

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

REGIONAL BENCH - COURT NO. 2

Central Excise Appeal No. 21250 of 2017

(Arising out of Order-in-Original No. 168-169/2017-AU I dated 03.05.2017
passed by the Commissioner of Central Excise(Appeals-I), Bangalore)

Ahluwalia Contracts India Limited

#64,14th Cross,9th Main Road,
Indira Nagar, 2nd Stage,
Bangalore, Karnataka – 560038

.....Appellant

VERSUS

Commissioner of Central Excise, Bangalore-II

PB NO. 5400, CR Buildings, Queens Road,
Bangalore, Karnataka – 560001

.....Respondent

WITH

Central Excise Appeal No. 21248 of 2017

(Arising out of Order-in-Original No. 168-169/2017-AU I dated 03.05.2017 passed by
the Commissioner of Central Excise(Appeals-I), Bangalore)

A R Sreekanta

#444, 1st Floor, 39 A Cross 5 T Block,
Jayanagar,
Bangalore, Karnataka – 560041

.....Appellant

VERSUS

Commissioner of Central Excise, Bangalore-II

PB NO. 5400, CR Buildings, Queens Road,
Bangalore, Karnataka – 560001

.....Respondent

Appearance:

Mr. Prateek Marlecha, Chartered Accountant (CA) for the Appellant
Mr. Rajashekar. B.N.N, Authorised Representative (AR) for the Revenue

Coram:

Hon'ble Mr. P.A. Augustian, Member (Judicial)

Hon'ble Mr. Pallela Nageswara Rao, Member (Technical)

Final Order No. 21855-21856 /2025

Date of Hearing: 11.09.2025

Date of Decision: 21.11.2025

Per: P. A. Augustian

These 2(two) appeals are filed against Orders-in-Original No. 168-169/2017-AUI dated 03.05.2017 passed by the Commissioner of Central Excise(Appeals-I), Bangalore.

2. The issue in the present appeal is whether the product manufactured by the Appellant is falling under the category of 'Ready Mix Concrete (RMC)', an excisable product falling under Central Excise Tariff Heading (CETH) 38245010 of Central Excise Tariff Act, 1985.

3. The brief facts are alleging that M/s. Ahluwalia Contracts India Limited the Appellant is manufacturing excisable product and supplying the same to M/s. Bengaluru Metro Rail Corporation Ltd., (BMRCL) for construction of workshop-cum-Depot at Peenya, and the has not registered with Central Excise Department and not paying appropriate central excise duty on the RMC manufactured at the batching plant, investigation was conducted and thereafter show cause notice was issued demanding Excise Duty from 01.03.2011 to 30.11.2012. Show cause Notice was also issued to Shri. A.R Sreekanta, General Manager, Appellant herein. Even though the Appellant submitted that the goods manufactured by the Appellant is not Ready Mix Concrete and it is only concrete mix at the site, the Adjudication authority as per the Order-in-Original dated 31.01.2014 confirmed the demand along with interest and also imposed penalty on Appellants. Aggrieved by said orders, appeals were filed before the Commissioner (Appeals) and Commissioner (Appeals) upheld the demand with interest and penalty imposed on M/s Ahluwalia Contracts India Pvt Ltd. However, the penalty imposed on the Appellant Shri. A.R Sreekanta, General Manager was reduced to Rs. 10,000/. Aggrieved by said orders, present appeals are

filed by M/s. Ahluwalia Contracts India Limited and Shri. A.R Sreekanta, General Manager.

4. When the appeals came up for hearing, Learned Chartered Accountant (CA) for the Appellant submits that Appellant is only manufacturing concrete mix at the site. Appellant had received orders for construction of workshop-cum-depot for M/s. BMRCL. As per the requirement of the contract, the Appellant has to establish a batch plant at site. The Learned CA also draws our attention to the Technical specification for civil structure and submits that as per the clause 3.7.4, "as soon as the construction works are over, the contractor shall submit a proposal to the Engineer for removing all the plant structure/storage, etc., from the allocated site and hand over the same in a condition not inferior to what existed prior to the installation of the batching plant". There is no finding that the product manufactured by the Appellant is RMC and there is no finding that the machine is capable for manufacturing RMC. As per the impugned Order-in-Original, Adjudication authority reached the finding that "it is clear that the batching plants are installed in the project site for manufacturing Ready mix concrete for M/s ACIL, it appears that no central excise duty is discharged either by M/s. Ahlcon or M/s ACIL. It appears that the above said excisable goods chargeable to central excise duty under Section 3 of the Central Excise Act, 1944 appeared to have been removed for captive consumption by M/s. ACIL during the period from 01.03.2011 to 30.11.2012 without assessment and without raising proper invoice as required under Rule 6 and Rule 11 of Central Excise Rules, 2002."

5. Learned Chartered Accountant (CA) further submits that without any admissible evidence Adjudicating Authority as well as Appellate authority has held that the concrete mix manufactured by the appellant is RMC and accordingly the appellant is liable to pay excise duty. However, appellant is manufacturing concrete which is specified in technical specifications (clause 3.2) which is as per IS 456 standard and not as per IS 4926-1976 (as applicable for RMC). However, in spite of bringing the fact that the appellant is manufacturing the concrete mix as per IS 456 standard learned Adjudicating authority as well as learned

Appellate authority has held that the appellant is manufacturing RMC. In this regard, Learned Chartered Accountant (CA) submits that the issue is covered by the Circular No. 368/1/98-CX dated 06.01.1998. The relevant para is extracted below:

"4. Ready Mix Concrete is thus an excisable product which has a separate tariff entry under sub-heading 3824.20 of the Central Excise Tariff Act, 1985. It is also known under the Indian Standard IS: 4926-1976, which for the purposes of that standard defines Ready Mix Concrete as concrete delivered at site or into the purchaser's vehicle in a plastic condition and requiring no further treatment before being placed in the position in which it is to stay and harden. Ready Mix Concrete attracts duty at the rate of 13% prior to 21.10.1997. Subsequent to 21.10.1997 vide Notification No. 65/97-C.E, dated 21-10-1997 the duty on Ready Mix Concrete classified under sub-heading 3824.20 has been reduced to 8%.

.....

6. The matter has been examined, and concrete mix implies the conventional method of concrete production conforming to the ISI Standard 456-1978, which is produced and used at the site of construction. It is this concrete mixture, manufactured at the site of construction which is fully exempt vide Notification No. 4/97-C.E, dated 1-3-1997 (S.No.51). It is thus clarified that ready mix concrete or pre-mixed concrete, by its very nature, cannot be manufactured at the site of construction and is brought from the factory of manufacturer for use in construction."

6. Learned Chartered Accountant (CA) submits that no samples were drawn and no inspection was conducted by any authorised person and entire finding is relied as per the statement recorded from the Finance Officer during investigation. Learned Chartered Accountant (CA) further submits that the RMC is manufactured according to Indian Standard IS: 4926-1976 whereas the concrete mix is produced according to Indian

Standard IS 456-1978. The contract with M/s. BMRCL states that various codes and standard operating procedures laid down in Indian Standards which are to be followed by the appellant. The contract clearly states that in respect of concrete, the appellant has to manufacture the concrete as per IS 456. As stated by the Board in the Circular dated 06.01.1998 noted above, the IS 456 applies to 'concrete mix' and not to 'ready mix concrete (RMC)'. Therefore, the concrete mix manufactured by the appellant is not RMC but a conventional concrete mix. Moreover, the Circular No. 368/1/98-CX dated 06.01.1998, also recognizes the fact that RMC by its very nature cannot be manufactured at site of construction and is brought from the factory of manufacture. In the subject case the concrete mix is manufactured at site by the appellant and hence, it cannot be RMC. Hence, the product is not classifiable as RMC at all and accordingly the appellant is not liable to pay excise duty.

7. The Learned Chartered Accountant (CA) further submits that the Adjudication authority and the Appellate authority have arrived at a conclusion that the goods manufactured by the Appellant is manufactured at site is RMC as per the statement recorded from the Finance Officer of M/s. Ahlcon Ready Mix Concrete Mix Pvt., Ltd. The statement of such a non-technical person like Finance executive cannot be relied on to reach a conclusion that the goods manufactured by the Appellant are RMC. The Learned Chartered Accountant (CA) also draws our attention to the report of the Chartered Engineer produced by the Appellant, where it is specifically stated that the concrete prepared at the project does not conform to standards of Ready Mix Concrete as specified in IS 4926. The Learned CA further submits that even if it is held that the goods manufactured by the Appellant are excisable goods, as per the Notification No. 4/2006 up to 16.03.2012 and as per Notification No. 12/2012 from 17.03.2012 onwards, the rate of duty for concrete mix manufactured at the site of construction for use in construction site is exempted. As per the show cause notice, it is specifically stated that as per the statement recorded during the investigation, the batching plant was installed at the project site.

8. Learned CA further submits that even if it is held that the activity amounts to manufacture, as evident from records, Appellant had subcontracted the activities to M/s. Ahlcon to set up plant for mixing of raw material into concrete. Facts being so, Appellant cannot be considered as manufacturer since it is manufactured through subcontractor and for that reason, also, demand cannot be confirmed on Appellant.

9. The Learned CA further submits that the demand is also unsustainable since it is confirmed by invoking the extended period of limitation. There is no allegation that the Appellant is guilty of any act or omission as per Section 11A (4) of the Act. Even if the allegation in the show cause notice is admitted to the extent that the clandestine manufacture and removal of excisable goods would not have come to the notice of the Department but for the verification of the Department, it is submitted that such contention is not sufficient to allege that the Appellant is guilty of suppression, fraud for evasion of payment of duty. In this regard, the Learned Chartered Accountant (CA) relied on the decision of the Tribunal in the matter of **Landis Plus GYR Ltd Vs. CCE (2013 (290) E.L.T 447)**.

10. Learned Authorized Representative (AR) for the Revenue reiterated the findings in the impugned order.

11. Heard both sides and perused the records.

12. We find that as per the contract entered by the appellant, it is for supply of reinforced concrete having IS.456 standard and there is no evidence available on record to show that goods manufactured at the batching plant at site is capable of producing ready mix concrete (RMC) specified in IS 4926 as held by the Adjudication Authority. Further we find that no samples were drawn and no inspection was conducted by any authorised person. Thus, in the absence of any admissible evidence, no finding can be given that goods manufactured by the appellant was RMC. Further as per the Circular No. 368/1/98-CX dated 06.01.1998 concrete mix implies the conventional method of concrete

production conforming to the ISI Standard 456-1978, which is produced and used at the site of construction. Further, as per Notification No. 4/2006-CE dated 01.03.2006 up to 16.03.2012 and as per Notification No. 12/2012-CE from 17.03.2012 onwards, the duty on concrete mix manufactured at the site of construction for use in construction site is exempted. Therefore, we find that the impugned order upholding the confirmation of demand along with interest and penalty is unsustainable.

13. Accordingly, the impugned order upholding the demand along with interest and penalty against appellant, in Appeal No. E/21250/2017 is set aside.

14. As regards Appeal No. E/21248/2017, since the goods manufactured by the appellant are not RMC and in the absence of any other allegations, impugned order imposing penalty on Shri. A.R Sreekanta, General Manager is also set aside.

15. Accordingly, Appeal No. E/21250/2017 and Appeal No. E/21248/2017 are allowed with consequential relief, if any, in accordance with law.

(Order pronounced in Open Court on 21.11.2025)

(P.A Augustian)
Member (Judicial)

(Pullela Nageswara Rao)
Member (Technical)

Sasi