

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD**

REGIONAL BENCH - COURT No.II

Excise Appeal No.70461 of 2020

(Arising out of Order-in-Original No.16/Commissioner/G.B.Nagar/2019-20 dated 29/01/2020 passed by Commissioner of Central Tax & Central Excise, Noida)

Mr. Vinod Kumar Mishra,

.....Appellant

(E-Square, Plot No.C2, Sector-96, Noida-201303)

VERSUS

Commissioner of Central Excise &

CGST, Noida

....Respondent

(3rd Floor, Wegmans Business Park,

KP-III, Greater Noida-201306)

WITH

Excise Appeal No.70462 of 2020

(Arising out of Order-in-Original No.16/Commissioner/G.B.Nagar/2019-20 dated 29/01/2020 passed by Commissioner of Central Tax & Central Excise, Noida)

Mr. Dharmendra Kumar Gupta,

.....Appellant

(E-Square, Plot No.C2, Sector-96, Noida-201303)

VERSUS

Commissioner of Central Excise &

CGST, Noida

....Respondent

(3rd Floor, Wegmans Business Park,

KP-III, Greater Noida-201306)

APPEARANCE:

None, for the Appellants

Shri Santosh Kumar, Authorised Representative for the Respondent

CORAM: HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)

HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

FINAL ORDER NOs.70846-70847/2025

DATE OF HEARING : 16 October, 2025
DATE OF PRONOUNCEMENT : 04 December, 2025

SANJIV SRIVASTAVA:

This appeal is directed against Order-in-Original No.16/Commissioner/G.B.Nagar/2019-20 dated 29/01/2020 passed by Commissioner of Central Tax & Central Excise, Noida. By the impugned order following has been held:-

"ORDER

- i. I hereby confirm the demand of Central Excise Duty amounting to Rs.2,84,00,242/- (Rupee Two Crore Eighty Four Lakh Two Hundred Forty Two only) (BED-Rs. 2,77,12,429/- Edu. Cess Rs. 4,58,544/ Secondary & Higher Education Cess- Rs. 2,29,269/-), on M/s Ambit Concrete (P) Ltd., F-6/54, Sai Bhawan, Janta Garden, Near East Delhi Public School, Pandav Nagar, Delhi-110092 under Section 11A(4) of the Central Excise Act, 1944 readwith Section 174 of the Central Goods and Services Tax Act, 2017 and order for recovery of the same from them.*
- ii. I order for payment of interest by ACPL, at appropriate rate, on this above confirmed demand of Central Excise duty in terms of provisions of Section 11AA of the Central Excise Act, 1944.*
- iii. I impose a penalty of Rs.2,84,00,242/- (Rupee Two Crore Eighty Four Lakh Two Hundred Forty Two only) upon M/s Ambit Concrete (P) Ltd., F-6/54, Sai Bhawan, Janta Garden, Near East Delhi Public School, Pandav Nagar, Delhi-110092 under Rule 25 of the Central Excise Rules, 2002 readwith Section 11AC of the Central Excise Act, 1944 readwith Section 174 of the Central Goods and Services Tax Act, 2017.*
- iv. I impose a penalty of Rs.1,20,000/- (Rs. One Lakh Twenty Thousand only) upon M/s Ambit Concrete (P) Ltd., F-6/54, Sai Bhawan, Janta Garden, Near East Delhi Public School, Pandav Nagar, Delhi-110092 under Rule 27 of the Central Excise Rules, 2002 readwith*

Section 174 of the Central Goods and Services Tax Act, 2017.

- v. *I impose a penalty of Rs. 2,60,000/- (Rs. Two Lakh Sixty Thousand) upon M/s Ambit Concrete (P) Ltd, - 6/54, Sai Bhawan, Janta Garden Near East Deini Public School, Pandav Nagar, Delhi-110092 under Rule 12(6) of the Central Excise Rules, 2002 readwith Section 174 of the Central Goods and Services Tax Act. 2017.*
- vi. *I impose a penalty of Rs 10,00,000/- (Rupees Ten Lakhs only) upon Sh Sanjay Soni of M/s Ambit Concrete (P) Ltd., F-6/54, Sai Bhawan, Janta Garden, Near East Delhi Public School, Pandav Nagar, Delhi-110092 under Rule 26 of the Central Excise Rules, 2002 readwith Section 174 of the Central Goods and Services Tax Act, 2017.*
- vii. *I do not impose any penalty on M/s Supertech Ltd. as no penalty is imposable on them under Rule 25 of Central Excise Rules, 2002 read with Section 11AC of the Central Excise Act, 1944 readwith Section 174 of the Central Goods and Services Tax Act, 2017.*
- viii. *I impose a penalty of Rs 10,00,000/- (Rupees Ten Lakhs only) upon Shri D. K. Chief Financial Officer of M/s Gupta, Supertech Ltd., B-28-29, Sector-58, Noida, under Rule 26 of the Central Excise Rules, 2002 readwith Section 174 of the Central Goods and Services Tax Act, 2017.*
- ix. *I impose a penalty of Rs 10,00,000/- (Rupees Ten Lakhs only) upon Shri Vinod Kumar Mishra, Assistant Vice President (Projects) 1 M/s Supertech Ltd., B-28-29, Sector-58, Noida, under Rule 26 of the Central Excise Rules, 2002 readwith Section 174 of the Central Goods and Services Tax Act, 2017.”*

2.1 Show cause notice dated 07.06.2018 has been issued to the appellants and others asking them to show cause as to why:-

"61. Now, therefore, M/s Ambit Concrete (P) Ltd., F-6/54, Sal Bhawan, Janta Garden, Near East Delhi Public School, Pandav Nagar, Delhi-92 are hereby required to Show Cause to the Commissioner, Central Tax (GST & Central Excise) Commissionerate, Gautam Buddh Nager at 3rd Floor, Wegmans Business Park, Plot No. 3, KP-3, Greater Noida (U.P.) within 30 days of the receipt of the Show Cause Notice as to why:

(i) Central Excise duty amounting to Rs. 2,84,00,242/- (Rupee Two Crore Eighty Four Lakh Two Hundred Forty Two only) (BED- Rs. 2,77,12,429/- + Edu. Cess- Rs. 4,58,544/-+ Secondary & Higher Education Cess- Rs. 2,29,269/-) not paid by them for the period from 2013-14 (w.e.f. 01.05.2013) to 2016-16 (upto 28.02.2016), should not be demanded and recovered from them under Section 11A(4) of erstwhile Central Excise Act, 1944 by invoking the extended period of limitation, read with Section 174 of Central Goods & Services Tax Act, 2017:

(ii) Penalty amounting to Rs. 1,20,000/- for non-filing of monthly ER-1 returns for the period 2013-14 (w.ef. May, 2013) to 2014-15 (upto February, 2015), should not be demanded and recovered from them under Rule 27 of the erstwhile Central Excise Rules, 2002, read with Section 174 of Central Goods & Services Tax Act, 2017;

(iii) An amount of Rs. 2,60,000/- for non-filing of ER-1 returns for the period 2014-15 (March, 2015) to 2015-16 (upto February, 2016) and annual ER-4 returns for the period 2013-14 to 2015-16, should not be demanded and recovered from them under Rule 12(6) of the erstwhile Central Excise Rules, 2002.

(iv) Interest on the aforesaid amount of duty of 2,84,00,242/- should not be demanded and recovered from them, in terms of section 11AA of the erstwhile Central Excise Act, 1944, as applicable at the relevant time

read with Section 174 of Central Goods & Services Tax Act, 2017:

(v) Penalty should not be imposed upon them under Rule 25 of the erstwhile Central Excise Rules, 2002 read with Section 11AC of the erstwhile Central Excise Act, 1944 and Section 174 of Central Goods & Services Tax Act, 2017.

62. Also, Shri Sanjay Soni, the key person and/or Chairman cum Managing Director of M/s Ambit Concrete (P) Ltd., F-6/54, Sai Bhawan, Janta Garden, Near East Delhi Public School, Pandav Nagar, Delhi-92 is hereby required to show cause to the Commissioner, Central Tax (GST & Central Excise) Commissionerate, Gautam Buddh Nagar at 3rd Floor, Wegmans Business Park, Plot No. 3, KP-3, Greater Noida (U.P.) within 30 days of the receipt of the Show Cause Notice as to why penalty should not be imposed upon him under Rule 26 of erstwhile Central Excise Rules, 2002, read with Section 174 of Central Goods And Services Tax Act, 2017.

63. Also, M/s Supertech Ltd., B-28, 29, Sector-58, Noida are hereby required to show cause to the Commissioner, Central Tax (GST & Central Excise) Commissionerate, Gautam Buddh Nagar at 3rd Floor, Wegmans Business Park, Plot No. 3, KP-3, Greater Noida (U.P.) within 30 days of the receipt of the Show Cause Notice as to why penalty should not be imposed upon them under Rule 25 of erstwhile Central Excise Rules, 2002, read with erstwhile Section 11AC of the Central Excise Act, 1944 and Section 174 of Central Goods & Services Tax Act, 2017.

64. Also, Shri Vinod Kumar Mishra, Assistant Vice President (Projects) of M/s Supertech Ltd., B-28, 29, Sector-58, Noida is hereby required to show cause to the Commissioner, Central Tax (GST & Central Excise) Commissionerate, Gautam Buddh Nagar at 3rd Floor, Wegmans Business Park, Plot No. 3, KP-3, Greater Noida (U.P.) within 30 days of the receipt of the Show Cause

Notice as to why penalty should not be imposed upon him under Rule 26 of erstwhile Central Excise Rules, 2002, read with Section 174 of Central Goods And Services Tax Act, 2017.

65. Also, Shri D.K. Gupta, Chief Financial Officer of M/s Supertech Ltd., B-28, 29, Sector-58, Noida is hereby required to show cause to the Commissioner, Central Tax (GST & Central Excise) Commissionerate, Gautam Buddh Nagar at 3rd Floor, Wegmans Business Park, Plot No. 3, KP-3, Greater Noida (U.P.) within 30 days of the receipt of the Show Cause Notice as to why penalty should not be imposed upon him under Rule 26 of erstwhile Central Excise Rules, 2002, read with Section 174 of Central Goods And Services Tax Act, 2017."

2.2 This show cause notice has been adjudicated as per the impugned order referred in para-1 above.

2.3 Aggrieved appellants have filed appeals before this Tribunal.

3.1 Appellants/ Appellants Counsel are absent on call.

3.2 As we find that the issue involve herein is in very narrow compass, the matter is taken up for consideration after hearing Shri Santosh Kumar, learned Authorized Representative appearing for the Revenue, who reiterates the findings recorded in the impugned order.

4.1 We have considered the impugned orders along with the submissions made in appeal and during the course of argument.

4.2 We find that by the same Order-in-Original demand has been confirmed against M/s Ambit Concrete (P) Ltd. and penalties were imposed on Shri Sanjay Soni along with the present two appellants. The appeals filed by them (E/70267 & 70268/2020) have been decided by this Tribunal in the case of vide Final Order No.70257-70258/2021 dated 30.11.2021 by holding as follows:-

"13. We further take notice that as per Board Circular (supra), RMC plant consists of stone crushers, conveyors,

vibrator screen to segregate different sizes of stone aggregates, sand mill to produce sand from stone. A central batching plant is also installed in which all aggregate are weighed, batched by electrical control and limit switches. Cement from site is carried to the batching plant by a screw conveyor, operated with automatic weighing gauges. Water is fed through flow meters after subjecting such water to chemical treatment. The mixture of stone aggregates, sand, cement and water is mixed in a mixer (batching plant). The mixture so obtained 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 the site for further use in construction of building etc. The qualities accruing to RMC so obtained far out-weight to those of the site mixed concrete. The final product - RMC is a material in plastic, wet process state and not a finished product like blocks or precast tiles or beams.

14. We find from the show cause notice and the impugned order-in-original that none of such facts were found and /or alleged in the instant show cause notice. Admittedly, there has been no inspection at the site (Eco Village-II), where the appellant has installed their batching plant for supplying to M/s Supertech Limited. Further, admittedly the appellant has taken registration under Service Tax provisions with the Department, and were paying service tax on the job charges. Admittedly, appellant have raised two bills one for supply of material and the other for job work – mixing the cement, aggregate water, etc. in its batching plant. Further, appellant has raised the job work invoice for concrete mix.

15. Accordingly, in view of our findings and observations, we hold that Revenue have not brought any facts on record in support of its allegation of manufacture of RMC by the appellant. Thus, in the facts and circumstances, we conclude that what has been manufactured and supplied

by the appellant is 'concrete mix', which is not dutiable. Further, in view of our finding that the appellant has taken registration for service tax, paying service tax and making compliances for the said activity under dispute, the facts were in the knowledge of the Department and as such extended period of limitation is not invocable. We further find that in trade parlance 'concrete mix' and 'RMC' are used interchangeably, as clarified by the Board Circular and by the Hon'ble Supreme Court. Manufacture of RMC is a process involving several machines and is a matter of precision. 16. Accordingly, we set aside the impugned order and allow the appeal with consequential relief, if any, as per law. The appeal No.E/70268/2020 of Sh. Sanjay Soni, Director is also allowed."

4.3 As the impugned Order-in-Original confirming the duty and penalty on M/s Ambit Concrete (Main Noticee) has been set aside, we do not find any reason to uphold the penalties on the co-noticees i.e. the appellants. It is settled principle in law that where demand of duties are set aside, penalties on the co-noticees also needs to be set aside.

4.4 In view of the above, impugned order in respect of present two appellants do not hold merit.

5.1 Appeals are allowed.

(Order pronounced in open court on-04 December, 2025)

(P. DINESHA)
MEMBER (JUDICIAL)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)