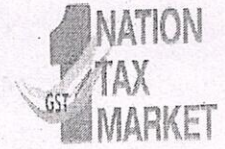




सत्यमेव जयते

आयुक्त का कार्यालय, (अपीलस)  
Office of the Commissioner,



केंद्रीय जीएसटी, अहमदाबाद आयुक्तालय  
Central GST, Appeal Commissionerate- Ahmedabad  
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.  
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015  
☎ : 079-26305065 टेलिफैक्स : 079 - 26305136

रजिस्टर डाक ए.डी.द्वारा

6242 + 06246

- क फाइल संख्या (File No.): V2(38)19 /North/Appeals/ 2018-19  
 ख अपील आदेश संख्या (Order-In-Appeal No.): AHM-EXCUS-002-APP-47-18-19  
 दिनांक (Date): 23-Aug-18 जारी करने की तारीख (Date of issue): 11/9/2018  
 श्री उमा शंकर, आयुक्त (अपील) द्वारा पारित  
 Passed by Shri Uma Shanker , Commissioner (Appeals)
- ग \_\_\_\_\_ आयुक्त, केंद्रीय उत्पाद शुल्क, (मंडल-VII), अहमदाबाद उत्तर, आयुक्तालय द्वारा जारी  
 मूल आदेश सं \_\_\_\_\_ दिनांक \_\_\_\_\_ से सृजित  
 Arising out of Order-In-Original No CGST/A'bad-North/Div-VII/S.Tax-DC-006-17-18  
 Dated: 11/01/2018  
 issued by: Deputy Commissioner Central Excise (Div-VII), Ahmedabad North
- घ अपीलकर्ता/प्रतिवादी का नाम एवम पता (Name & Address of the Appellant/Respondent)

M/s Simplex Infrastructures limited

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





(b) In case of rebate or duty or 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 है।

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

(घ) अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो इयूटी क्रेडीट 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 (न.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 such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec. 109 of the Finance (No.2) Act, 1998.

(१) 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. के 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.

(२) 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 रुपये से ज्यादा हो तो रुपये 1000/- फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs. 200/- where the amount involved in Rupees One Lac or less and Rs. 1000/- where the amount involved is more than Rupees One Lac.

सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील :-  
Appeal to Customs, 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 सम्बन्धित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठिका वेस्ट ब्लॉक न. 3. आर. के. पुरम, नई दिल्ली को एवं

The special bench of Customs, Excise & Service Tax Appellate Tribunal of West Block No. 2, R.K. Puram, New Delhi in all matters relating to classification valuation and





- (ख) उक्तिलिखित परिच्छेद 2(1) क में बताए अनुसार के अलावा की अपील, अपीलों के मामले में सीमा शुल्क, केंद्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में ओ-20, न्यू मेन्टल होस्पिटल कम्पाउंड, मेघानी नगर, अहमदाबाद-380016.
- (b) To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at O-20, New Mental Hospital Compound, Meghani Nagar, Ahmedabad: 380016, in case of appeals other than as mentioned in para-2(1) above.
- (2) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 की धारा 6 के अंतर्गत प्रपत्र इ.ए.-3 में निर्धारित किए अनुसार अपीलीय न्यायिकरण की गई अपील के विरुद्ध अपील किए गए आदेश की चार प्रतियाँ सहित जहाँ उत्पाद शुल्क की माँग, ब्याज की माँग और लगाया गया जुर्माना रुपए 5 लाख या उससे कम है वहाँ रुपए 1000/- फीस भेजनी होगी । जहाँ उत्पाद शुल्क की माँग और लगाया गया जुर्माना रुपए 5 लाख या ५० लाख तक हो तो रुपए ५०००/- फीस भेजनी होगी । जहाँ उत्पाद शुल्क की माँग और लगाया गया जुर्माना रुपए ५० लाख या उससे ज्यादा हो तो रुपए १००००/- फीस भेजनी होगी । फीस सहायक रजिस्टार के नाम से रेखांकित बैंक ड्राफ्ट के रूप में संबंध में की जाए । यह ड्राफ्ट उस स्थान के किसी नामित सार्वजनिक क्षेत्र के बैंक की शाखा का हो जहाँ उक्त न्यायाधिकरण की पीठ स्थित है । स्टे के लिए आवेदन-पत्र रुपए ५००/- फीस भेजनी होगी ।
- 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.5000/-, 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 crossed bank draft in favour of Asst. Registrar of 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. Application made for grant of stay shall be accompanied by a fee of Rs. 500/-
- (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 चाहिये इस तथ्य के होते हुए भी की लिखा पढ़ी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केंद्रीय 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 १९७० यथा संशोधित की अनुसूची-१ के अंतर्गत निर्धारित किये अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रुपए ६.५० पैसे का न्यायालय शुल्क टिकट लगा होना चाहिये ।
- 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 सम्बंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केंद्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्यावधि) नियम, १९८२ में निहित है ।
- (6) Attention is invited to the rules covering these and other related matter contended in Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.





### ORDER-IN-APPEAL

This appeal has been filed by M/s. Simplex Infrastructure Ltd., Situated at Godrej Garden City, Jagatpur, Ahmedabad (hereinafter referred to as "the appellants") against the Order-in-Original number CGST/A'bad-North/Div-VII/S.TAX-DC-006-17-18 dated 11.01.2018 (hereinafter referred to as "the impugned order") passed by the Deputy Commissioner, Central Excise & GST, Division-VII, Ahmedabad-North (hereinafter referred to as "the adjudicating authority").

2. Brief facts of the case are that intelligence was gathered that the appellants were involved in the manufacture of "Ready Mix Concrete" (hereinafter referred to as "RMC") on site at Godrej Garden City, Jagatpur, Ahmedabad for use in construction purpose. However, they were not paying Central Excise duty by misusing Central Excise Exemption Notification number 12/2012-CE (Sr. number 146) as amended. Thus, a team of Central Excise preventive officers visited the site premises of the appellants and some documents were withdrawn under a regular panchnama. After completion of a thorough investigation, a show cause notice, dated 18.11.2016, 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 ₹13,58,460/- under Section 11A(4) of the Central Excise Act, 1944. He also ordered to recover interest under Section 11AA of the Central Excise Act, 1944 and imposed redemption fine of ₹10,00,000/- under Rule 25(1) of the CER, 2002 and imposed equivalent penalty of ₹13,58,460/- under Section 11AC of the Central Excise Act, 1944.

3. Being aggrieved, the appellants have filed the present appeal before me. The appellants argued that the goods manufactured, at the site for use of construction work, are exempted from Excise duty by virtue of Notification number 4/97-CE dated 01.03.1997. They contended that 'Concrete Mix' (CM) is manufactured at the site of construction whereas, 'Ready Mix Concrete' (RMC) cannot be manufactured at the site of construction. Vide Board Circular number 368/1/98 dated 06.01.1998, CM, manufactured at the site, is fully exempted vide Notification number 4/97-CE dated 01.03.1997. The appellants pleaded that they are not engaged in the manufacture of RMC.

4. A personal hearing in the matter was held on 26.07.2018 and Shri Kaushik Mojumdar, Authorized Signatory and Shri Atanu Goswami, Commercial in-charge of the appellants appeared for the same and reiterated the grounds of appeal. They submitted copies of ST-3 returns to show that they had discharged Service Tax liabilities for the FY 2014-15.





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. To begin with, I find that there has been a delay occurred in filing the appeal by the appellants. The impugned order was issued on 11.01.2018 and the appellants have filed the appeal on 26.04.2018. They have filed a request letter, along with the appeal memo, for condonation of delay. The appellants have claimed, in their E.A.-1 form, to have received the impugned order on 09.02.2018. In support of their claim, they have submitted a photocopy of the envelop vide which the impugned order was sent to them. However, on the body of the envelop, a seal of receipt showing date 19.01.2018 can be seen. Thus, as per the date reflected on the body of the envelop, the appellants are delayed by 7 days from the condonation period. An assessee, if not satisfied with the demand, may prefer appeal to the higher authorities [in this case, the Commissioner (Appeals)] **within 60 days** from the date of receipt of order from such adjudicating authority. The Commissioner (Appeals) **may** allow a further period of **30 days**, if sufficient cause for late filing of appeal is shown and proved to him. In the present case, the delay is more than the further period of 1 month and hence, outside my purview. In view of the above, I reject the appeal on the ground of limitation itself; however, as per the principles of natural justice, I would like to discuss the case on merit also.

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. Nowadays, the manufacturers 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**".

As per the above clarification, the impugned goods in the present case is liable to be treated as 'RMC' by virtue of the fact that the appellants had installed their own concrete mix batch plant and produced RMC out of raw materials such as coarse aggregates, sand, cement, admixture and fly ash and the RMC was used onsite for construction work at Godrej Garden City, Jagatpur, Ahmedabad. This clarification of the Board has been cited and endorsed by Hon'ble Supreme Court in the case of Larsen and Toubro Ltd. vs. C.C.E., Hyderabad [2015 (324) E.L.T. 646 (S.C.)]. The relevant portion of this decision is reproduced 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 freeing 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 inasmuch 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".*

The above judgment was affirmed vide the order dated 24.02.2016 by the Supreme Court Bench comprising Hon'ble Mr. Justice A.K. Sikri and Hon'ble Mr. Justice Rohinton Fali Nariman [2016 (336) E.L.T. A135 (S.C.).

The Supreme Court in its impugned order had held that legislature has treated Ready Mix Concrete (RMC) as product different from Concrete Mix (CM). Whereas CM has generally been covered by exemption notification, such exemption is not extended to RMC. Classification entries have also been enacted accordingly. Further, process of mixing concrete is different between CM and RMC. Accordingly, assessee being RMC manufacturer which manufactured and used at site, was not entitled to benefit of Notification No. 4/97-C.E.

It was further held that party cannot set up case which was not made out before authorities below. In instant case, the assessee till High Court had contested levy of duty on RMC only on ground of its manufacture at site while always admitting that it was RMC. However, before Apex Court, a plea was taken that RMC and CM are one and same thing.

Apex Court also held that although RMC and CM are two different products, even if there is a doubt, which was even accepted by the assessee, since we





are dealing with the exemption notification it has to be strict interpretation and in case of doubt, benefit has to be given to the Revenue.

Thus, the above distinction between CM and RMC has been made on factual basis and the appellant's attempt to challenge the impugned order is not sustainable because the explanation of a wider import of Concrete Mix under entry 144 of the Notification number 12/2012 dated 17.03.2012, as mentioned in paragraph 7 above, leads to the erroneous conclusion that CM also includes RMC, which is contradictory to the law settled on factual basis that there is a clear distinction between the product CM and RMC as held by the Hon'ble Supreme Court on the basis of process of mixing as follows;

*"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".*

Thus, in view of the above, it is very much clear that RMC and CM are two different products. There is no doubt that the appellants are engaged in the manufacture of RMC falling under Chapter Head 38245010. This has been stated by the adjudicating authority in paragraph 39 of the impugned order where he has confirmed that the appellants were fully equipped with batching plant and also having barrel tractor for delivery of concrete in a plastic state to the site. Thus, without much ado, I conclude that the adjudicating authority has rightly confirmed the demand.

8. In view of above discussions, I up held 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*

(उमा शंकर)

CENTRAL TAX (Appeals),

AHMEDABAD.

ATTESTED

*S. Dutta*  
100918  
(S. DUTTA)

SUPERINTENDENT,

CENTRAL TAX (APPEALS), AHMEDABAD.





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**Copy to:-**

1. The Chief Commissioner, Central Tax Zone, Ahmedabad.
2. The Commissioner, Central Tax, Ahmedabad-North.
3. The Dy./Asstt. Commissioner, CGST, Division-VII, Ahmedabad-North.
4. The Asstt. Commissioner, (Systems), CGST, Hq., Ahmedabad-North.
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