



सत्यमेव जयते

केंद्रीय कर आयुक्त (अपील)

O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,

केंद्रीय उत्पाद शुल्क भवन, 7th Floor, Central Excise Building,
सातवीं मंजिल, पोलिटेकनिक के पास, Near Polytechnic,
आम्बावाडी, अहमदाबाद-380015 Ambavadi, Ahmedabad-380015



☎ : 079-26305065

टेलीफैक्स : 079 - 26305136

रजिस्टर डाक ए .डी .द्वारा

क फाइल संख्या (File No.) : V2(38)141&142/Ahd-II/Appeals-II/ 2016-17 /511-16

ख अपील आदेश संख्या (Order-In-Appeal No.): AHM-EXCUS-002-APP- 258-259-17-18

दिनांक (Date): 28.12.2017 जारी करने की तारीख (Date of issue): 24/01/18

श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित

Passed by Shri Uma Shanker , Commissioner (Appeals)

ग _____ आयुक्त, केंद्रीय उत्पाद शुल्क, (मंडल-III), अहमदाबाद- II, आयुक्तालय द्वारा जारी

मूल आदेश सं----- दिनांक -----से सृजित

Arising out of Order-In-Original No . 29-30/AC/D/BJM/2016 Dated: 30.12.2016

issued by: Assistant Commissioner Central Excise (Div-III), Ahmedabad-II

घ अपीलकर्ता/प्रतिवादी का नाम एवम पता (Name & Address of the Appellant/Respondent)

M/s UltraTech Cement Ltd (Concrete Unit)

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 an 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) (क) (i) केंद्रीय उत्पाद शुल्क अधिनियम 1994 की धरा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परंतुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली-110001 को की जानी चाहिए ।

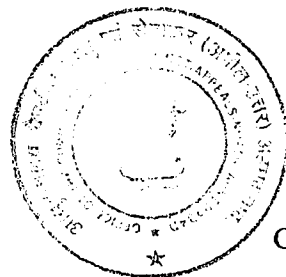
A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid:

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

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 मामले में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है ।

As file



Cont...2

- (c) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

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 हैं।

- (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 सबूत 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-बी/35-इ के अंतर्गत:-

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

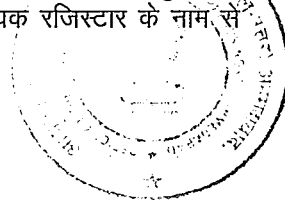
- (क) वर्गीकरण मूल्यांकन से संबंधित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठिका वेस्ट ब्लॉक नं. 3. आर. के. पुरम, नई दिल्ली को एवं

- (a) the special bench of Custom, Excise & Service Tax Appellate Tribunal of West Block No.2, R.K. Puram, New Delhi-11 in all matters relating to classification valuation and.

- (ख) 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 मेटल हॉस्पिटल कम्पाउण्ड, मेघानी नगर, अहमदाबाद-380013.

- (b) 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 रूपर 5 लाख या उससे कम है वहाँ रूपर 1000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपर 5 लाख या 50 लाख तक हो तो रूपर 5000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपर 50 लाख या उससे ज्यादा है वहाँ रूपर 10000/- फीस भेजनी होगी। की फीस सहायक रजिस्टार के नाम से



रेखांकित बैंक ड्राफ्ट के रूप में संबंध की जाये। यह ड्राफ्ट उस स्थान के किसी नामित सार्वजनिक क्षेत्र के बैंक की शाखा का हो जहाँ उक्त न्यायाधिकरण की पीठ स्थित है।

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 पढी 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 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 उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट), के प्रति अपील के मामले में कर्तव्य मांग (Demand) एवं दंड (Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिकतम पूर्व जमा 10 करोड़ रुपए है। (Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

केन्द्रीय उत्पाद शुल्क और सेवा कर के अंतर्गत, शामिल होगा "कर्तव्य की मांग" (Duty Demanded) -

- (i) (Section) खंड 11D के तहत निर्धारित राशि;
- (ii) लिया गलत सेनवैट क्रेडिट की राशि;
- (iii) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि.

⇒ यह पूर्व जमा 'लंबित अपील' में पहले पूर्व जमा की तुलना में, अपील दाखिल करने के लिए पूर्व शर्त बना दिया गया है।

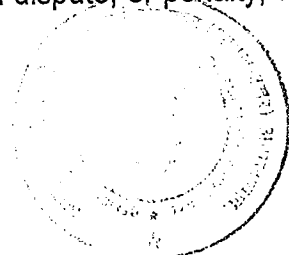
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

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.

इस सन्दर्भ में 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।

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

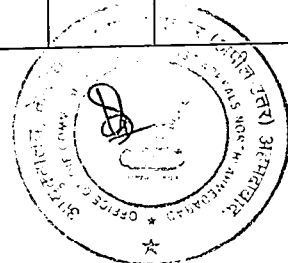
M/s. Ultratech Cement Ltd., Unit Ultratech Concrete, situated at Survey No. 331/2, Applewood Estate Pvt. Ltd., Applewood Township, Nr. Shantipura Ring Road, Ahmedabad, and M/s. Ultratech Cement Ltd., Unit Ultratech Concrete, situated at Plot No. 18/19, C/o. Reward Const. P. Ltd., Sanand GIDC, Sanand, Ahmedabad (*hereinafter referred to as 'appellant'*) are engaged in the manufacture and clearance of ready to use Concretes known as "Ready-Mix Concrete (RMC)" falling under Chapter Heading "38245010" of the Central Excise Tariff Act, 1985. The said appellant is registered with Central Excise. The appellant have filed the present appeal on 09.03.2017, against the Order-in-Original No. 29-30/AC/D/BJM/2016 dated 30.12.2016 (*hereinafter referred to as 'impugned order'*) passed by the Assistant Commissioner, Central Excise, Division-III, Ahmedabad-II (*hereinafter referred to as the 'Adjudicating authority'*), confirming the demand amounting to Rs.15,51,925/-, alongwith interest under Section AB/AA & also imposing penalty under Section 11 AC, of the Central Excise Act, 1944, and rules made thereunder, for non payment of Service tax on the clearance of RMC demanded vide Show Cause Notices issued from F. No. V.38/15-66/OA/2016 and F. No. V.38/15-66/OA/2016, both dated 06.07.2016.

2. The facts of the case, in brief, are that the appellants are engaged in the manufacture of product namely "Ready Mix Concrete" (RMC) falling under Chapter Sub-heading No. 38245010. The description of goods of Chapter Heading No. 38245010 as per the Central Excise Tariff is as under :

Tariff Item	Description of Goods
382450	Non-refractory mortars and concretes:
38245010	Concrete ready to use known as "Ready-mix Concrete (RMC)"
38245090	Other

During the course of preliminary scrutiny of the ER-8 return filed by the appellant, it was noticed that they had been claiming the benefit of exemption of Notification No. 12/2012-CE dt.17.03.2012 (Sl. No. 144), as amended, for clearance of Ready Mix Concrete without payment of duty. Sl. No. 144 of the Notification No. 12/2012-CE dt.17.03.2012, is shown below :

Sl. No.	Chapter or heading or sub-heading or tariff	Description of excisable goods	Rate	Condition No.



	item of the First Schedule			
144	38	Concrete Mix manufactured at the site of construction for use in construction work at such site	Nil	---

3. It was evident from the above that the benefit of Sl. No. 144 of Notification No. 12/2012-CE was available only to concrete mix manufactured at the site of the construction for use in construction work at such site and not for the RMC manufactured by the appellant. The benefit of Sl. No. 144 of Notification No. 12/2012-CE dt.17.03.2012, as amended, was not available to 'Ready Mix Concrete'. The appellant had therefore, by wrongly availing the benefit of Notification No. 12/2012-CE (Sl. No. 144) evaded Central Excise duty amounting to Rs. 7,46,797/-, and Rs. 8,05,128/- . Therefore, two show cause notices were issued in this regard to the appellant. Show Cause Notice issued from F. No. V.38/15-66/OA/2016, dated 06.07.2016, was issued to M/s. Ultratech Cement Ltd., Unit Ultratech Concrete, situated at Survey No. 331/2, Applewood Estate Pvt. Ltd., Applewood Township, Nr. Shantipura Ring Road, Ahmedabad, demanding Central Excise duty amounting to Rs.7,46,797/-, on the value of Rs.3,62,52,259/-, for the period from April'14 to October'14. Another Show Cause Notice issued from F. No. V.38/15-67/OA/2016, dated 06.07.2016, was issued to M/s. Ultratech Cement Ltd., Unit Ultratech Concrete, situated at Plot No. 18/19, C/o. Reward Const. Pvt. Ltd., Sanand GIDC, Sanand, Ahmedabad, demanding Central Excise duty amounting to Rs.8,05,128/-, on the value of Rs.3,90,83,874/-, for the period from April'14 to December'14. The appellant contended that they are engaged in the manufacture of RMC and clearance of the same for use at the construction site itself. The Adjudicating Authority, however, vide the impugned order dt. 30.12.2016, concluded that the appellant had wrongly availed the benefit available under Notification No. 4/2006-CE dt. 01.03.2006, as amended by Notification No.12/2016-CE dt. 01.03.2016, with respect to the RMC manufactured and cleared by them for the use at the construction site itself. Accordingly, a demand of Central Excise duty of Rs. 15,51,925/-, was confirmed, alongwith interest and penalty under the related provisions by the Adjudicating Authority vide the impugned order.

4. Being aggrieved by the impugned order dt. 30.12.2016, the appellant has filed this appeal before me on the grounds that (i) Concrete Mix & RMC are not two different products, but Concrete Mix includes RMC and hence



denial of exemption benefit on the ground that RMC & Concrete Mix are two different products is not correct; (ii) the appellants satisfy the ingredients of Notification No. 12/2012-CE dt.17.03.2012, and are eligible to avail the benefit of the aforesaid exemption Notification; (iii) the RMC manufactured and cleared by the appellants to their dedicated customer is nothing but a type of CM classifiable under Chapter 38; (iv) the RMC is manufactured at the site of construction; and (v) the extended period cannot be invoked in the present case as there is no suppression of facts with an intent to evade payment of duty.

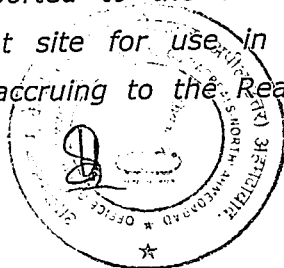
5. During the personal hearing, the learned Advocate of the appellant appeared before me and reiterated the grounds of appeal and also made additional written submission. She referred to the Notification No. 12/2016-CE and submitted that it is clarificatory in nature and therefore it should be applied retrospectively.

6. I have carefully gone through the facts of the case on record, grounds of appeal in the Appeal Memorandum, further submissions and oral submissions made by the appellant at the time of personal hearing.

7. The question to be decided is as to whether the RMC manufactured and cleared by the appellant is eligible for exemption from Central Excise duty during the relevant period.

8. Concrete Mix in a layman's language is normally made out of agglomeration of water, sand, cement and aggregated stones in a Mixer. The entire mix is agitated in a concrete mixture, either with the help of power or manually. Ready Mix Concrete is a mixture of cement, sand, coarse aggregates and a few chemicals in a fixed proportions and involving strict quality control and sample tests. Circular No. 237/71/96-CX dt.12.08.1996, at Para 2 describes the 'Ready Mix Concrete' as -

"2. The Ready Mix Concrete plant consists of stone crushers, conveyors, vibrator screen to segregate different sizes of stone aggregates, and 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 site is carried to the batching plant by a screw conveyer operated with automotive 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 mixer. The mixture so obtained 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. The qualities accruing to the Ready Mix



Concrete so obtained far out weigh to those of the site 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."

"Concrete mix manufactured at the site of construction for use in construction work at such site" (Ch.38) was exempted fully from Central Excise duty vide Notification No. 4/97-CE dt.01.03.97 (Sl. No. 51). The Union Budget of 1997 introduced a specific sub-heading No. 3824.20 for Ready Mix Concretes which attracted Central Excise duty @ 13%. Subsequently, the rate of duty for Chapter sub-heading No.3824.20 i.e. RMC was decreased to 8%. Due to the persistent doubts raised during that period, the Board vide Para 4 of Circular No. 315/31/97-CX. dt.23.05.97, clarified that -

"4. The Board has examined the matter and is of the view that Ready Mix Concrete and Concrete Mix are two separate and distinguishable commodities. Ready Mix Concrete, even if it is manufactured at the site of construction, is chargeable to excise duty @ 13% under sub-heading No. 3824.20 of Central Excise Tariff Act, 1985. The exemption for concrete mix manufactured at the site of construction for use in construction work at such site available vide S.No. 51 of Notification No. 4/97-CE dated 1.3.1997 is not applicable to Ready Mix Concrete manufactured at the site of construction."

Thus, the Department made it clear vide the above Circulars, that Ready Mix Concrete and Concrete Mix are two separate and distinguishable commodities, with the former attracting 8% rate of duty, while the latter was exempted from payment of duty. However, the confusion persisted when cases of concrete mix manufactured at the site of construction were being denied the benefit of exemption under Notification No. 4/97-CE dt.01.03.97 (Sl. No. 51). The Department vide Circular No.368/1/98 dt.06.01.98, clarified this matter very explicitly as follows:

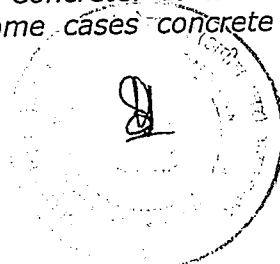
**Circular No. 368/1/98
dated 6/1/98**

F.No. 126/2/97-CX.3

Government of India
Ministry of Finance
Department of Revenue
Central Board of Excise & Customs, New Delhi

Subject: Board's Circular No. 315/31/97-CX dated 23.5.97-
Classification of "Ready Mix Concrete" - Reg.

Attention is invited to Board's Circular No. 315/31/97-CX dt. 23.5.97 regarding classification of Ready Mix Concrete. It has been brought to the notice of the Board that in some cases concrete mix



manufactured at the site of construction is being denied exemption under S.No. 51 of Notification No. 4/97 dt. 1.3.97.

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 some what different to site 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. Ready Mix Concrete attracts duty at the rate of 13% prior to 21.10.97. subsequent to 21.10.1997 vide Notification No. 65/97-CE dt. 21.10.97 the duty on Ready Mix Concrete classified under sub-heading 3824.20 has been reduced to 8%.

5. A doubt has been raised as to whether concrete mix manufactured at site using large mechanical devices is a form of ready mix concrete.

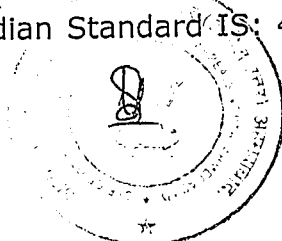
6. The matter has been examined and concrete mix implies the conventional method of concrete production conforming to the ISI Standard 456-1978, which is produced and used at the site of construction. It is this concrete mixture, manufactured at the site of construction which is fully exempt vide Notification No. 4/97-CE dt. 1.3.97(S.No. 51). It is thus clarified that ready mix concrete or pre-mixed concrete, by its very nature, cannot be manufactured at the site of construction and is brought from the factory of manufacturer for use in construction.

7. In view of the above and keeping in mind the distinction between Ready Mix Concrete and "Concrete Mix" it is clarified that Ready Mix Concrete is an excisable product classifiable under sub-heading 3824.20, chargeable to duty at the appropriate rate whereas "Concrete Mix" manufactured at the site of construction for use in construction at such site, is fully exempt vide Notification No. 4/97-CE dt. 1.3.97-(S.No. 51).

8. All Pending disputes/ assessments on the issue may be settled in the light of these guidelines.

Sd/-
(Renu K. Jagdev)
Under Secretary to the Govt. of India

From the above circular, the Department made it clear that Concrete mix at site and Ready Mix Concrete are clearly distinct products. That the qualities of RMC are some what different to the Site Mixed Concrete. The Circular also clarified that RMC is also known under the Indian Standard IS: 4926-

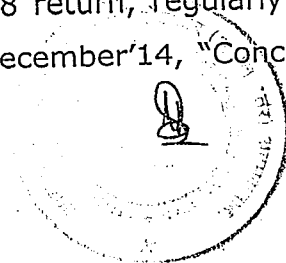


1976, whereas Concrete mix which is produced and used at the site of construction, confirms to Indian Standard IS: 456-1978. The Circular also clarified that RMC cannot be manufactured at the site of construction and is brought from the factory of manufacturer for use in construction. Therefore, Concrete mix manufactured at the site of construction for use in the construction at such site, was fully exempted vide Noti. No. 4/97-CE dt. 01.03.97 (Sl. No.51). Thereafter, the Department also issued Notification No. 04/2006-CE dt.01.03.2006, wherein at Sl. No. 74 it was provided that "Concrete mix manufactured at the site of construction for use in construction work at such site" is exempted from payment of Central Excise duty. The above-mentioned Notification No. 04/2006-CE dt.01.03.2006, was superseded by Notification No. 12/2012-CE dt.17.03.2012, and vide Sl.No.144 of the said Notification No.12/2012-CE, the exemption from payment of Central Excise duty continued for "Concrete mix manufactured at the site of construction for use in construction work at such site". Prior to 01.03.2011, RMC was chargeable to Nil rate of duty and was indicated in the Tariff as below :

Tariff Item	Description of goods	Rate of duty
3824	Prepared binders of foundry moulds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included	
3824 50	- Non-refractory mortars and concretes:	
3824 5010	--- Concretes ready to use known as "Ready-mix Concrete (RMC)"	Nil
3824 5090	--- Other	8%#

Meanwhile, vide Finance Act, 2011, the tariff rate of duty for Concretes ready to use known as "Ready-mix Concrete (RMC)" was increased to 5% and vide Notification No. 01/2011-CE dt.01.03.2011, the effective rate of duty was fixed at 1%, if no Cenvat credit has been taken for the same. The said effective rate of Central excise duty for "Ready-mix Concrete (RMC)" was increased to 2% w.e.f. 17.03.2012.

9. The appellant in this case, during the period from April'14 to December'14, supplied RMC without payment of Central Excise duty by availing the benefit of Sl. No. 144 of Notification No. 12/2012-CE dt.17.03.2012, which was declared in their ER-8 return, regularly filed by them. So, during this period from April'14 to December'14, "Concrete mix



Sl.No.144 of the said Notification No.12/2012-CE, while "Ready Mix Concrete (RMC)", was imposed to an effective rate of Central Excise duty of 2% advalorem, subject to the condition that no Cenvat credit on inputs or input services is availed. On a closer look in to the issue, it is evident that "Concrete Mix manufactured at the site of construction for use in construction work at such site" (Ch.38) was exempted from Central Excise duty continuously during this entire period, either through Notification No. 4/97-CE or through Notification No. 4/2006-CE or through Notification No. 12/2012-CE. There is as such, no doubt that "Concrete Mix manufactured at the site of construction for use in construction work at such site" (Ch.38) was exempted during the relevant period of this case. However, the question that needs clarification is whether the Ready Mix Concrete (RMC) manufactured by the appellant is also a "Concrete Mix" as contended by them or whether both the products i.e. Ready Mix Concrete (RMC) and Concrete Mix are two different products. The appellant has contended that Ready Mix Concrete (RMC) and Concrete Mix are the same in respect of all other prespective like usage, constituent, etc. and just the difference in the manufacturing process of the products will not render them as different products. The appellant has confirmed that the only possible difference between Ready Mix Concrete (RMC) and Concrete Mix is the method adopted for manufacture of the mix. In their decision in the case of Larsen & Toubro Ltd. v/s. Commissioner of Central Excise, Hyderabad [2015(324) ELT 646 (SC)], the Hon'ble Supreme stated at Para 18 that -

"Further, we also find from Order-in-original as well as order passed by the Tribunal that the assessee always accepted that what was being produced was RMC and claimed exemption only on the ground that it was manufactured at the site of construction and captively used."

In this case too, the appellant has contended that what they have produced was RMC and claimed exemption of the same on the ground that it was Concrete Mix manufactured at the site of construction for use in construction work at such site. In the same case of Larsen & Toubro, the Hon'ble Supreme Court clarified the difference between Ready Mix Concrete (RMC) and Concrete Mix at Para 19 to 21, as indicated below :

"19. We are also inclined to agree with the stand taken by the Revenue that it is the process of mixing the concrete that differentiates between CM and RMC. In the instant case, as it is found, the assessee installed two batching plants and one stone crusher at site in their cement plant to produce RMC. The batching plants were of fully automatic version. Concrete mix obtained from these batching plants was delivered into a transit mixer mounted on a self propelled chassis for delivery at the site of construction is in a plastic condition requiring no further treatment.



before being placed in the position in which it is to set and harden. The prepared chassis which was mounted was to ensure that when the concrete mix is taken to the actual place of construction, it keeps rotating. It is also significant to mention that for producing the concrete mix, material used was cement, aggregates, chemically analysed water and admixtures, namely, retarders and plasticizers. As the L&T was constructing cement plant of a very high quality, it needed concrete also of a superior quality and to produce that aforesaid sophisticated and modernised process was adopted. The adjudicating authority in its order explained the peculiar feature of RMC and the following extracts from the said discussion needs to be reproduced :

"32. Central Excise Tariff does not define Ready Mix Concrete. Therefore, as per the established case-laws on the subject it is necessary to look for the meaning of this expression as understood in the market viz., as understood by the people who buy and sell this commodity. In this connection it would be relevant to refer to the following excerpts from an article - what is ready mix concrete, appearing in internet website of National Ready Mix Concrete Association, USA :-

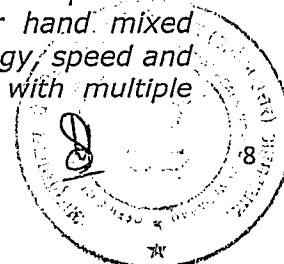
(i) Concrete, in its freshly mixed state, is a plastic workable mixture that can be cast into virtually any desired shape. It starts to stiffen shortly after mixing, but remains plastic and workable for several hours. This is enough time for it to be placed and finished. Concrete normally sets or hardens within two to 12 hours after mixing and continue to gain strength within months or even years.

(ii) Ready Mix Concrete refers to concrete that is delivered to the customer in a freshly mixed and non-hardened state. Due to its durability, low cost and its ability to be customized for different applications, Ready Mix Concrete is one of the world's most versatile and popular building materials.

(iii) Admixtures are generally products used in relatively small quantities to improve the properties of fresh and hardened concrete. They are used to modify the rate of setting and strength, especially during solid and cold weather. The most common, is an air-entraining agent that develops millions of tiny holes in the concrete, which imparts the durability to concrete in freezing and thawing exposure. Water reducing Admixtures enable concrete to be placed at the required consistency while minimizing water used in the mixture, thereby increasing the strength and improving durability. A variety of fibers are incorporated in the concrete to control or improve aberration and impact resistance."

20. After referring to some text as well, the adjudicating authority brought out the differences between Ready Mix Concrete and CM which is conventionally produced. The position which was summed up showing that the two products are different reads as under :

"From the literature quoted above it is clear that Ready Mix Concrete is an expression now well understood in the market and used to refer to a commodity bought and sold with clearly distinguishable features and characteristics as regards the plant and machinery required to be set-up for its manufacture and the manufacturing processes involved, as well as its own properties and the manner of delivery. RMC refers to a concrete specially made with precision and of a high standard and as per the particular needs of a customer and delivered to the customer at his site. Apparently due to the large demand resulting from rapid urbanization and pressure of completing projects on time, consumption of RMC has steadily grown replacing the conventional/manual concreting works. Today leading cement companies have entered the field by setting-up RMC plants in which L&T ECC is one. RMC is slowly replacing site or hand mixed concrete because of the distinct advantages due to technology, speed and convenience. Furthermore, absence of the need to deal with multiple



agencies for procuring and storing cement, sand, blue metal and water as well as the absence of the need to handle unorganized labour force are factors influencing customers to go in for RMC in preference to CM”.

21. In this backdrop, the only question is as to whether RMC manufactured and used at site would be covered by notification. Answer has to be in the negative in as much as Notification No. 4, dated March 1, 1997 exempts only 'Concrete Mix' and not 'Ready Made Mixed Concrete' and we have already held that RMC is not the same as CM.”

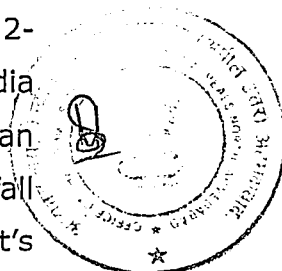
Thus, the Hon'ble Supreme Court made it amply clear that RMC is not the same as Concrete Mix as it is the process of mixing the concrete which differentiates between them and also that RMC is not covered by Notification No. 4/1997-CE dt.1.03.1997. The said order of the Hon'ble Supreme Court also clarified that in the Simplex Infrastructures Limited case, which the appellant herein has cited in their appeal, the merits of the case was not discussed and there is no discussion that RMC is different from Concrete Mix, and so the said case of Simplex Infrastructures Limited would have no application in the current matter too. In a similar case of Shapoorji Pallonji & Co. Ltd. v/s. Commissioner of Central Excise, Mumbai [2016 (344) ELT 1132 (Tri.-Mum.)], relying on the above-mentioned judgement of Larsen & Toubro Ltd., the Hon'ble Mumbai Tribunal at Para 4.3 emphatically concluded that –

"4.3 In view of the above, the Hon'ble Supreme Court has answered a few questions and has clearly held that RMC and concrete mix are two different products. Exemption under Notification 4/97, dated 1-3-1997 is available only to concrete mix and not to RMC. Hon'ble Supreme Court has discarded the proposition as RMC cannot be manufactured at site. In Para 20 of the order the Hon'ble Supreme Court differentiates between RMC and concrete mix in the following terms.

"It clearly states that RMC refers to concrete specially made with precision and of a high standard and as per the particular needs of a customer and delivered to the customer at his site.”

In the instant case the mix manufactured by the appellant is specially made for Mahindra & Mahindra and is manufactured with precision of a high standard and is delivered to the customer at his site. Thus prima facie it fulfils the criteria identified by the Hon'ble Supreme Court in its decision. In the instant case the appellants are also adding plasticizers to improve the quality of the concrete. In view of above it is held that the product manufactured by the appellants is RMC and the appellants are not entitled under Notification No. 4/97, dated 1-3-1997.

Thus, the above judgements conclusively confirm that RMC and Concrete Mix are two different products and that RMC manufactured by the appellant in this case is not entitled to the benefit of exemption Notification No.12/2012-CE dt.17.03.2012. The appellant has cited the case of The Western India Plywoods Limited v/s CCE [1985(19)ELT 590(T)] wherein it is stated that an article cannot be relegated to the residuary item, if it can be said to fall within the scope of a specific item. In the current case, the appellant's

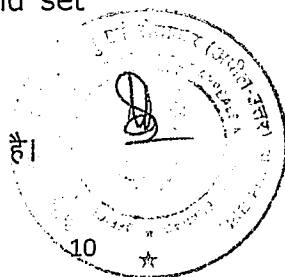


product RMC has a specific Chapter Sub-heading Number and is not relegated to any Chapter Sub-heading meant for residuary items. Therefore, when there is a specific Chapter Sub-heading Number for RMC, the same would be applicable to RMC. The site of manufacturing RMC and its use in the site itself, is not being disputed by either of the parties involved. All other judgements cited by the appellant giving the benefit of exemption to RMC considering it as also an RMC are contrary to the Hon'ble Supreme Court's judgement mentioned above in the matter of Larsen & Toubro. The appellant has contended that the ratio of the Apex Court judgement in the case Larsen & Toubro cannot be applied to the present case as the manufacturing process in the case of Larsen & Toubro and in the case of the appellant were different. However, the distinction between 'CM' and 'RMC' is settled clearly on the factual basis of '**process of mixing**' and cannot be undone or challenged. Hence there is no scope to accept the contention of the appellant that entry no. 144 of Notification No. 12/2012-CE dated 17/03/2012 covers under its ambit of 'concrete mix' all types of concrete mixed at the site of construction. The said entry pertains to 'CM' only and not to 'RMC' that is different from 'CM' on the basis of the process of mixing. Therefore, I find that the demand for Central Excise duty and interest as confirmed in the impugned order is just and proper and I uphold the same.

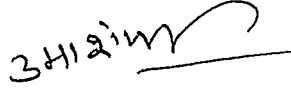
As regards the contention that extended period of limitation is not invocable, the Adjudicating Authority has affirmed that no extended period has been invoked in the light of amendment in the normal period of limitation from one year to two years vide Section 143 of the Finance Act, 2016. The matter in this case was under dispute till the Hon'ble Supreme Court's judgement dtd. 6.10.2015, in the case of Larsen & Toubro Ltd., gave a finality in this regard. Therefore, during the period involved in the appellant's cases i.e. April'14 to December'14, the matter related to interpretation of Central Excise Tariff with regard to RMC and Concrete Mix had not attained finality, and so the same cannot be construed as suppression or wil-ful mis-statement to evade payment of Central Excise duty, especially when the appellant had indicated the same in his ER-8 returns.

10. In the light of the above, I uphold the demand of duty and interest confirmed by the Adjudicating Authority vide the impugned order and set aside the penalty imposed under the said impugned order.

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




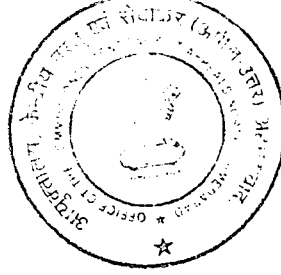
11. The appeal filed by the appellant, stands disposed off in above terms.


(उमा शंकर)

आयुक्त (अपील्स)

ATTESTED


(R.R. NATHAN)
SUPERINTENDENT,
CENTRAL TAX APPEALS,
AHMEDABAD.



By R.P.A.D.:

To,

- (i) M/s. Ultratech Cement Ltd.,
Unit: Ultratech Concrete, Survey No.331/2,
Applewood Estate Pvt. Ltd., Applewood Township,
Nr. Shantipura Ring Road,
Ahmedabad.
- (ii) M/s. Ultratech Cement Ltd.,
Unit: Ultratech Concrete, Plct No.18/19,
C/o. Reward Construction Pvt. Ltd., Sanand GIDC,
Sanand, Ahmedabad.

Copy to:

- 1) The Chief Commissioner, Central Tax, GST, Ahmedabad Zone.
- 2) The Commissioner, Central Tax, Ahmedabad-North.
- 3) The Dy./Asst. Commissioner, Division-III, Central Tax, GST, Ahmedabad (North), Ahmedabad.
- 4) The Asst. Commissioner(System), Central Tax, Hqrs., Ahmedabad (North).
- 5) Guard File.
- 6) P.A. File.