



सत्यमेव जयते

केंद्रीय कर आयुक्त (अपील)

O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,
केंद्रीय कर भवन,
सातवीं मंजिल, पोलिटेकनिक के पास,
आम्बावाडी, अहमदाबाद-380015



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7726/07728

अभिरुचि डाक ए.डी. द्वारा

फाइल संख्या : File No : V2(38)122/Ahd-South/2018-19
Stay Appl.No. /2018-19

अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-105-2018-19
दिनांक Date : 30-11-2018 जारी करने की तारीख Date of Issue

श्री उमा शंकर आगुवत (अपील) द्वारा पारित

Passed by Shri. Uma Shanker, Commissioner (Appeals)

Arising out of Order-in-Original No. CGST/Div-VI/09/MSK/17-18 दिनांक: 29.03.2018 issued by
Assistant Commissioner, Div-VI, Central Tax, Ahmedabad-South

अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
M S Khurana Engg. Ltd
Ahmedabad

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

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

संघत सरकार का पुनरीक्षण आवेदन :
Revision application to Government of India :

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

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

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

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

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

(iii) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।



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

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

(ग) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

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

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

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

(e) केंद्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए-8 में दा प्रारंभ में प्रेषित आदेश के प्रति आदेश पेशित दिनांक से तीन मास के भीतर मूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ वित्त आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्ष के अंतर्गत धारा 35-इ में निर्धारित फी के भुगतान के प्रपत्र के साथ टीआर-6 बालान 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 जाएगी और जहाँ संलग्न रकम एक लाख से ज्यादा हो तो 1000/- की फीस भुगतान की जाएगी।

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.

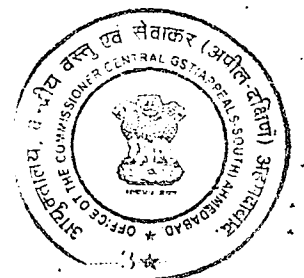
सीमा शुल्क, केंद्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(a) केंद्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35-बी/35-इ के अंतर्गत:-

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

(a) उपरोक्त परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपील के मामले में सीमा शुल्क, केंद्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (रिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में ओ-20, न्यू मेटल हॉस्पिटल कंपाउण्ड, मेघानी नगर, अहमदाबाद-380016

(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.



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 Asslt. 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.

यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल आदेश के लिए फीस का भुगतान उपरोक्त रूप में 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 Appellate Tribunal or the one application to the Central Govt. As the case may be, is filed to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

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 निम्न जमा करना 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.

जब आदेश में अतिरिक्त मामलों का 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.

सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (रिस्ट्रिक्ट), के प्रति अपील के मामले में कर्तव्य जमा (Demand) एवं दण्ड (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 उत्पादन शुल्क और सेवाकर के अंतर्गत, शामिल होगा "कर्तव्य की मांग"(Duty Demanded) -

- (i) (Section) 11 D के तहत निर्धारित राशि;
- (ii) त्रुटि गलत सेन्वैट क्रेडिट की राशि;
- (iii) सेन्वैट 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, provided that the pre-deposit amount shall not exceed Rs.10 Crores. 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.

यदि आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क के पूर्व 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 where duty or penalty alone is in dispute.



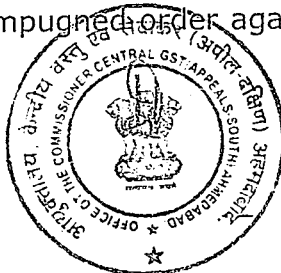
ORDER-IN-APPEAL

This appeal has been filed by M/s. M. S. Khurana Engg. Ltd., 2nd Floor, MSK House, Nr. Passport Office, Panjra Pole, Ambawadi, Ahmedabad (hereinafter referred to as "the appellants") against the Order-in-Original number CGST/Div-VI/09/MSK/17-18 dated 29.03.2018 (hereinafter referred to as "the impugned order") passed by the Assistant Commissioner, Central GST, Division-VI, Ahmedabad-South (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 AMC-EWS, 19 Project, Opp. Vishwas 10, Vaishno Devi Circle to Gota Overbridge, S. G. Highway, Ahmedabad for use in construction purpose. However, neither they were registered with the Central Excise department, nor they were 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 above mentioned 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 08.12.2016, 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 ₹ 1,59,044/- 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 ₹ 80,000/- under Rule 25(1) of the CER, 2002 and imposed equivalent penalty of ₹ 1,59,044/- under Section 11AC (1) of the Central Excise Act, 1944. The adjudicating authority further imposed penalty amounting to ₹ 20,000/- on the General Manager of the appellants under Rule 26 of the Central Excise Rules, 2002.

3. Being aggrieved, the appellants have filed the present appeal before me. The appellants, in their grounds of appeal, have argued that they were not given any opportunity to submit their detailed reply to the show cause notice which violates the principles of natural justice. I find that they have not produced any argument to counter the impugned order on merit.

4. A personal hearing in the matter was held on 20.11.2018 and Shri M. K. Kothari, Consultant and Shri P. R. Maheshwari, Authorized Signatory appeared for the same and reiterated the grounds of appeal. They submitted copies of payment particulars w.r.t. the impugned order against the demand of duty, interest and penalty.

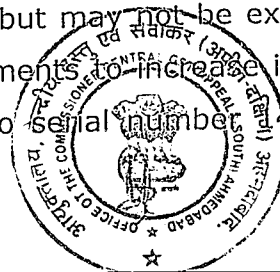


5. I have carefully gone through the facts of the case on records, appeal memorandum and submissions made by the appellants at the time of personal hearing. To begin with, I find that there has been a delay occurred in filing the appeal by the appellants. The impugned order was issued on 29.03.2018 and the appellants have filed the appeal on 17.08.2018. Thus, there seems to be a delay of 51 days even after the lapse of the condonation period. However, the appellants have claimed, in Form EA-1, to have received the impugned order on 24.05.2018. Though the appellants have not submitted any documentary evidence in support of their claim that they had received the impugned order on 24.05.2018, still for the sake of justice, I agree to their claim and as per their request letter, along with the appeal memo, for condonation of delay, I condone the same and proceed to discuss the case on merit.

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 44 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 the Board's Circular number 315/31/97-CX dated 23.05.1997 in paragraph 18 of the impugned order, 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.

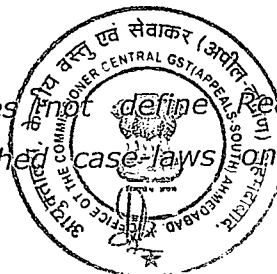


4. Ready Mix Concrete is thus an excisable product which has a separate tariff entry under sub-heading 3824.20 of the Central Excise Tariff Act, 1985. It is also known under the Indian Standard IS: 4926-1976, which for the purposes of that standard defines Ready Mix Concrete as concrete delivered at 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 and going by the details discussed in the impugned order, 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 AMC-EWS, 19 Project, Opp. Vishwas 10, Vaishno Devi Circle to Gota Overbridge, S. G. Highway, 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 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 per the particular needs of a customer and delivered to the customer



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."

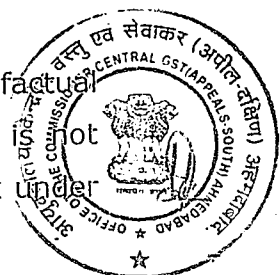
The above judgment was affirmed vide the order dated 24.02.2016 by the Supreme Court Bench comprising Hon'ble Mr. Justice A.K. Sikri and Hon'ble Mr. Justice Rohinton Fali Nariman [2016 (336) E.L.T. A135 (S.C.).

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



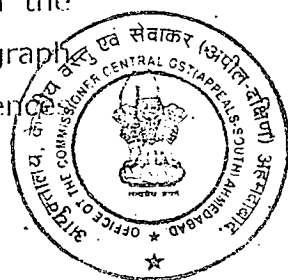
entry 144 of the Notification number 12/2012 dated 17.03.2012, as mentioned in paragraph 7 above, leads to the erroneous conclusion that CM also includes RMC, which is contradictory to the law settled on factual basis that there is a clear distinction between the product CM and RMC as held by the Hon'ble 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 the impugned order where he has confirmed that the appellants were fully equipped with batching plant.

8. Now, I find that the appellants have not said anything on merit against the impugned order. Their only plea was that they were not given any opportunity, by the adjudicating authority, to submit any reply to the show cause notice. I find that the appellants were awarded only one day i.e. 20.03.2018, to appear before the adjudicating authority. No other day was allotted to the appellants and the case was decided on 29.03.2018. It seems that the adjudicating authority was in a hurry to decide the case as per his own choice and that is why he failed to award additional opportunity to the appellants for personal hearing in contrast to the principles of natural justice. This, I find, is a clear case of violation of principles of natural justice. The adjudicating authority simply jumped to a conclusion in absence of supporting evidence from the appellants. He should have offered the appellants the opportunity of personal hearing to avoid unnecessary allegation of injustice. This has converted the entire case into a single way traffic where one party has all the easy access of the path and the other party has been barred to even enter inside. When the department has authorized him to perform the role of an adjudicating authority, he should shun all kind of personal prejudice against the claimants and decide the cases with an impartial attitude.

9. Therefore, looking to the allegation of violation of principles of natural justice, it becomes fit to remand back the case to the adjudicating authority to decide the case afresh after verifying the reply and related documents submitted by the appellants. Further, the adjudicating authority should decide the case in light of my discussion held in paragraphs 6 and 7. The adjudicating authority is further directed to treat the appellants as per the clause mentioned in the principles of natural justice mentioned in paragraph 8 above and conclude the case with the help of documentary evidence.



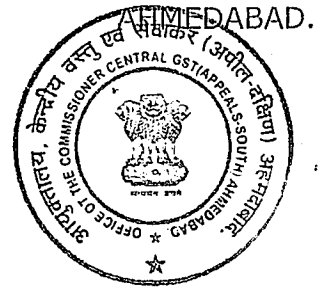
submitted by the appellants. The appellants are also directed to provide all possible assistance to the adjudicating authority in relation to the above mentioned claim.

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),



ATTESTED

S. Dutta
28/12/18
(S. DUTTA)

SUPERINTENDENT,

CENTRAL TAX (APPEALS), AHMEDABAD.

BY R.P.A.D

To,

M/s. M. S. Khurana Engg. Ltd.,

2nd Floor, MSK House, Nr. Passport Office,

Panjra Pole, Ambawadi,

Ahmedabad-380 015.

Copy to:-

1. The Chief Commissioner, Central Tax Zone, Ahmedabad.
2. The Commissioner, Central Tax, Ahmedabad-South.
3. The Dy./Asstt. Commissioner, CGST, Division-VI, Ahmedabad-South.
4. The Asstt. Commissioner, (Systems), CGST, Hq., Ahmedabad-South.
5. Guard file.
6. P.A file.

