IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 23RD DAY OF MARCH 2016

PRESENT

THE HON'BLE MR. JUSTICE JAYANT PATEL

AND

THE HON'BLE MRS. JUSTICE B.V.NAGARATHNA

WRIT APPEAL No.5798/2011

AND

WRIT APPEAL Nos.16575-585/2011(T-RES)

IN W.A. NO.5798/11

BETWEEN:

1. THE ASSISTANT COMMISSIONER OF
(HEAD QUARTERS)-VAT DIVISON,
MANGALORE.

2. THE COMMISSIONER OF
COMMERCIAL TAXES,
VANIJYA TERGIE KARYALAYA
BUILDING, GANDHINAGAR,
BANGALORE – 560 009.

3. STATE OF KARNATAKA,
DEPARTMENT OF FINANCE,
REPRESENTED BY ITS
SECRETARY, VIDHANA SOUDHA,
BANGALORE – 560 001. ... APPELLANTS

(BY SRI: K.M. SHIVAYOGISWAMY, AGA)

AND:

M/S. H.H. CEMENT PRODUCTS,

NEAR NAVADURGA GARAGE,
N.H.48, KANNUR,
MANGALORE – 575 007.
REPRESENTED BY ITS PATNER,
SRI. MOHAMMAD AFIZ,
S/O U.ABBAS,
AGED ABOUT 39 YEARS. ... RESPONDENT

(BY SMT: VANI .H, ADVOCATE)

IN W.A. NOs.16575-585/11

BETWEEN:

1. THE ASSISTANT COMMISSIONER
OF COMMERCIAL TAXES,
(ENFORCEMENT)-1,
WEST ZONE, VANIJYA
TERIGE BHAVAN, MAIDAN ROAD,
MANGALORE.

2. THE COMMISSIONER OF
COMMERCIAL TAXES,
VANIJYA TERGIE KARYALAYA
BUILDING, GANDHINAGAR,
BANGALORE – 560 009.

3. STATE OF KARNATAKA,
DEPARTMENT OF FINANCE,
REPRESENTED BY ITS
SECRETARY, VIDHANA SOUDHA,
AMBEDKAR VEEDHI,
BANGALORE – 560 001. ... APPELLANTS

(BY SRI: K.M. SHIVAYOGISWAMY, AGA)

AND:

M/S.PEECI INDUSTRIES,
NO.S-5, ISLAMIC TRUST COMPEX,
HAMAPANAKATTE,
MANGALORE – 566 001,
REPRESENTED BY ITS PARTNER,

SRI. G.HASHEER,
S/O P.C.M.KUNHI,
AGED ABOUT 38 YEARS. ... RESPONDENT

(BY SMT: VANI .H, ADV.)

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THESE WRIT APPEALS ARE FILED U/S 4 OF THE KARNATAKA HIGH COURT ACT PRAYING TO SET ASIDE THE ORDR PASSED IN THE WRIT PETITION 13172-173/10 C/W 13376/10 & 13843-851/10 DATED 17/1/11.

THESE APPEALS COMING ON FOR DICTATING JUDGMENT THIS DAY, ***JAYANT PATEL J.*** DELIVERED THE FOLLOWING:

JUDGMENT

All these four appeals are directed against the common judgment. Hence, they are taken up for consideration simultaneously.

2. All these appeals are directed against order dated 17/01/2011 passed by the learned single Judge of this Court in the respective writ petitions whereby the learned Single Judge for reasons recorded in the order has allowed the writ petitions.

3. The brief facts of the cases are that on 01/04/2005 the Karnataka Value Added Tax Act (hereinafter referred to as "The KVAT Act") has come into force and as per the said Act, there was specific Entry No.2 of Schedule III which provided as under:-

> *"All kinds of bricks including fly ash brick; refractory bricks and the like; ashphaltic roofing sheet; earthen tiles".*

4. On 08/09/2006, the second appellant issued a clarification in purported exercise of power under Section 59 of the KVAT Act and observed that bricks of particular sizes came within the scope of Entry No.2; rest of the bricks/blocks would be taxable under residuary entry at the rate of 12.5%. On 05/03/2010, the first appellant acting upon the clarification issued by the second appellant issued notices calling upon the respondents to furnish the books of accounts such as sale invoices and purchase

invoices etc., for the assessment periods of 2005-06, 2009-10. The respondent submitted reply stating that they have already produced the books of accounts for the respective assessment years before the DCCT (Audit) and as the books are taken up for the audit by the DCCT (Audit) for verification under Section 39(1), there was no need for the first appellant to interfere with the jurisdiction of the Deputy Commissioner.

5. However, on 26/03/2010, the first appellant issued show cause notices proposing to levy VAT at 12.5% on paving bricks/blocks treating them as falling outside entry No.2 of Schedule III. On 05/04/2010, the first appellant proceeded to pass an order for reassessment based on the clarification issued by appellant No.2. However, at that stage, the respondents approached this Court by preferring respective writ petitions. The learned single Judge

found that paving bricks/blocks are covered by Entry No.2 of Schedule III and therefore instead of relegating the respondents herein to the alternative remedy found that the matter may be permitted to be agitated under Article 226 of the Constitution and ultimately set aside the order for recovery of VAT passed on the clarification issued by the second appellant herein and further declared that the clarification issued by the second appellant herein would not be applicable to tiles which are in the form of paving bricks and they are covered by the exhaustive definition of all kinds of bricks/asphalt tiles and the tax was directed to collected at the rate of 4% as provided under Entry 2 of Schedule III of the KVAT Act. Hence, these appeals are preferred by the State.

6. We have heard Mr.K.M. Shivayogiswamy, learned Additional Government Advocate, appearing

for the appellants and Smt. Vani, learned counsel, appearing for the respondents in all the matters.

7. It was submitted by the learned counsel for the appellant-State that Entry No.2 of Schedule III is clear in its language to include bricks and only bricks stipulated therein which are used for construction of a building and it cannot include paving bricks since the normal use of paving bricks is mainly for flooring in the compound, garden etc, and not for construction of a building. Learned Additional Government Advocate mainly relied upon the decision of this Court in the case of ***Raman Boards Limited vs. State of Karnataka [(2015) 80 VST 502]*** to support his contention regarding interpretation of the entry in question and the meaning to be given to such an entry and the approach of the Court while interpreting the entry. He therefore, submitted that this Court

may set aside the impugned order by upholding the clarification issued by the second appellant.

8. Whereas, learned counsel appearing for the respondents contended that when the language used in the Entry is to include "bricks of all kinds," the Court need not restrict the interpretation of the entry by the traditional meaning given to the word 'brick'. It should take into consideration advancement of science and technology in manufacturing various types of bricks. In her submission, paving bricks/blocks are also a type of brick and when the Legislature has used the expression "all kinds of bricks" and further, the definition is inclusive, it should be expansively read so as to include paving bricks/blocks also. She submitted that she wished to rely upon certain examples where paving bricks/blocks are used for construction of compound wall also. Alternatively, it

was contended that if the meaning of brick is to be considered in the context of construction only, even then flooring in the compound or in the garden is also a kind of construction. It is her submission that the meaning of the expression 'construction' should not to be restricted to construction of walls of a building only. She submitted that, had the entry in the schedule intended a limited meaning to be given to only construction of walls, then asphalted roofing sheet or earthen tiles would not have been included. Keeping in view the said aspects, learned counsel for the respondents has supported the view taken in the impugned order. She has also relied upon various decisions in support of her contentions, which we would be referring to in the latter part of the judgment to the extent they are applicable.

9. As Entry 2 of Schedule III is already reproduced, we need not repeat the same. Before we address on the question of interpretation of the present entry, we need to consider the broad principles by now well settled with regard to the interpretation of a provision of a taxing statute as stated by the Hon'ble Supreme Court in ***State of West Bengal vs. Kesoram Industries Ltd., & others [(2004) 10 SCC 201]*** as under:

> "***106.*** *The judicial opinion of binding authority flowing from several pronouncements of this Court has settled these principles; (i) in interpreting a taxing statute, equitable considerations are entirely out of place. Taxing statutes cannot be interpreted on any presumption or assumption. A taxing statute has to be interpreted in the light of what is clearly expressed; it cannot imply anything which is not expressed; it cannot import provisions in the statute so as to supply any deficiency; (ii) before taxing any person it must be shown that he falls within the ambit of*

the charging section by clear words used in the section; and (iii) if the words are ambiguous and open to two interpretations, the benefit of interpretation is given to the subject. There is nothing unjust in the taxpayer escaping if the letter of the law fails to catch him on account of the Legislature's failure to express itself clearly. (See, Justice G.P. Singh, ibid, pp.638-39)."

As far as interpretation of an "entry" in a taxing statute is concerned, it is by now well settled that whenever an entry in the taxing statute is to be considered or interpreted in respect of a product or an item its name in the commercial parlance is to be considered and if there is no clear identity or there is no clarity on the said aspect, the Court may consider the composition of the product used or other dictionary meaning etc. When the product is well known and understood amongst the buyers in commercial parlance, the other test namely, its

composition or its actual use by different persons who may be using it for various purposes or its dictionary meaning would have little role to play. At this stage, we may refer to the decision of this Court in the case of *Raman Boards Ltd. supra,* more particularly the observations made at Para 37 of the said decision, which reads as under:-

> *"37. The "entry" to be interpreted here is in a taxing statute; full effect should be given to all the words used therein. If a particular article would fall within a description, by the force of words used, it is impermissible to ignore that description and denote the article under another entry, by a process of reasoning. The meanings given to articles in a fiscal statute must be as people in trade and commerce, conversant with the subject, generally treat and understand by them in the usual course. If an expression is capable of a wider meaning as well as narrower meaning the question whether the wider or the narrower meaning should be given depends on the context and the background of the case.*

But once article is classified and put under a distinct entry, the basis of the classification is not open to question. Technical and scientific tests offer guidance only within limits. Once the articles are in circulation and come to be described, then, there is no difficulty for statutory classification under a particular entry. The classification of the said goods for the purpose of levy under the Central Excise Act, furnishes no guidance for determining the rate of levy under the State Sales Tax Act. The definition of a word given for a specific purpose in an enactment cannot be treated upon to interpret the said word used in a general sense in another enactment. It is well settled rule of construction that the words used in a statute imposing the tax, may be construed in the same way in which they are understood in ordinary parlance in the area in which the law is in force."

(emphasis supplied)

We may also refer to the decision of the Apex Court upon which reliance is placed by learned counsel appearing for the respondents in the case of ***Trutuf***

Safety Glass Industries vs. Commissioner of Sales Tax, U.P. [(2007) 7 SCC 242] wherein the Apex Court at paragraphs 7 and 11 has observed as under:-

> *"7. It is settled position in law that while interpreting the entry for the purpose of taxation recourse should not be made to the scientific meaning of the terms or expressions used but to their popular meaning, that is to say, the meaning attached to them by those dealing in them. This is what is known as "common parlance test". The dictionary meaning of 'glassware' means an article made of glass. The High Court proceeded on the basis that while interpreting the words 'glass and glass wares' in the entry, it should be interpreted as it is understood by the persons dealing in them. It held that the articles manufactured by the assessee cannot be described as glass or glass wares. The view of the High Court would have been correct had the expression "in all forms" not succeeded the expression "glass and glass wares.*
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> *x x x*

11. The golden rule for construing wills, statutes, and, in fact, all written instruments has been thus stated: "The grammatical and ordinary sense of the words is to be adhered to unless that would lead to some absurdity or some repugnance or inconsistency with the rest of the instrument, in which case the grammatical and ordinary sense of the words may be modified, so as to avoid that absurdity and inconsistency, but no further"(See Grey V.Pearson 6 H.L.Cas.61). THE latter part of this "golden rule" must, however, be applied with much caution. "if", remarked Jervis, C.J., "the precise words used are plain and unambiguous in our judgment, we are bound to construe them in their ordinary sense, even though it lead, in our view of the case, to an absurdity or manifest injustice. Words may be modified or varied where their import is doubtful or obscure. But we assume the functions of legislators when we depart from the ordinary meaning of the precise words used, merely because we see, or fancy we see, an absurdity or manifest

injustice from an adherence to their literal meaning"(See Abley V.Dale 11, C.B.378)."

The aforesaid decision enunciates that the popular meaning attached to a product mentioned in an entry by persons who are dealing in the same or what is known as 'common parlance test' has to be taken into consideration and applied. It has been further observed that the grammatical or ordinary sense of the words used is to be adhered to, unless it would result in absurdity or some repugnance or inconsistency with the rest of the entry.

10. Thus, in the matter of construction of general words such as "All kinds of bricks" found in of Entry No.2 of Third Schedule, we could rely on what has been stated by Justice G.P.Singh in his celebrated work, "Principles of Statutory Interpretation." 13th Edition. The cardinal rule is that general words in the statute must be given a general construction, unless

there is something in the Act itself, such as subject matter with which the Act is dealing or context in which such words are used, to show the intention of the Legislature, that they must be given a restricted meaning. Thus words of general import must be given plain and ordinary meaning and then to see whether the context or principle of construction requires that some qualified meaning should be placed on those words. It is, however, quite often that the object or subject matter or the collocation or speaking briefly, the context has the effect of restricting the normal wide meaning of general words.

11. According to Kapoor J., in ***Empress Mills, Nagpur vs. Municipal Committee, Wardha [AIR 1958 SC 341, P.348],*** "general words and phrases, however wide and comprehensive they may be in their literal sense must usually be construed as being limited to the actual object". According to Privy

Council "one of the safest guides to the construction of the sweeping general words which it is difficult to apply in their full literal sense is, to examine other words of like import in the same instrument and to see what limitations can be placed on them". General words also receive a restricted meaning because of principle of legality as also when used in association with other words by application of the rules of *noscitur a sociis* and *ejusdem generis*. Simply put the former means, the meaning of a word is to be judged by the company it keeps. It is a rule wider than the rule of *ejusdem generis,* rather, the latter rule is, only an application of the former. It has been explained as follows: "Where two or more words susceptible of analogous meaning are clubbed together, they are understood to be used in their cognate sense. They take as it were their colour from each other, that is, the more general is restricted to a sense analogous to

a less general" - Maxwell on "Interpretation of Statues", 12th Edition Page 321.

12. In the case of ***State of Bombay vs. Hospital Mazdoor Sabha [AIR 1960 SC 610],*** it has been observed that the meaning of a doubtful word may be ascertained by reference to the meaning of words associated with. By way of caution it is noted that *noscitur a sociis* is merely a rule of construction and it cannot prevail in cases where it is clear that wider words have been deliberately used in order to make the scope of the defined word correspondingly wider. It is only where the intention of legislature in associating wider words with words narrower, is doubtful, or otherwise not clear that the said rule of construction can be usefully applied. Further, the rule cannot be used to make one of the associated words wholly redundant. Thus, while we have given a wide meaning to the word bricks to include every kind of

brick, yet the expression must take its colour from the other words used in the entry such as "and the like".

13. Several decisions could be adverted to at this stage:

(i) In ***M/s.Parakh Foods Ltd. vs. State of A.P [AIR 2008 SC 2012],*** the expression "such other" used in Rule 37-D of prevention of Food Adulteration Rules, 1955 came up for consideration and it was held that the said expression had to be read with the subject matter in which they had been used. The expression "such other" was in the nature of a residuary clause of the rule and had to be read in light of the ten prohibited expressions preceding that class. Then, it would become clear that what was prohibited were only those expressions which were exaggeration of the quality of the product that is, ten prohibited expressions used in Rule 37(D) with regard to the labeling of the product which would tend to exaggerate the quality of the product.

(ii) In another decision of the Hon'ble Supreme Court in the case of ***Godfrey Philips India Ltd. vs. State of Utter Pradesh [(2005) 2 SCC 515].*** In that case, what came up for consideration was Entry 62 of List II, which relates to the exclusive power of the State Legislature to make laws with reference to the 'taxes on luxuries, including taxes on entertainments, amusements, betting and gambling'. Quoting Maxwell on "Interpretation of Statutes", with regard to the effect of words, and particularly general words, it was held that they cannot be read in isolation; their colour and content are derived from their context. It was observed that where two or more words susceptible of analogous meaning are clubbed together, they are understood to be used in their cognate sense. It was held that the meaning of 'luxury' must be understood in a sense analogous to that of the less general words, such as entertainments, amusements, gambling and betting, which are clubbed with it. Thus, the principle of

noscitur a sociis as approved in the case of ***Rainbow Steels Ltd. vs. CST [(1981) 2 SCC 141]*** was applied in the matter.

(iii) In *Rainbow Steels Ltd.,* the expression 'old' occurring in Entry 15 of schedule to the notification dated May 30, 1975, issued under the provisions of the Uttar Pradesh Sales Tax Act, 1948 came for interpretation. The said entry 15 reads as follows:

"Old, discarded, unserviceable or obsolete machinery, stores or vehicles, including waste products, except cinder, coal ash and such items as are included in any other notification issued under the Act."

Applying the principles of *noscitur a sociis*, it was held that the expression 'old' occurring in Entry 15 must be given a restricted meaning, in a sense

analogous to that of the less general words clubbed with it.

(iv) When particular words pertaining to a class, category or genus are followed by general words, the general words are construed as limited to things of the same kind as those specified vide ***K.K.Kochuni vs. State of Madras and Kerala [AIR 1960 SC 1080]***. The rule which is known as rule of *ejusdem generis* applies when; (i) the statute contains an enumeration of specified words; ii) the subject of the enumeration constitute a class or category; iii) that class or category is not exhausted by the enumeration ; iv) the general terms follow the enumeration; v) there is no indication of different legislative intent. In the instant case, the general words. "All kinds of Bricks" precede the specified words.

(v) In ***Commissioner of Income Tax, Udaipur, Rajasthan vs. Macdowell and Company***

Limited, [(2009) 10 SCC 755], it was held that when particular words pertaining to a class, category or genus are followed by general words, the general words are construed as limited to the things of the same kind as those specified.

(vi) In the case of ***M/s.Rohit Pulp and Paper Mills Ltd. vs. Collector Of Central Excise, Baroda [(1990) 3 SCC 447 = AIR 1991 SC 754]***, the point for consideration was, whether "art paper and chromo paper" manufactured from unconventional raw materials were entitled to concessional rate of tax prescribed by the Notification No.25/1984. Those two types of papers fell under category 'printing and writing paper' and those two articles also fell under the description 'coated paper' used in the second proviso to the notification. It was held that the only reasonable way of interpreting the expression 'coated paper' was in a narrower sense consistent with the other

expressions used in the second proviso to the notification. Thus, "coated paper" was held to refer only to coated paper used for industrial purposes and not to coated varieties of printing and writing paper, was the opinion of the Hon'ble Supreme Court.

(vii) In the case of ***Grasim Industries Ltd vs. Collector Of Customs, Bombay [(2002) 4 SCC 297]***, it was held that the rule of *ejusdem generis* is applicable when particular words pertaining to a class, category or genus are followed by general words and in such a case, the general words are construed as limited to things of the same kind as those specified. It was further held that the rule restricts an attempt to reconcile incompatibility between the specific and general words in view of the other rules of interpretation that all words in a statute are given effect if possible; that a statute is to be construed as a whole and that no words in a statute are presumed to be superfluous. It was

further held that for invoking the application of the ejusdem generis rule, there must be a distinct genus or category and the specific words must apply not to different objects of a widely differing character but to something which can be called a class or kind of objects. Where that is lacking, the rule cannot be applied, but the mention of a single species does not constitute a genus."

14. It can hardly be disputed that the meaning of the word 'bricks' is known to public at large who are consumers of varieties of bricks for various purposes. But, the general use and the general meaning the expression brick is one used for construction purposes. One who is involved in the business of construction or who is desirous to put up construction would use of the bricks for the purpose of construction of a building. Therefore, the common meaning of bricks is that which could be used for construction

purposes with the help of cement and sand for outer finishing and also for aligning of bricks. If one thinks, of bricks, at the first instance, country made bricks made out of clay would come within such category but the Legislature intended to include refractory bricks, fly ash bricks in addition to country made bricks. Therefore, it has also used the words "all kinds of bricks". It is true that the language used is to include all kinds of bricks and therefore, one may say that the bricks made out of any preparation, other than fly ash bricks or refractory bricks can also be included. But, two aspects need to be emphasized here. One, is that the language used is "and the like" and the another, is that the general use of bricks is for constructions of various types of building. Under the circumstances, if the product or item is marketed as bricks, it is for the purpose of construction and in common parlance

bricks are used for construction and all such bricks used for construction can be said to be included.

15. The attempt on the part of learned counsel for the respondent to contend that laying the flooring in a compound or in the garden is also a part of construction activity cannot be accepted for the reason that if such a wide meaning is given to the word "construction" it would result in an absurdity by equating to construction whereas there is no construction, in the strict sense of the term, while paving or laying a flooring with bricks. While giving a meaning to the word "construction" one would normally consider the general meaning of the word "construction" to something to be raised above the surface of the earth and it may also be below the earth's surface, but would not include construction on the level of the earth or on the surface of the earth

and not raised above the surface of the earth. If the aforesaid aspects are considered, it is not possible to accept the contention of learned counsel for the respondents that the construction should include flooring in the compound or flooring in the garden as sought be canvassed.

16. The attempt made by learned counsel for the respondents to contend that paving bricks/blocks are also used for construction of compound walls also, cannot be countenanced so as to nullify the general meaning of bricks used for construction of compound wall. Merely because some persons as an exception use paving bricks/blocks for the purpose of construction of compound wall is not a reason to take a different view than the view that could be taken on the basis of general understanding amongst the buyers or the persons interested to buy the product

for the purpose of construction which is in accordance with commercial parlance test.

17. The aforesaid reason is in addition to the basic features of paving bricks such as the method of manufacturing of paving bricks/blocks as compared to normal bricks. Paving bricks invariably would contain an interlocking system as it is used for flooring. In normal circumstances cement is not required to be used for combining one block with another. No cement is required for flooring the paving blocks. Paving bricks/blocks can be fixed on any surface interlocking each other whereas bricks which are used for construction neither have any interlocking system nor can be used for construction of walls of a building, unless cement is used as material for straight alignment of the bricks apart from the use of cement for its outer surface. In our view the aforesaid also

makes a distinction of the word bricks as compared to paving bricks/blocks.

18. An attempt was made by learned counsel for the respondents to contend that insofar as manufacturing process or the commercial composition of bricks are concerned more particularly fly ash bricks and paving bricks are the same. As such, there is no material available in support of such a proposition. Even if we consider the contention for the sake of examination, the strength of fly ash bricks and paving blocks is different because of difference in the proposition or quantity of cement or other materials used in paving bricks in comparison with fly ash bricks. It is true that the composition of the product would have little role to play, if the product is known in the commercial parlance for a particular general use. But the aforesaid observations are made only for

the purpose of examining the contention of respondents though the composition of the product in the present case for the purpose of making distinction between bricks and paving bricks/blocks has a very little role to play rather, no role to play when the entry is interpreted.

19. We may now refer to the decisions upon which reliance has been placed by the learned counsel for the respondents in the case of ***State of Maharashtra vs. Bradma of India Limited [2005(2) SCC 669],*** the question considered by the Apex Court was when the specific entry is available, whether the residuary entry could be resorted to. The principles laid down by the Apex Court in the said decision, even if applied to the facts of the present case, would be of no assistance to the respondents because if it is found that paving bricks/blocks are

included in Entry 2 of Schedule III naturally there would not be any question of resorting to residuary entry. The converse also applies.

20. In the decision of Apex Court in the case of ***Brindavan Bangle Stores vs. Assistant Commissioner of Commercial Taxes [2000(1) SCC 674],*** the Apex Court made observations regarding the intention of the Legislature in associating words with limited meanings with wider words and meaning to be given thereto. The attempt on the part of learned counsel for the respondent was that since the language used is "all kinds of bricks" a wider meaning should be given to the word "bricks", cannot be countenanced for the simple reason that the said expression is followed by the words "the like". Hence, the said decision is of no help to the respondents.

21. In the case of ***Trutuf Saftey Glass Industries (supra)*** the Apex Court did observe that for the purpose of interpretation of an entry, recourse should not be made to the scientific meaning of the terms or expressions used but to its popular meaning, that is to say, the meaning attached to them by those dealing in them in other words "Common parlance test" must be applied. In our view, even if principles stated in the said decision are considered, we do not find that the said decision is of any help to the respondents.

22. In the case of ***Mauri Yeast India Pvt. Ltd. vs. State of Uttarpradesh & Others [(2008) 5 SCC 680]***, the question was with regard to giving a wide meaning to an Entry, keeping in view the intention of the Legislature. However, as observed

earlier by us, the specific word in the Entry such as " the like", goes to show that bricks should have the same characteristics as that of country made bricks or refractory bricks. Therefore, we do not find that the said decision would be of any help to the respondents.

23. In the decision of this Court in the case of ***State of Karnataka vs. Kasturi and sons [ILR (Kar) 2000 page 2995]***, question arose regarding of an interpreting Entry when it read as "Paper of all kinds" and this Court found that even waste paper, could be used for any purpose for which paper is normally used and therefore, found that waste paper will would be included in the said entry. In the present case, as observed by us earlier, normally the use of bricks is for construction of wall in buildings and blocks are used for flooring, compound wall, flooring in the garden and normal use is different of

both the commodities and therefore, the said decision would be of no help to the respondents.

24. Learned counsel for the respondents relied upon two decisions of the Tribunal one is of Gujarat Value Added Tax Tribunal in Appeal No.20/2009 and another, is of Karnataka Appellate Tribunal in STA No.364/2007 decided on 15/06/2012 and 23/05/2008 respectively. In view of the examination of the matter by distinguishing between bricks and the floor bricks or pavers we cannot agree with the view taken by the Gujarat Tribunal as well as Karnataka Appellate Tribunal. Hence, we find that the said views of the Tribunal are not correct.

25. In view of the aforesaid observations and discussion, the conclusion recorded in the impugned order cannot be sustained.

26. Apart from the above, we do notice that in normal circumstances, the Court while exercising power under Article 226 of the Constitution of India would have relegated the parties to the alternative statutory remedy of preferring appeal or revision, as the case may be. It is only in exceptional circumstances this Court may make a departure there from and exercise its power under Article 226 of the Constitution of India. In any case, even if this matter is considered as being an exceptional category so as to exercise power under Article 226 of the Constitution of India, then also, in view of the observations and discussion referred herein above, we do not find that the clarification made by the Commissioner which is impugned herein would call for any interference. Consequently, order of re-assessment based on the clarification would also not call for any interference.

In the circumstances, the order of the learned Single Judge is set aside. All petitions stand dismissed.

27. The appeals are accordingly ***allowed***. There is no order as to costs.

Sd/-
JUDGE

Sd/-
JUDGE

Alb/TL