CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL ALLAHABAD.

REGIONAL BENCH – COURT NO. 1

Excise Appeal No. 70267 of 2020

(Arising out of order in original No. 16/Commissioner/G.B. Nagar/2019-20 dated 29.01.2020 passed by the Commissioner, Central Tax, Goods & Service Tax and Central Excise, Gautam Budh Nagar, Noida).

M/s Ambit Concrete (P) Ltd., **Appellant**
F6/53, Sai Bhawan, Janta Garden
Near East Delhi Public School
New Delhi-110 092.

VERSUS

Commissioner, Central Tax **Respondent**
Goods, Service Tax & Central Excise
3rd Floor, Wegmans Business Park, KP-III
Gautam Budh Nagar-201 306.

AND

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Sh. Sanjay Soni, Director **Appellant**
F6/55, Sai Bhawan, Janta Garden
Near East Delhi Public School
New Delhi-110 092.

VERSUS

Commissioner, Central Tax **Respondent**
Goods, Service Tax & Central Excise
3rd Floor, Wegmans Business Park, KP-III
Gautam Budh Nagar-201 306.

APPEARANCE:

Shri Anurag Mishra, Advocate for the appellants
Shri Santosh Kumar Agarwal, Authorised Representative for the respondent

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER No. 70257-70258 / 2021

DATE OF HEARING: 06.08.2021
DATE OF DECISION: 30.11.2021

ANIL CHOUDHARY:

The issue involved in these appeals is whether 'Ready Mix Concrete' (RMC in short) or 'concrete mix' manufactured by the appellant at the site of M/s Supertech Limited, and supplied to them, whether it is dutiable under Central Excise Act.

2. Brief facts of the case are, based on intelligence that RMC was being manufactured and used at the construction site of residential complex of M/s Supertech Limited, and no Central Excise duty was being discharged, the Officers of Revenue visited the premises (Eco Village-I) on 21.10.2015 and drew a panchnama. Shri Ajay Kumar Srivastava, Dy. General Manager of M/s Supertech Limited informed, that for manufacture of RMC they have got installed two batching plants. The Officers resumed some records which appeared to be relevant for further enquiry. Statement of Shri D.K. Singh, Assistant Vice President (Projects) of M/s Supertech Limited was recorded, wherein he stated inter-alia as under:-

(i) They were not procuring RMC from outside manufacturers. RMC was manufactured onsite for which purpose they had two batching plants, which were owned by M/s J. R. Buildway Construction Pvt. Ltd., and by M/s Goddone Infrastructure Pvt. Ltd.,

(ii) That contracts had been awarded to them for construction of towers and extended basement and the RMC manufactured at batching plants was used by them for the above said purpose;

(iii) Cement and Admixtures were supplied by them and the remaining inputs like aggregate, sand etc. were procured by the contractors;

(iv) Admixtures were used to increase workability (Lubricants) of RMC;

(v) Admixtures used in RMC were the plasticizers normally used in RMC;

(vi) The Contractors (manufacturer of RMC) used transit mixers (Rotary mixtures) for transportation of RMC at different locations;

(vii) Their project was launched in the year 2012; there were batching plants of various contractors at their site; he would provide names of contractors and copies of all the contracts available in their Head Office, to the Department on 23.11.2015.

3. In response to summons M/s Supertech Limited provided batching plant details. According to such information, the appellant - (Ambit concrete) had installed its batching plant at Eco-Village-II site. Thereafter, summons were issued to Authorised Signatory of appellant for personal appearance and recording of statement.

4. It appeared to Revenue that – appellant - ACPL manufactured and supplied RMC to M/s Supertech Limited, by manufacturing in their batching plant installed at the site of M/s Supertech Limited, for its residential project at Eco Village-II. Further, M/s Supertech Limited provided information, being copies of purchase bills, details of copy of ledger accounts in respect of RMC purchased from appellant for the period 2012-13 to 2015-16 (upto February, 2016), vide their letter dated 05.12.2016. It appears that details so

furnished in respect of bills submitted by ACPL on M/s Supertech Limited, from perusal of ledger accounts, there appears that mobilisation advance was also given, which was adjusted regularly against the payment against the R.A. bills. It further appeared that appellant was registered under Service Tax with the Service Tax Commissionerate, Delhi, and the same was found mentioned in the invoice. Thereafter, the Assistant Commissioner (AE), Service Tax issued letter dated 13.01.2017 to the appellant, requesting therein to provide requisite information. In response M/s Supertech Limited vide letter dated 22.02.2017, submitted charts showing year-wise, month-wise quantity & value of Concrete Mix material & Pumping Mix supplied to them by their contractor(s) including the appellant. It was observed by the Revenue that in the invoice etc. the supply was mentioned as 'Supply of concrete Mix material', which appeared to Revenue to be RMC supplied to Supertech Limited by the appellant. As per data provided, the year-wise supply made by the appellant to M/s Supertech Limited was compiled.

5. It further appeared from the examination of record and data furnished by M/s Supertech Limited, that they have submitted charts showing month-wise, grade-wise (PCC-M10, M-25, M-30) quantities of RMC received from the appellant, which tallied with the consolidated month-wise quantities as provided under their letter dated 22.02.2017. It appeared that invoices has been provided only for the period 2014-15 and 2015-16. It further appeared that M/s Supertech Limited in order to facilitate their supplier/ contractor –

appellant in evading Central Excise duty, which would otherwise be chargeable by appellant from them, by meticulously planning issuance of two different kinds of invoices by appellant, one towards supply of materials on which VAT was payable and the other towards provision of taxable service of 'mixing & pumping' of RMC. In fact, the amount charged towards mixing was for mixing of all the materials such as stone grit, sand, cement, water, additives, etc. It was also observed that the process of mixing was nothing but the process of manufacturing of RMC through dedicated batching plant, installed at site of M/s Supertech by the appellant.

6. Statement of Shri Vinod Kumar Mishra, Assistant Vice President (Projects) was recorded on 04.10.2017 who inter alia stated – that in cases where RMC or concrete mix was required, the same was procured / purchased from outside vendors; that the said RMC was manufactured by the outside vendors for which they brought the batching plant at the project site of M/s Supertech Limited. RMC so manufactured was used in their construction – residential complex - project.

7. In his further statement Shri Mishra stated that detailed information, if any, required can be furnished by the CFO of M/s Supertech Limited. He further stated the manufacturing process of concrete mix and RMC. That 'concrete mix' was made through mixing sand & concrete by using mixer on site and it was used before initial setting time of cement, while RMC was made where the concrete was required to be used for a longer time i.e. more than the initial setting

time of cement; that the design, reflects the strength of RMC / concrete; different types of RMC have different strength and the strength of a particular grade of RMC depends upon the base of water/ cement ratio, workability of design of that grade of RMC. Further stated that stone grit, sand, cement, water and proper chemical are the basic ingredients of RMC, that for increasing duration for use of the produce, chemicals are mixed, which renders it as RMC; that the basic difference between concrete mix and RMC was the use of chemical.

8. It further appeared to Revenue that RMC is an excisable product and classifiable under CTH 38245010 under Miscellaneous Chemical Products, under Central Excise Tariff Act, 1985 and attracts duty @ 6% of the value. Further, RMC was chargeable @ 2% in terms of Entry No. 46 of Notification No. 1/2011-CE, as amended by Notification No. 16/2012-CE, on the condition that the credit of duty on inputs or tax on input services has not been taken under the provisions of Cenvat Credit Rules, 2004. It further appeared that the appellant never provided any information regarding the availment of cenvat credit to the Department. Further, appellant was charging service tax on the job work invoices (for making concrete mix). Thus, it was assumed that the appellant was availing cenvat credit on input and input services. Thus, it appears that the benefit under the aforementioned notifications was not available. It further appeared that dutiability of RMC has also been clarified by the Board Circular No. 368/1/98/CX dated 06.01.1998, according to which it appeared that RMC even if manufactured onsite and used at the construction site, was dutiable. It further appeared to Revenue that in view of the ruling

of Hon’ble Supreme Court in **Larsen & Toubro Ltd.- 2015 (324) ELT 646 (SC)**, where it has been held that the exemption under Notification No. 4/97-CE dated 01.03.1997 as amended, is available only to concrete mix and not to RMC, and had concluded that both the products are different commodities and that the exemption from levy of Central Excise duty is available only to ‘concrete mix’ and not to ‘RMC’.

9. It further appeared that the effective duty became Nil on RMC manufactured at the site of construction for use in the construction at site, in terms of Entry No. 144 of exemption Notification No. 12/2012-CE, as amended by Notification No. 12/2016-CE. Further, it appeared to Revenue that the appellant had only manufactured and supplied RMC and not concrete mix. Accordingly, show cause notice dated 07.06.2018 was issued demanding Excise duty of Rs.2,84,00,242/- including cess for the period 2013-14 (w.e.f. 01.05.2013) to 2015-16 (upto February, 2016), invoking extended period of limitation. Further, penalty was proposed for non filing of ER-1 return read with Rule 27 of Central Excise Rules read with Section 174 of CGST Act, 2017. Further, penalty was also proposed under Rule 25. Personal penalty was also proposed on Shri Sanjay Soni, CMD of the appellant under Rule 26 of Central Excise Rules, 2002 read with Section 174 of CGST Act. Further, M/s Supertech Limited and Shri Vinod Kumar Mishra, AVP (Projects) of M/s Supertech Limited, Shri D. K. Gupta, CFO of M/s Supertech Limited were also required to show cause why penalty should not be imposed on them.

10. The show cause notice was adjudicated on contest and the proposed demand was confirmed with interest and further equal penalty was imposed under Rule 25 read with Section 11AC of the Act. Another penalty was imposed of Rs. 1,20,000/- under Rule 27 of Central Excise Rules plus penalty of Rs. 2,60,000/- under Rule 12(6) of Central Excise Rules. Personal penalty of Rs. 10 lakhs was imposed on the Director Shri Sanjay Soni under Rule 26. Penalty on M/s Supertech Limited under Rule 25 was dropped, however, penalty of Rs. 10 lakhs was imposed under Rule 26 of Central Excise Rule, 2002. Personal penalty of Rs. 10 lakhs was imposed on Shri Vinod Kumar Mishra, Assistant Vice President (Projects) of M/s Supertech Limited under Rule 26. Being aggrieved, the appellant company is before this Tribunal.

11. Heard the parties and perused the written submissions filed by the appellant company.

12. Before proceeding to dwell on the facts, it is required to take notice that the issue as to what is concrete mix and what is RMC have been settled by Hon'ble Supreme Court in the case of **L&T vs. CCE, Hyderabad -2015 (324) ELT 646 (SC)**. The Hon'ble Supreme Court has referred to Board Circular No. 237/71/96-CX dated 12.08.1996, wherein it has been held that –

i) 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, which was otherwise not present at the site ECO Village-II, Greater Noida, since the appellant were only manufacturing 'Concrete Mix'.

ii) A central batching plant is also installed, in which all aggregates are weighed, batched by electrical controls and limit switches, which was otherwise not present at the site ECO Village-II, Greater Noida, since the appellant were only manufacturing 'Concrete Mix'.

iii) Cement from site is carried to the batching plant by a screw conveyer operated with automatic weighing gauges, which was otherwise not present at the site - ECO Village-II, Greater Noida, since the appellant were only manufacturing 'Concrete Mix'.

iv) Water is fed through flow meters after subjecting such water to chemical analysis, which was otherwise not present at the site - ECO Village-II, Greater Noida, since the appellant were only manufacturing 'Concrete Mix'.

v) The mixture of stone aggregates, sand, cement and water is mixed in a mixer. 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 site for use in further construction of building, which was otherwise not present at the site - ECO Village-II, Greater Noida, since the appellant were only manufacturing 'Concrete Mix'.

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 invokable. 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. Manufactured 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.

(Pronounced on 30.11.2021).

Sd/-

(Anil Choudhary)
Member (Judicial)

Sd/-
(P. Anjani Kumar)
Member (Technical)

Pant