CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL ALLAHABAD

REGIONAL BENCH - COURT No. I

Excise Appeal No.70040 of 2019-Division Bench

(Arising out of Order-in-Appeal No. NOI-EXCUS-002-APP-1817 & 1818-17-18 dated 13/03/2018 passed by Commissioner of Central Tax (Appeals), Noida)

M/s Ajnara India Ltd. **.....Appellant**

(D-247/26, Sector-63, Noida, U.P.-201301)

VERSUS

Commissioner of Central GST, Noida-II **....Respondent**

(3rd Floor, WEGMANS Business Park, Plot No.3,

Knowledge Park-III, Greater Noida U.P.-201306)

APPEARANCE:

Absent on Call, for the Appellant
Shri Anupam Kumar Tiwari, Authorised Representative for the Respondent

CORAM:

HON'BLE SMT. ARCHANA WADHWA, MEMBER (JUDICIAL)
HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

FINAL ORDER NO. - 71615 / 2019

Date of Hearing : 20 August, 2019
Date of Pronouncement : 30 August, 2019

PER: ARCHANA WADHWA

On matter being called neither anybody appeared nor is there any adjournment request. As the issue stands finally decided by the Hon'ble Supreme Court, accordingly, we proceed to decide the appeal, after going through the impugned order and after hearing the learned A.R. appearing for the Revenue.

2. On going through the impugned order, we note that the issue relates to the availability of exemption Notification

No.04/1997-CE dated 01/03/1997 to the ready mix concrete being prepared by the assessee at the construction site. Whereas the assessees have claimed the benefit of the said exemption, which allows *nil rate* of duty to the concrete mix, Revenue has denied the same on the ground that ready-mix concrete is different from the concrete mix and inasmuch as the Notification exempts only the concrete mix, the benefit cannot be extended to ready-mix concrete.

3. We note that the issue is no more *res integra.* The Hon'ble Supreme Court in the case of Larsen & Toubro Ltd. vs. Commissioner of Central Excise, Hyderabad 2015 (324) E.L.T. 646 (S.C.) has observed that concrete mix and ready-mix concrete are two different products and inasmuch Notification No.04/1997-CE extends the exemption benefit only to concrete mix, the exemption would not be available to ready-mix concrete.

4. However, we note that demand stands raised vide Show Cause Notice dated 27/05/2016 for the period from April, 2013 to March, 2015 by invoking longer period of limitation. We note that the Tribunal in the case of Shapoorji Pallonji & Co. Ltd. vs. Commissioner of Central Excise, Mumbai 2016 (344) E.L.T. 1132 (Tri.-Mumbai) has observed that in the absence of any evidence to reflect upon the *mala fide* intention of the assessee, extended period is not invocable. The said decision stands followed by this Bench of the Tribunal in the case of M/s Gaursons Promoters Pvt. Ltd. it stands observed as under:-

> *"3. We note that though the issue stands decided against the assessee on merits by the Hon'ble Supreme Court decision in the case of M/s Larsen & Toubro Ltd. referred (Supra) but we note that Para 23 of the said judgement of Hon'ble Supreme Court has itself observed that there was doubt in the field and following the said decision, Tribunal in the case of M/s Shapoorji Pallonji & Co. Ltd. and in the case of M/s Larsen & Toubro referred (Supra) has extended the benefit of limitation to the assessee."*

5. By following the above decision, we uphold the demand falling within the normal period and direct the Original Adjudicating Authority to quantify the same. Penalty is also set aside.

Appeal is disposed of in above manner.

(Order pronounced in the open court on – 30 August, 2019)

Sd/-
(Archana Wadhwa)
Member (Judicial)

Sd/-
(Anil G. Shakkarwar)
Member (Technical)

Lks