of Schedule I of notification no 1/2017 Central Tax (Rate) Dt:- 28.06.2017.

22.1 In this regard, we have to mention here that irrespective of the fact as to whether the 'Fly Ash Bricks' can be manufactured with 90% fly ash content or otherwise or whether majority of the manufacturers manufacture 'Fly Ash Bricks' which contain only 60% fly ash content or otherwise, the fact remains that Sr.No.225B of Schedule I of notification no 1/2017 Central Tax (Rate) dated 28.06.2017 covers only 'Fly Ash Bricks' with 90% or more fly ash content and therefore excludes 'Fly Ash Bricks' containing less than 90% fly ash content, as discussed in the foregoing paras. Since the appellant has specifically mentioned that the 'Fly Ash Bricks' manufactured and supplied by them contains only 60% fly ash content which has also been supported by the copy of Test Result dated 15.12.2020 submitted by them which states that their product contains only 60% fly ash content i.e. less than 90% fly ash content, it automatically gets excluded from Sr.No.225B above.

23. The appellant has relied upon the general rules of interpretation of the Customs tariff which have been borrowed for the purpose of interpreting GST rate notification by clause (iv) of the Explanation to the rate notification issued under the GST Acts. Rule 2(a) of the general rules of interpretation which is relevant for the present purpose reads as under:

2. (a) Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished articles has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or failing to be classified as complete or finished by virtue of this rule), presented unassembled or disassembled.”

23.1 As per Rule 2(a) of the General Rules for the Interpretation of the CTA, 1975, “any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished article has the essential character of the complete or finished article.”.

In this regard, we observe that 'Fly Ash Bricks' are not incomplete or unfinished goods and therefore, Rule 2(a) of the General Rules of Interpretation would not be applicable in this case.

23.2 Further, as per Rule 1 of the General Rules of Interpretation of the Customs Tariff Act, 1975, classification is required to be determined according to the terms of the headings and any relative Section or Chapter

Notes. The Hon'ble Supreme Court has held in the case of Commissioner of Central Excise, Nagpur Vs. Simplex Mills Co. Ltd. [2005 (181) ELT 345 (SC)] as follows:-

“11. The rules for the interpretation of the Schedule to the Central Excise Tariff Act, 1985 have been framed pursuant to the powers under Section 2 of that Act. According to Rule 1 titles of Sections and Chapters in the Schedule are provided for ease of reference only. But for legal purposes, classification “shall be determined according to the terms of the headings and any relevant section or Chapter Notes”. If neither the heading nor the notes suffice to clarify the scope of a heading, then it must be construed according to the other following provisions contained in the Rules. Rule-I gives primacy to the Section and Chapter Notes along with terms of the headings. They should be first applied. If no clear picture emerges then only can one resort to the subsequent rules.”-

23.3 Therefore, we hold that Rule 2(a) of the General Rules of Interpretation is not applicable for classification of 'Fly Ash Bricks' in the present case.

24. The appellant has also contended that in any case if in taxing statutes two views are possible, then the view in favour of the assessee should be adopted. Hence, presuming for the sake of argument that the classification of Fly Ash Bricks are as affirmed by the learned advance ruling authority is a possible view, even then since the classification as being canvassed by the appellant is also possible, the contention of the appellant is required to be accepted. They have relied upon the following judgements of the Apex Court to support their contention:

- (a) Mauri Yeast India Pvt. Ltd. v/s State of Uttar Pradesh and Another (2008) 5 SCC 680;
- (b) Commissioner of Income Tax v/s Kullu Valley Transport Co. Pvt. Ltd. AIR 1970 SC 1734.

24.1 We have gone through the aforementioned judgements. The judgement mentioned at (a) above is applicable to cases where there are two different classifications available for a particular product. In the instant case, we find that there is absolutely no dispute with regard to the classification of 'Fly Ash Bricks' which we find, is classifiable under Heading 6815(specific sub-heading 68159910) of the Customs Tariff Act, 1975 as discussed earlier and the appellant themselves have no issues with regard to the said classification. Hence, the said judgement is not applicable to the instant case. As regards, the judgement mentioned at (b) above, it pertains to late filing of Income-tax return by the Income-tax assessee and is therefore not applicable to the instant case.

25. In view of the discussions in the foregoing paras, we find that 'Fly Ash Bricks' found mention in Sr.No.177 of Schedule-II of Notification No.01/2017-Central Tax (Rate) dated 28.06.2017(on which GST leviability was 12%) but was omitted from Sr.No.177 with effect from 15.11.2017 vide Notification No.41/2017-Central Tax (Rate) dated 14.11.2017. Further, it is also seen that vide Notification No.41/2017-Central Tax (Rate) dated 14.11.2017 which amended Notification No.1/2017-Central

Tax (Rate), Sr.No.225A has been inserted in Schedule-I of the said notification wherein 'Fly Ash Bricks' with 90% or more fly ash content, finds mention. However, since the 'Fly Ash Bricks' manufactured by the appellant are containing Fly Ash content of only 60%, the same will not be covered under the said Sr.No.225A, as discussed earlier. We also find that vide Notification No.24/2018-Central Tax(Rate) dated 31.12.2018 which amended Notification No.1/2017-Central Tax (Rate) dated 28.06.2017, Sr.No.225A has been amended to read as under wherein the entry at Sr.No.225A has been shifted to Sr. No.225B:

S.No.	Chapter/Heading/ Subheading/ item	Description of goods
225A	66020000	Walking sticks including seat sticks.
225B	6815	Fly ash bricks or fly ash aggregate with 90 per cent or more fly ash content; Fly ash blocks”;

Therefore, since the 'Fly Ash Bricks' (containing 60% fly ash content) manufactured and supplied by the appellant does not find mention in any of the entries of any of the Schedules I, II, IV, V and VI of Notification No.1/2017-Central Tax (Rate) dated 28.06.2017(as amended from time to time), we conclude that the same would be covered under Sr.No.453 of Schedule-III of Notification No:01/2017-Central Tax(Rate) with effect from 15.11.2017 which covers goods which are not specified in Schedule-I, II, IV, V or VI of the said Notification. The same reads as under:

S.No.	Chapter/Heading/ Subheading / item	Description of goods
453	Any Chapter	Goods which are not specified in Schedule I, II, IV, V or VI

Thus the GST rate on 'Fly Ash Bricks' will be 18% (9% SGST + 9% CGST) with effect from 15.11.2017.

26. In view of foregoing, we confirm the Advance Ruling No. GUJ/GAAR/R/20/2020 dated 02.07.2020 to the extent it has been appealed before us and hold that –

- (1) The product 'Fly Ash Bricks' manufactured and supplied by Dipakkumar Ramjibhai Patel (M/s. Mahalaxmi Cement products and Timber) are classifiable under Tariff item No.68159910 of the First Schedule to the Customs Tariff Act, 1975(51 of 1975). The said product will be covered under Sr.No.177 of Schedule-I of Notification No.01/2017-Central Tax(Rate) dated 28.06.2017(as amended from time to time) upto 14.11.2017 and under Sr.No.453 of Schedule-III of Notification No.01/2017-Central Tax(Rate) dated 28.06.2017(as amended from time to time) w.e.f. 15.11.2017, for the reasons discussed hereinabove. Applicability of GST rate on the said product would be 12% GST (6% SGST + 6% CGST) upto 14.11.2017 and 18% GST (9% SGST + 9% CGST) with effect from 15.11.2017 as per Notification No:01/2017-Central Tax(Rate) dated 28.06.2017 (as amended from time to time), for the reasons discussed hereinabove.

27. The appeal filed by Dipakkumar Ramjibhai Patel(Shree Mahalaxmi Cement Products and Timber), Highway Road, Khimana, Banaskantha-385555, is rejected.

(J. P. Gupta)
Member

(Seema Arora)
Member

Place : Ahmedabad
Date : 08.03.2021.