CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
<u>BANGALORE</u>

REGIONAL BENCH - COURT NO. I

Excise Appeal No. 1162 of 2011

[Arising out of Order-in-Original No. 02/2011-Commr. dated 07.01.2011 passed by the Commissioner of Central Excise, Belgaum]

Commissioner of Central Excise and Service Tax, Belgaum ......**Appellant**
No. 71, Club Road, Central Excise Building,
Belgaum, Karnataka 590001

VERSUS

Rajashree Cements ......**Respondent**
Malkhed Road, Gulbarga,
Karnataka

<u>APPEARANCE:</u>

Present for the Appellant: Sh. H. Jayathirtha, Authorized Representative

Present for the Respondent: None

<u>CORAM:</u>
HON'BLE Dr. D. M. MISRA, MEMBER (JUDICIAL)
HON'BLE Mrs. R. BHAGYA DEVI, MEMBER (TECHNICAL)

FINAL ORDER NO. 21482/2023

DATE OF HEARING: 22.12.2023
DATE OF DECISION: 22.12.2023

PER D. M. MISRA

None present for the respondent. Heard the ld. AR for the Revenue.

2. This appeal is filed by the Revenue against Order-in-Original No. 02/2011-Commr passed by the Commissioner of Central Excise, Belgaum.

3. Briefly stated facts of the case are that the respondent are engaged in manufacture of cement and clinker falling under Chapter 25 of the Central Excise Tariff Act, 1985. During the relevant period, they cleared the clinker and cement in bulk to their sister unit determining its assessable value under Rule 8 of the Central Excise Valuation Rules, 2000. Alleging that the method of assessment of goods cleared to their sister unit is contrary to the provisions of Section 4 of the Central Excise Act, 1944 read with the Central Excise Valuation Rules, 2000, demand notice was issued to them for recovery of differential duty amounting to Rs.12,83,54,239/- for the period from 01.03.2008 to 31.07.2009 with interest and penalty. On adjudication, the ld. Commissioner though upheld the assessment procedure alleged in the show cause notice, however, limited the demand to normal period of limitation and dropped the penal proceedings. Hence, Revenue is in appeal.

4. The ld. AR for the Revenue has submitted that the Respondent has failed to determine the correct assessable value of clinkers and cements cleared in bulk to their sister unit. Hence, the ld. Commissioner ought to have confirmed the demand for the extended period instead of for the normal period of limitation.

5. We find that the Revenue is in appeal on the short point of confirming the demand by the ld. Commissioner for normal period, dropping the demand for extended period against the

Respondent and penal proceedings initiated. Undisputedly, during the relevant period, the Respondent had been discharging duty determining the assessable value under Rule 8 of the Central Excise Valuation Rules, 2000. They filed ER-1 Returns periodically reflecting the payment of duty assessed by them. The ld. Commissioner analyzing the facts and evidence on record held as follows:

> "71. Coming to the second issue of the charge of suppression made on the assesse, I find that it is not tenable looking at the entire facts and circumstances. At best, this matter is a matter of interpretation of the law and it is settled law that no intendment to evade can be made out when the question is of interpretation of law. The show cause notice has been issued on 07.04.2010. In the circumstances, the proposal to demand of duty prior to April 2009 under proviso to Section 11A of the Act is liable to be dropped. I confirm the demand from April 2009 onwards. The total duty for this period is Rs.1,52,83,885/- (including EC and S&II EC) as detailed in the enclosed Annexure."

6. We find that this Tribunal in similar circumstances, involving the same items namely clinkers and bulk cements in **UltraTech Cement Ltd vs CCE**, **Belgaum (Appeal No. E/23715/2014) vide Final Order No. 21426/2023 dt.**

22.12.2023 even though upheld the method of assessment to be under Rule 4 read with Rule 11 of the Central Excise Valuation Rules, 2000 but following the principle laid down in the below mentioned case restricted the demand to normal period of limitation. It is observed as:

> "**12.** The said judgment of the Tribunal was carried over in appeal before the Hon'ble Gujarat High Court reported as ***CCE, Bhavnagar Vs. Ultratech Cement Pvt. Ltd. [2014(302) ELT 334 (Guj.)].*** Their lordships analysing the facts upheld the order of the Tribunal on the issue of limitation observing as follows: -
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> ***19.*** *Thus on both the counts, firstly that there came a decision explaining and clearing the doubts as to in what manner the valuation requires to be done in the event of captive consumption of goods as also in case of goods transferred to sister concern or to another factory of the same assessee and till then, Board circular governed the field. And, also because from March, 2008 onwards. On regular basis, the monthly returns have been filed by the assessee respondent indicating all possible details. Thus, the Tribunal rightly turned down the demand of duty prior to the period of one year from the date of issuance of show cause notice dated 09.11.2009, holding the same to have been hit by the law of limitation.*
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> ***20.*** *In the instant case, we are in complete agreement with the findings of CESTAT, which rightly has concluded from the gamut of facts and evidence that all the materials were available with the Department, which could have been questioned and at no point of time any issue was raised questioning any credential of the respondent with regard to such transfer, the extended period of limitation in the demand notice could not have been sustained. Question of law is appropriately answered by the Tribunal.*
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> **13**. Following the aforesaid judgments, we are of the view in the present case also, extended period of limitation

cannot be invoked. However, the demand be confined to the normal period of limitation."

7. Following the aforesaid principle, we are of the view that the demand has been rightly restricted to normal period of limitation as held by the ld. Commissioner in the impugned order. Consequently, the impugned order is upheld and the Revenue's appeal being devoid of merit is dismissed.

(Dictated and pronounced in the open court)

(D. M. MISRA)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

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