

and cleared by them during the period of dispute of 01.03.2012 to 31.03.2012. It is further submitted that the grounds for invoking extended period of limitation are not made out in view of the facts or evidence whatsoever in Show Cause Notice or impugned order, and hence is liable to be set aside.

3. The facts leading to the present show cause notice are as follows:

01.03.1997 and 01.03.2006: Notification No. 4/1997-CE and Notification No. 4/2006 respectively, exempted payment of excise duty for 'Concrete Mix' in terms of Sl. No. 51 or Sl. No. 74, falling under Chapter 38.

07.02.2011: SCN in O.R. No. 3/2011- Hyd-I Adjn issued upon the Appellant wherein the benefit of SSI exemption was sought to be denied on the grounds that the Appellant was also engaged in manufacture of RMC, **which was exempted from payment of duty** and whose value was not considered to determine the aggregate value of clearances and hence the appellant is not entitled to SSI exemption, as their turnover of dutiable goods and exempted goods (RMC) was in excess of Rs.4 Crores.

17.03.2012: Mega Exemption Notification No. 12/2012-CE also exempted payment of excise duty for 'Concrete Mix' vide Sl. No. 144.

19.03.2012: Additional Commissioner, Hyderabad while adjudicating the matter vide Para 13 of the Order-in-Original No. 14/2012-(CE) categorically held:

“The issue involved in the present case is that the assessee has irregularly availed SSI exemption Notification No. 8/2003-CE, dated 01.03.2003 without including the value of clearances of the exempted goods viz. ready mix concrete to arrive at the aggregate value of turnover”

6.10.2015

The Hon’ble Supreme Court in Civil Appeal filed by **Larsen and Toubro vs. CCE, Hyderabad** reported in [2015 (324) ELT 346] against the order of this Tribunal holding that **Larsen & Toubro** was not entitled to exemption on ‘ready mix concrete’ (in short RMC) under Notification No. 4/97 CE as the said notification exempted concrete mix or CM and not RMC whereas in other appeal i.e. Ranjit Sagar Dam (assessee-respondent) vs. Chief Engineer, Ranjit Sagar Dam, Hon’ble Punjab and Haryana High Court have taken a contrary view holding that RMC and CM are one and the same thing and accordingly, RMC is eligible for exemption under notification No. 4/97 CE. The Hon’ble Supreme Court held as follows:

“18. We may point out at the outset that the case which is now sought to be set up by the assessee, namely, CM and RMC are one and the same product, was never the case of the assessee. On the contrary, in reply dated June 12, 1998 to the letter dated May 18, 1998 issued by the Assistant Commissioner of Central Excise, Anantpur, the explanation given by the assessee was that the product produced at the site is only concrete mix, which is different from RMC; and that RMC cannot be manufactured at the site of construction; that

chemicals/retarders are not used in site mix concrete. 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.

Even in the writ petition filed by the assessee in the High Court of Madras [[2006 \(198\) E.L.T. 177 \(Mad.\)](#)], the assessee itself proceeded on the basis that what was manufactured was RMC inasmuch as in Para 3 of this writ, it was mentioned : ‘the writ petitioner had set up a Unit for manufacture of Ready Mix Concrete at Manapakkam.’ Paras 3 and 4 reads as under :

“3. The writ petitioner had set up an Unit for manufacture of Ready Mix Concrete at Manapakkam and has registered itself with the Central Excise. According to the respondents, the Ready Mix Concrete manufactured by the petitioner is not meant to be used at the site itself and they have to be cleared and sold to various other construction companies. The product is transported through the vehicle fitted with mixing drum specifically designed to carry Ready Mix Concrete from the petitioner’s unit to various concrete sites. The product is marketable, transportable and eventually available for sale.

4. The product concrete mix was not specified anywhere in Chapter 28 of the Central Excise Tariff Act, 1995. It was classified under Chapter sub-heading 38.23. However, as both the concrete mix and Ready

Mix Concrete were closely related products, confusion arose in respect of classification and levy of duty.”

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.*

22. *In Simplex Infrastructures Limited case, this Court had not delved into the issue at hand at all except stating that, “if RMC is produced at site then alone the assessee is entitled to exemption under the requisite notification.” There is no discussion on this behalf as well. Though, Para 3 starts with the words : ‘As stated above’, a reading of earlier paras reveals that in the preceding paras also there is no discussion on this aspect. It appears that the parties proceeded on the basis that if RMC is produced at site, it will be entitled to exemption. Otherwise there is no discussion that RMC is different from CM and the notification mentioned only approves CM and not RMC. Moreover, Para 5 of the said judgment would disclose that after setting aside the order of the Tribunal and in an appeal filed by the Revenue, matter was remitted back to the Tribunal without expressing any opinion on the merits of the case. Para 5 reads as under :*

“5. In the above circumstances, we set aside the impugned order of the Tribunal and we remit the matter to the Tribunal to decide, in accordance with law, the dichotomy which arises in the present case between the existence of the batching plant, its location, its mobility and the area of the site. We make it clear that we

express no opinion on the merits of the case. We remit this matter only on the basis of the statement made in the impugned order of the Tribunal that the above position was not disputed. Keeping the arguments on both sides open and further giving liberty to both sides to file additional documents, we set aside the impugned order and we remit the matter to the Tribunal for fresh consideration in accordance with law.”

Therefore, the aforesaid judgment would have no application.

23. On these facts, as far as appeal of the L&T is concerned that warrants to be dismissed when we find that the assessee was producing RMC and the exemption notification exempts only CM and the two products are different. 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. Appeals of L&T, therefore, fails and are dismissed.

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24. In the instant case, the CESTAT has held that as the RMC was manufactured at site and was used in construction work at site, the same was covered vide Notification No. 4/97-C.E. This view of the Tribunal has been upheld by the High Court thereby dismissing the appeal of the Revenue. Having regard to our discussion in the case of L&T, this view has to be rejected. At the same time, we find that the process of preparing the Concrete Mix at site has not been discussed at all. It is only that process which would determine as to whether the produce could be termed as CM or it would be

treated as RMC. Therefore, while allowing the appeal of the Revenue and setting aside the order of the Tribunal as well as the High Court, we remit the case back to the adjudicating authority to look into the matter afresh from this angle, keeping in view our observations in this judgment.

4. Learned Counsel in view of the aforementioned facts and event states that no case of any, collusion, suppression of facts or malafide is made against the appellant. It was the view of the department as is evident from show cause notice dated 7.2.2011, that Revenue itself was of the view that the RMC is exempted goods under the said Notification No. 4/97-CE. Further, view of this Tribunal was confirmed by the Hon'ble Punjab and Haryana High Court in Chief Engineer, Ranjit Sagar Dam, we are of the view that RMC and CM are one and the same, are not liable to Excise duty. Further, it is only after the rulings of the Supreme Court dated 6.10.2015, that the present show cause notice dated 9.3.2017 has been issued. Thus demand relating to the period March, 2012 was beyond the period of limitation. It is evident on face of the record that show cause notice has been issued only for the sake of change of opinion on the part of the Revenue and accordingly prays for setting aside of the impugned order and to allow the appeal on the ground of limitation.

5. Learned Authorised Representative have relied upon the finding in the impugned order.

6. Having considered the rival contentions, we are satisfied that the show cause notice in question, invoking the extended period of limitation has been issued by way of change of opinion, there being no condition precedent available for invocation of extended period of limitation. In this view of the matter, we hold that the show cause notice is not maintainable. Accordingly, we allow the appeal and set aside the impugned order. The appellants are entitled to consequential relief in accordance with law.

(Dictated and pronounced in the open Court)

(**CL Mahar**)
Member (Technical)

(**Anil Choudhary**)
Member (Judicial)

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