
 सत्यमेव जयते	केंद्रीय कर आयुक्त (अपील) <b>O/O THE COMMISSIONER (APPEALS), CENTRAL TAX</b> वस्तु एवं सेवा कर भवन, सातवीं मंजिल, पोलिटेक्निक के पास, आम्बावाडी, अहमदाबाद-380015 ☎ : 079-26305065	 GST Building, 7 <sup>th</sup> Floor, Near Polytechnic, Ambavadi, Ahmedabad- 380015 टेलीफैक्स : 079-26305136
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क फाइल संख्या : File No : **V2(38)91/STC-III/2016-17/hoh8 to hoh2**

ख अपील आदेश संख्या : Order-In-Appeal No.: **AHM-EXCUS-003-APP-0137-17-18**

दिनांक Date : **23.10.2017** जारी करने की तारीख Date of Issue: **6-11-17**

श्री उमाशंकर आयुक्त (अपील) द्वारा पारित

Passed by Shri Uma Shanker Commissioner (Appeals) Ahmedabad

ग अपर आयुक्त, केन्द्रीय उत्पाद शुल्क, अहमदाबाद-III आयुक्तालय द्वारा जारी मूल आदेश :  
**25/D/GNR/VHB/2016-17** दिनांक : **29.11.2016** से सृजित

Arising out of Order-in-Original: **25/D/GNR/VHB/2016-17**, Date: **29.11.2016** Issued by:  
 Assistant Commissioner, Central Excise, Div: Gandhinagar, Ahmedabad-III.

घ अपीलकर्ता एवं प्रतिवादी का नाम एवं पता

Name & Address of the Appellant & Respondent

**M/s. PSP Projects Ltd.**

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

Any person aggrieved by this Order-In-Appeal may file an appeal or revision application, as the one may be against such order, to the appropriate authority in the following way :

भारत सरकार का पुनरीक्षण आवेदन :

**Revision application to Government of India :**

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अंतर्गत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अवर सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली : 110001 को की जानी चाहिए।

(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4<sup>th</sup> Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid :

(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रक्रिया के दौरान हुई हो।

(ii) In case of any loss of goods where the loss occur in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse.

(ख) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामलों में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

(b) In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

- (ग) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।
- (c) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

ध अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

(d) Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

(1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक से तीन मास के भीतर मूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्ष के अंतर्गत धारा 35-इ में निर्धारित फी के भुगतान के संबूत के साथ टीआर-6 चालान की प्रति भी होनी चाहिए।

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

(2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख से ज्यादा हो तो 1000/- की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-  
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35- णबी/35-इ के अंतर्गत:-

Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में ओ-20, न्यू मैन्टल हास्पिटल कम्पाउण्ड, मेघाणी नगर, अहमदाबाद-380016.

To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at O-20, New Metal Hospital Compound, Meghani Nagar, Ahmedabad : 380 016. in case of appeals other than as mentioned in para-2(i) (a) above.

(2) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 की धारा 6 के अंतर्गत प्रपत्र इ.ए-3 में निर्धारित किए अनुसार अपीलीय न्यायाधिकरणों की गई अपील के विरुद्ध अपील किए गए आदेश की चार प्रतियाँ सहित जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रुपए 5 लाख या उससे कम है वहां रुपए 1000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रुपए 5 लाख या 50 लाख तक हो तो रुपए 5000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रुपए 50 लाख या उससे ज्यादा है वहां रुपए 10000/- फीस भेजनी होगी। की फीस सहायक रजिस्टार के नाम से रेखांकित बैंक ड्राफ्ट के रुप में संबंध की जाये। यह ड्राफ्ट उस स्थान के किसी नामित सार्वजनिक क्षेत्र के बैंक की शाखा का हो

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of Central Excise(Appeal) Rules, 2001 and shall be accompanied against (one which at least should be accompanied by a fee of Rs.1,000/-, Rs.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / refund is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asstt. Registrar of a branch of any

nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated

(3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल आदेश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढ़ी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है।

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner notwithstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

(4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रु.6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall bear a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

(5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

Attention is invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

(6) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सीस्तेत) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1984 की धारा 34फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 24) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1994 की धारा 23 के अंतर्गत सेवाकर को भी लागू की गई है, द्वारा निश्चित की गई पूर्व-राशि जमा करना अनिवार्य है, बशर्ते कि इस धारा के अंतर्गत जमा की जाने वाली अपेक्षित देय राशि दस करोड़ रूपए से अधिक न हो

केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "माँग किए गए शुल्क" में निम्न शामिल है

- (i) धारा 11 डी के अंतर्गत निर्धारित रकम
- (ii) सेनवैट जमा की ली गई गलत राशि
- (iii) सेनवैट जमा नियमावली के नियम 6 के अंतर्गत देय रकम

→ आगे बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम, 2014 के आरम्भ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्जी एवं अपील को लागू नहीं होंगे।

For an appeal to be filed before the CESTAT, it is mandatory to pre-deposit an amount specified under the Finance (No. 2) Act, 2014 (No. 25 of 2014) dated 06.08.2014, under section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under section 83 of the Finance Act, 1994 provided the amount of pre-deposit payable would be subject to ceiling of Rs. Ten Crores,

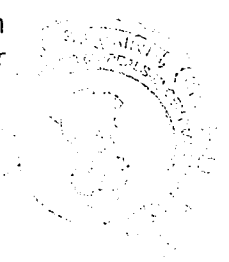
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (i) amount determined under Section 11 D;
- (ii) amount of erroneous Cenvat Credit taken;
- (iii) amount payable under Rule 6 of the Cenvat Credit Rules.

→ Provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.

(6)(i) इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

(6)(i) In view of above, an appeal against this order shall lie before the Tribunal 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."



**ORDER-IN-APPEAL**

This appeal has been filed by M/s. PSP Projects Ltd., Near PDPU University, Raysan Village, Koba Circle, Gandhinagar (hereinafter referred to as "the appellants") against the Order-in-Original number 25/D/GNR/VHB/2016-17 dated 29.11.2016 (hereinafter referred to as "the impugned order") passed by the Assistant Commissioner of Central Excise, Gandhinagar Division (hereinafter referred to as "the adjudicating authority").

2. Brief facts of the case are that the appellants are having Central Excise Registration number AAEC7961LEM007 and involved in the manufacture and clearance of "Ready Mix Concrete" (hereinafter referred to as "RMC") falling under the Chapter head 38245010 of the Central Excise Tariff Act, 1985. They were clearing the said goods by availing the benefit of Central Excise Notification number 01/2011-CE dated 01.03.2011 (as amended) and clearing goods on payment of Central Excise duty @ 2% ad valorem and filling quarterly returns in the form of ER-8. A search was conducted by the Preventive Officers of Central Excise, Ahmedabad-III at the RMC site of the appellants. During the search, it was revealed by the appellants that the said RMC plant premises pertained to PDPU for which they were having consent letter of PDPU. The appellants informed the Preventive Officers that they were discharging duty @ 2% on the RMC supplied to all the clients except PDPU as they were availing the benefit of exemption under Notification number 12/2012 dated 17.03.2012 (as amended) and accordingly not paying any duty on clearance of RMC to PDPU. However, it was confirmed that they stopped availing the exemption from November 2015 and started paying Central Excise duty on RMC clearance to their PDPU site also. Thus, a show cause notice, dated 04.04.2016, was issued to the appellants which was adjudicated by the adjudicating authority. The adjudicating authority, vide the impugned order, confirmed the demand of Central Excise duty of ₹ 4,96,650/- under Section 11A(1)(a) of the Central Excise Act, 1944. He also ordered to recover interest under Section 11AA of the Central Excise Act, 1944 and imposed penalty of ₹ 49,065/- under Rule 25 of the CER, 2002 read with Section 11AC(1)(a) of the Central Excise Act, 1944.

3. Being aggrieved, the appellants have filed the present appeal. The appellants argued that the products 'Ready Mix Concrete' (RMC) and 'Concrete Mix' (CM) are one and the same thing. They further stated that the distinction between RMC and CM is similar to that between garment and readymade garment or home-made food and the food ordered from restaurant for home delivery. They contended that when CM is prepared at one place from where it is packed and transported to some other place where the same is to be used, that is known as RMC. It is only when the RMC is

used at a place other than where it is prepared; the same becomes eligible to payment of duty and not when it is used at the site.

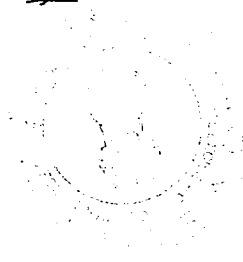
4. A personal hearing in the matter was held on 21.08.2017 and Shri Vipul Khandhar, Chartered Accountant appeared for the same and reiterated the grounds of appeal. He further argued that the matter has been clarified only after 06.10.2016 in the case of L & T Ltd. and therefore, the demand is sustainable only after that.

5. I have carefully gone through the facts of the case on records, appeal memorandum and submissions made by the appellants at the time of personal hearing. Now I would like to discuss the issue at length.

6. At first I would like to explain what exactly is the difference between RMC and CM. Concrete produced at a location other than the construction site is generally called as Ready Mix Concrete or Rock. RMC is produced from a batching plant usually of high capacity and good control over the process. The concrete from the plant is dumped in to a transit mixer for transportation to the construction site. Alternatively concrete can be produced on site using a batching plant of smaller capacity and directly used. Concrete mixers deployed at site are used for small volumes. Ready mix concrete is also concrete from a batching plant but may not be exactly vice versa. Ready mix concrete is also produced in batching plant only, the difference is that it is produced away from construction site and brought to site in transit mixers. Ready mix concrete shall be pumpable concrete which needs more workability and more slump. Ready mix concrete has 12 mm and down size aggregate and more quantity of super plasticizer to have more slump i. e. more than 100mm and generally 120 mm to 130 mm to avoid clogging of pump and piping. Ready mix concrete is also dosed with set retarders or retarding agents to delay setting and reach site in heavy traffic conditions also while concrete is still green. Ready mix plants will have 60 to 90 cubic meters per hour capacity batching plants where as site mix plants of lower capacity is sufficient depending on size of the construction site.

Thus, I find that RMC contains super plasticizer to desist it from setting down at a faster rate. Now a days, the manufacturer of RMC are adding fly ash to increase its fluidity.

7. From the above, it is quite clear that the above mentioned products are different from each other as I have quoted above that Ready Mix Concrete is also concrete from a batching plant but may not be exactly vice versa as they are using some additional supplements to increase its fluidity and its capacity to settle down. Now I come to serial number 144 of the Notification number 12/2012-CE dated 17.03.2012. The said notification very clearly says the goods have to be Concrete Mix (CM) manufactured at the



site of construction. The concerned portion of the said notification is mentioned below;

Sl. No.	Chapter or heading or sub-heading or tariff item of the First Schedule	Description of excisable goods	Rate	Condition No.
144	38	Concrete mix manufactured at the site of construction for use in construction work at such site	Nil	-

Thus, it can be seen that the exemption is given to the product Concrete Mix and not to Ready Mix Concrete. I find that the adjudicating authority has, very rightly, quoted paragraph 4 of the Board's Circular number 315/31/97-CX dated 23.05.1997 where it is clarified that RMC and CM are two separate distinguishable commodities. The Board vide Circular No. 315/31/97-CX dated 23.5.97 has issued further clarification regarding the classification of Ready Mix Concrete and the relevant portion of which reads as under;

"2. The Board has examined the issue of "RMC" afresh and finds that a clear distinction needs to be made between the two types - (a) concrete mix at site and (b) Ready Mix Concrete. The Ready Mix Concrete plant consists of stone crushers, conveyors, vibrator screen to segregate different sizes of stone aggregates, and a sand mill to produce sand from stones. A central batching plant is also installed in which all aggregates are weighed, batched by electrical controls and limit switches. Cement from silo is carried to the batching plant by a screw conveyer operated with automatic weighing gauges. Water is fed through flow meters after subjecting such water to chemical analysis. The mixture of stone aggregates, sand, cement and water is mixed in a mixer. The shelf life of the mixture so obtained is increased by addition of chemicals. This mix is loaded on a transit mixer mounted on truck chassis which is transported to the site of the customers and the same is discharged at site for use in further construction of building etc.

3. The qualities of Ready Mix concrete, are somewhat different to mixed concrete. The final product Ready Mix Concrete is a material in plastic, wet process state and not a finished product like blocks or precast tiles or beams.

4. Ready Mix Concrete is thus an excisable product which has a separate tariff entry under sub-heading 3824.20 of the Central Excise Tariff Act, 1985. It is also known under the Indian Standard IS: 4926-1976, which for the purposes of that standard defines Ready Mix

*Concrete as concrete delivered at site or into the purchaser's vehicle in a plastic condition and requiring no further treatment before being placed in the position in which it is to stay and harden".*

Thus, in view of the above, it is very much clear that RMC and CM are two different products. The appellants are engaged in the manufacture of RMC falling under Chapter Head 38245010 and they very much knew the fact that it attracted duty. That is the reason why they stopped availing the said exemption from November 2015 and started paying Central Excise duty on RMC clearance to their PDPU site also.

Thus, without much ado, I conclude that the adjudicating authority has rightly confirmed the demand.

8. In view of above discussions, I uphold the impugned order passed by the adjudicating authority and reject the appeal filed by the appellants.

9. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

9. The appeals filed by the appellant stand disposed off in above terms.



(उमा शंकर)

CENTRAL TAX (Appeals),

AHMEDABAD.

ATTESTED

  
(S. DUTTA)

SUPERINTENDENT,

CENTRAL TAX (APPEALS),

AHMEDABAD.

**BY R.P.A.D**

To,  
M/s. PSP Projects Ltd.,  
Near PDPU University,  
Raysan Village, Koba Circle,  
Gandhinagar.

**Copy to:-**

1. The Chief Commissioner, Central Tax Zone, Ahmedabad.
2. The Commissioner, Central Tax, Gandhinagar.
3. The Dy. / Asstt. Commissioner, Central Tax, Division- Gandhinagar.
4. The Addl./Joint Commissioner, (Systems), Central Tax, Gandhinagar.
5. Guard file.
6. P.A file.