



सत्यमेव जयते

## केंद्रीय कर आयुक्त (अपील)

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

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



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रजिस्टर डाक ए.डी.द्वारा

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क फाइल संख्या (File No.): V2(38)31&32/Ahd-II/Appeals-II/ 2017-18

ख अपील आदेश संख्या (Order-In-Appeal No.): AHM-EXCUS-002-APP-308-309-17-18

दिनांक (Date): 30/01/2018 जारी करने की तारीख (Date of issue): 14/2/2018

श्री उमा शंकर, आयुक्त (अपील-II) द्वारा पारित

Passed by **Shri Uma Shanker**, Commissioner (Appeals)

ग \_\_\_\_\_ आयुक्त, केंद्रीय उत्पाद शुल्क, (मंडल-V), अहमदाबाद-II, आयुक्तालय द्वारा जारी

मूल आदेश सं \_\_\_\_\_ दिनांक \_\_\_\_\_ से सृजित

Arising out of Order-In-Original No. MP/08/OA/2016-17 Dated: 31/03/2017

issued by: Deputy Commissioner Central Excise (Div-V), Ahmedabad-II

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

**M/s Hi-Tech Engineers and Contractors  
M/s Tejas Dalal**

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।

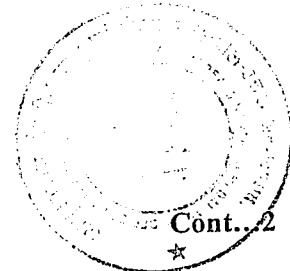
A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, under Section 35EE of the CEA 1944 in respect of the following case, governed by 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 प्रक्रिया 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।

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- (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 हों।

- (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 :-

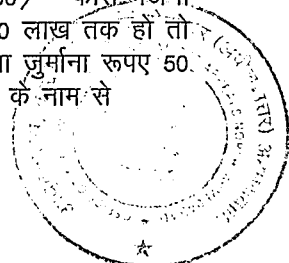
- (क) वर्गीकरण मूल्यांकन से संबंधित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठिका वेस्ट ब्लॉक नं. 3. आर. के. पुरम, नई दिल्ली को एवं

- (a) the special bench of Custom, Excise & Service Tax Appellate Tribunal of West Block No.2, R.K. Puram, New Delhi-1 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-380015.

- (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 रूपए 5 लाख या उससे कम है वहां रूपए 1000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हों तो रूपए 5000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहां रूपए 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।

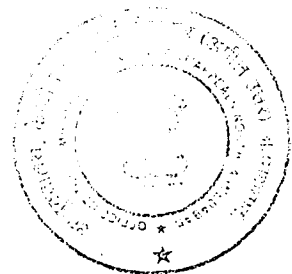
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section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

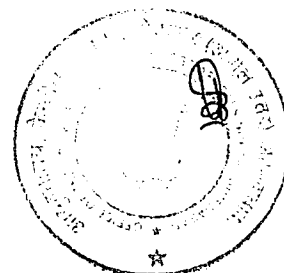
In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."



**ORDER IN APPEAL**

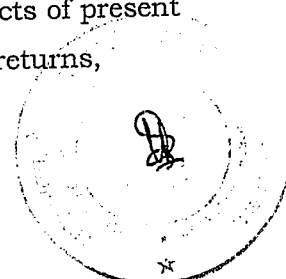
Subject appeals are filed by 1.M/s. Hi-Tech Engineers and Contractors (hereinafter referred to as "the Appellant unit") and 2.Shri Tejas Dalal partner of said unit ,Situating at B-401, Solitaire Corporate Park, Nr. Divya Bhaskar House, S.G. Highway, Ahmedabad against Order in Original No. MP/08//OA/2016-17 (hereinafter referred to as 'the impugned order') passed by the Asstt. Commissioner, Central Excise, div-V,Ahmedabad-II (hereinafter referred to as the 'the adjudicating authority'). The appellant is engaged in manufacturing Ready Mix Concrete (RMC) falling under Chaptel 38 of Central Excise Tariff Act, 1985 .[hereinafter referred as CETA-1985]. However, the party is not registered with Central Excise Department.

2. Briefly stated facts of the case are that, On the basis of intelligence, department serched the office and three site premises of the said unit on 09.01.2016 and adetailed verification was carried out under panchnama proceedings it was revealed that the said unit had been manufacturing "Ready Mix Concrete" on site at various sites i.e. M/s. Yash Arian InfraLLP, Memnagar, Ahmedabad, M/s. True Value Business Bay, Satellite, Ahmedabad and M/s. Viewport Properties LLP, Bopal, Ambli Road, Ahmedabad, for use in construction purpose. However, the party was not paying duty on the 'RMC' manufactured by them for the construction activity performed by them on the above said projects by misusing Central Excise Exemption Notification No. 12/2012-CE (Sr. No.144) dated 17.03.2012 as amended and thereby evading Central Excise duty.Shri Harshad Chandulal Swami, Authorized Person informed that their firm was involved in Civil Construction activity and currently they had said three projects where they had Ready Mix Concrete Plants and they were manufacturing Ready Mix Concrete on site .he further informed that their unit was not registered with Central Excise Department and not paying Central Excise duty on the Ready Mix Concrete. that they were under the assumption that Ready Mix Concrete manufactured on site was exempted from Central Excise Duty under Notification No. 12/2012~CE dated 17.03.2012 vide letter dated 18.02.2016 they submitted details of Year Wise Ready Mix Concrete manufactured by them, Total RMC Production 67701 cubic meters. Since the appellant had miss declared their goods to avail the benefit of the said exemption notification, hence the said unit had acted by way of wilful miss-statement, suppression of facts and contravention of the provisions of the Central Excise Act 1944and the rules made there under with the deliberate intent to evade payment of duty and therefore, the provisions of Section 11A (4) of the Central Excise Act, 1944 are required to be invoked for recovery of Central Excise duty for the period April 2011 to 31St Dec.2015. Therefore, total Central Excise duty amounting to Rs. 27,57,942/- was required to be recovered under Section 11A(4), along with interest and penalty .they have contravened the provision of Section 3 ,Rule 4 , 6 8 and 9 of the Central Excise Rules, 2002.vide above order demand confirmed with penalties.



3. Being aggrieved with the impugned orders, the appellant preferred these appeals on the following main grounds.

- a. That the ready mix concrete is different from concrete mix of Chapter 38 which was exempted under Notification no. 12/2012. the Board circular dated 23-05-1997, and circular dated 06-01-1998. Based on this circular, it is stated in para 7 that the ready mix concrete and concrete mix are two separate and distinguishable commodities. The concrete mix manufactured at the site of construction is exempted whereas ready mix is liable to duty.
- b. That the demand is made for the period from 2011-12 upto December 2015 The notice is without giving threshold exemption of Rs. 1.5 crore.
- c. It is denied that we are liable to duty, interest or penalty as proposed in the notice. It is denied that there is any suppression or concealment there by extended period is applicable.
- d. That the entire wisdom has been drawn on the department only on account of Supreme Court judgement in the case of Larsen & Toubro Ltd dated 6-10-15 referred in para 8 of the notice. It is clear that before the said judgement of Supreme Court, all the persons in the trade and the department were of the belief that the concrete mix manufactured at site and used at site was never liable to excise duty.
- e. We also invite attention to our letter dated 23-01-2016 received on 25-01-2016 addressed to Superintendent (Preventive),
- f. It is submitted that in order to apply the test laid down in that case, to the facts of, present case, there must be investigation, averment and discussion as to facts.
- g. Since the classification, is burden on the department, failure to fulfill the obligation is fatal to the notice. The notice must, therefore, be set aside.
- h. In the process, not only heavy machines, in the form of stone crushers, conveyors, vibrator screens to segregate different sizes of stone aggregates were used, there was addition of sand mill to produce sand from stones and other sophisticated equipments were also used for manufacture of RMC. None of the above facts are found / alleged in the notice in our case. Therefore the ratio of said judgment of Supreme Court will not apply in our facts.
- i. That except for the decision of Supreme Court in L & T case, there is no material to support the demand once the Ratio of L & T case is not applicable, the notice must fail. the CBEC, under Circular dated 6-1-98, had explained the difference between RMC and CM. they rely upon the decision of Punjab & Haryana High Court in the case of Chief Engineer Ranjit Sagar Dam, reported in 2007(217) ELT 245.
- j. That till the law is clarified by Supreme Court in the case of L&T, the concrete mix was always held to be exempted if manufactured at site for use in construction at site.
- k. That the extended period of limitation cannot be applied in the facts of present case. That from April 15 they have paid excise duty. Also filed monthly returns,



1. The extended period cannot be applied in the facts of present case in view of earlier clarification of Board/Appellate Authority as prevailing prior to Supreme Court decision in the case of L&T. In this fact, the extended period is not available.

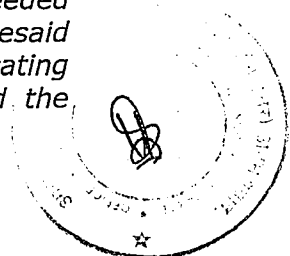
4. Personal hearing in this case was granted on 01.12.2017 and 20-12-17. Shri S.J. Vyas, Advocate requested to decide the case considering the submissions made in their GOA and additional submission filed on dated 19-12-17, I have carefully gone through the case records, OIO, facts of the case, additional submission made by the appellant and the case laws cited. The issue to decide is whether the product manufactured at the site of construction by the said unit is "Ready Mix Concrete" and is liable to Central Excise duty.

5. I find that, the fact that RMC Batching Plants were available at the construction sites. With regard to exemption vide Notification No. 12/2012-CE dated 17-03-2012 (Sr. No. 144) it is observed from the above that the exemption at Sr. No. 144 is for Concrete Mix falling under Chapter 38, while the product manufactured by the Appellant is Ready Mix Concrete. Specific type of concrete that is referred to as "Ready Mix Concrete (RMC)" and the rest of the concretes are classified in the category of "Others". So, Concrete Mix would come under the category of "Others" under 3824 5090 and would be exempted from Central Excise duty while Ready Mix Concrete which is a separate product specifically falling under Chapter Heading 3824 5010 would be liable to Central Excise duty. In this regard, I place reliance on CBEC Circular No. 315/31/97-CX dated 23.05.1997 wherein it is clarified at Para 4 as under:

*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."*

6. I find that, In the case of Larsen & Toubro, 2015 (324) E.L.T. 646 (S.C.) 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.

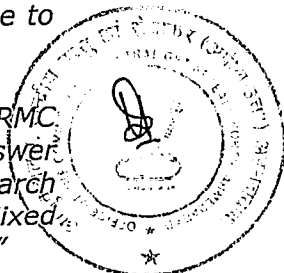
(ii) Ready Mix Concrete refers to concrete that is delivered to the customer in a freshly mixed and non-hardened state. Due to its durability, low cost and its ability to be customized for different applications, Ready Mix Concrete is one of the world's most versatile and popular building materials.

(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".

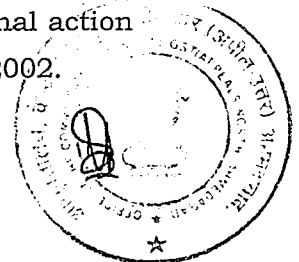
**21.** In this backdrop, the only question is as to whether RMC manufactured and used at site would be covered by notification. Answer has to be in the negative in as much as Notification No. 4, dated March 1, 1997 exempts only 'Concrete Mix' and not 'Ready Made Mixed Concrete' and we have already held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



7. Thus, the above judgments 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 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.

8. Further, it is seen that the Review petition filed by M/s Larsen and Toubro Ltd. against the aforementioned judgment in the case of *LARSEN AND TOUBRO LTD. vs C.C.E., HYDERABAD - 2015 (324) E.L.T. 646 (S.C.)* was dismissed by Hon'ble Supreme Court upholding that legislature has treated Ready Mix Concrete (RMC) as product different from Concrete Mix (CM) and that where CM has generally been covered by exemption notification, such exemption is not extended to RMC. The dismissal of the review petition has been reported as *Larsen & Toubro Ltd. v. Commissioner - 2016 (336) E.L.T. A135 (S.C.)*. The appellant had no basis to disregard law settled by the Apex Court establishing that the benefit of NIL rate of duty was not available to 'RMC'. In spite of the orders of Hon'ble Supreme Court and the clarification available *vide* Board's Circular number 315/31/97-CX dated 23.05.1997, the appellant had deliberately availed inadmissible benefit of NIL rate of duty indicating intention to evade duty. Hence the invoking of extended period and the imposition of penalty is justified and legally sustainable in the present case. The appellants suppressed the facts, by not taking Central Excise registration and not declaring the quantity/ value of Ready Mix Concrete manufactured resulting into evasion of Central Excise duty. I therefore, find that the department has rightly invoked the extended period and the imposition of penalty is justified and legally sustainable in the present case.

9. With reference to the imposition of penalties on the appellant no.1, I find that the appellant has willfully not disclosed the entire value of excisable goods, the appellant had deliberately attempted to evade duty by not taking Central Excise registration and cleared excisable goods without payment of duty. They have contravened the provisions of Section 3 of CEA1944, Rule 4, 6, 8 and 9 of the Central Excise Rules, 2002, that all these contraventions have been committed by way of suppression of facts with intent to evade payment of central excise duty. Therefore, the appellants have rendered themselves liable for penal action under Section 11AC(1)(c) of the CEA 1944 read with Rule 25 of the CER 2002.





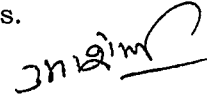
10. With reference to the imposition of penalty on Shri Tejas Dalal, partner of said unit, I find that he was fully aware of the facts that the product being manufactured and consumed by them at site was Ready Mix Concrete. He was the person looking after the manufacturing stock, dispatch of goods, accounts and administration etc. I find that Shri Tejas Dalal, is liable to penalty under the provisions of Rule 26 of the Central Excise Rules, 2002.

Therefore, I hold that the penalties imposed on the appellants are justified and legal.

11. In view of above, I uphold the impugned orders and reject both the appeals.

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

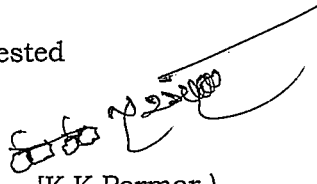
12. The appeal filed by the appellant stand disposed off in above terms.



(उमा शंकर)

आयुक्त (अपील्स )

Attested



[K.K.Parmar )

Superintendent (Appeals)  
Central tax, Ahmedabad.

Date- /01/18

By Regd. Post A. D

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S G. Highway , Ahmedabad.

2. Shri Tejas Dalal, Partner,  
M/s. Hi-Tech Engineers and Contractors.

Copy to:

1. The Chief Commissioner, CGST Central Excise, Ahmedabad.

2. The Commissioner, CGST Central Excise, Ahmedabad- NORTH.

3. The Dy. Commissioner, CGST C.EX.Div-VI, Ahmedabad-NORTH

4. The Asstt. Commissioner (Systems), CGST C.EX.Ahmedabad- NORTH.

✓ 5. Guard Life.

6. PA file.

