CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL BANGALORE

REGIONAL BENCH - COURT NO. 2

Excise Appeal No. 20838 of 2019

(Arising out of Order-in-Appeal No. MLR-EXCUS-000-APP-MSC-046-2019-20 dated 05.07.2019 passed by the Commissioner of Central Tax (Appeals), Belgaum)

Northern Sky Properties Pvt Ltd
D. No. 13-4-385-386, 1st Floor, J V Building,
Opp Govt College Hampankatta, Mangalore,
Karnataka – 575001 **......Appellant**

VERSUS

Commissioner of Central Excise, Mangalore
7th Floor, Trade Center, Bunts Hostel Road,
Mangalore, Karnataka – 575003 **........Respondent**

Appearance:

Shri. Akbar Basha, Chartered Accountant (CA) for the Appellant
Shri Rajashekar, Authorised Representative (AR) for the Revenue

Coram:

Hon'ble Mr. P.A. Augustian, Member (Judicial)
Hon'ble Mr. Pullela Nageswara Rao, Member (Technical)

<u>Final Order No. 20080 /2026</u>

Date of Hearing: 26.09.2025
Date of Decision: 23.01.2026

Per: P. A. Augustian

This appeal was filed against Order-in-Appeal No. MLR-EXCUS-000-APP-MSC-046-2019-20 dated 05.07.2019 passed by the Commissioner of Central Tax (Appeals), Belgaum. The period of dispute is June 2013 to January 2016 and the show cause notice was issued on 27.10.2017.

2. The brief facts are the Appellant is engaged in construction of residential complexes. Alleging that the Appellant had manufactured

Ready Mix Concrete (RMC) and had not paid excise duty as applicable, proceedings were initiated and show cause notice was issued on 27.10.2017. Adjudication authority as per order dated 10.08.2018 confirmed the demand. Aggrieved by said order, an appeal was filed before the Commissioner (Appeals) and Commissioner (Appeals) as per the impugned order dated 05.07.2019 rejected the appeal. Aggrieved by said order, present appeal was filed.

3. When the appeal came up for hearing, the Learned CA for the Appellant submits that the Appellant is engaged in construction of residential complex and for completion of the project named Residential Apartment Complex at Pumpwell Circle, Mangalore, Appellant had entered into agreement with M/s. Cementor Engineering (Contractor). Learned CA draws our attention to the agreement entered on 23.01.2013, wherein M/s. Cementor Engineering is engaged as the agency to supply, manage and maintain a batching plant. As per the agreement, Appellant provides raw material like sand, jelly, water and cement to the Contractor. The Contractor in turn uses his machinery, labour and manpower to manufacture and supply Ready Mix Concrete (RMC) to the Appellant. Learned CA also draws our attention to the definition of manufacture as defined under Section 2(f) of the Central Excise Act, 1944 and submits that only a manufacturer is liable to discharge excise duty on the manufacturing process and not the consumer / buyer of the product. Since the Appellant is not the manufacturer in the present case and merely providing raw material to the contractor, the contractor M/s. Cementor Engineering is liable to pay excise duty if it is applicable.

4. Learned CA further submits that; the Appellant is not undertaking any process involved in manufacturing of Ready Mix Concrete (RMC). Appellant is not performing any process incidental or ancillary to the manufacture of RMC. The whole process is outsourced to the contractor. Appellant is not undertaking any activity which is specified in relation to any goods in the Section or Chapter notes of the Fourth Schedule as amounting to manufacture of RMC; Appellant is not performing any

process in relation to the goods specified in the Third Schedule; Appellant has not hired any labour for production of RMC; the agreement between the contractor and the Appellant clearly indicate that the Contractor will hire labour to produce RMC; Appellant is not producing or manufacturing RMC on its own account, it has outsourced the activity of producing RMC to the Contractor and the Agreement between the Contractor and the Appellant states that the agreement is for Supply of RMC.

5. Learned CA further submits that the relation between the Appellant and M/s. Cementor Engineering is a relation of job work that exist between the Appellant and the contractor and since Appellant is supplying the raw material and manufacturing activities are carried out by M/s. Cementor Engineering, the activities are squarely covered under the definition of job worker as per Rule 2(n) of the CENVAT Credit Rules, 2004 and the law is well settled that the job worker will be liable to pay duty on the activity of manufacturing performed by them. In this regard Learned CA draws our attention in the following decisions;

I. **Commissioner of Central Goods and Service Tax, Excise Cutsoms, Udaipur Vs. Sonex Marmo Grani Pvt. Ltd, (2023) 9 Centax 198 (Tri.-Del).**

II. **Collector Of Central Excise, Baroda Vs. M.M. Khambhatwala, 1996 (84) E.L.T. 161 (S.C.)**

III. **Ujagar Prints, Etc. Etc. Vs. Union Of India And Others, 1988 (38) E.L.T. 535 (S.C.)**

IV. **Pawan Biscuits & Co. Pvt. Ltd. Vs. Collector of Central Excise, Patna, 2000 (120) E.L.T. 24 (S.C).**

6. Learned CA further submits that even if it is assumed that the activity carried out by the Appellant amounts to manufacture, Appellant is eligible for benefit of concessional rate of excise duty under Notification No.1/2011-CE dated 01.03.2011, since the Appellant has not availed the CENVAT credit.

7. Learned CA further submits that as regards confirming the demand by invoking extended period of limitation, the issue in the present case relates to subject matter of interpretation of statute and in such case, in the absence of any justifiable reason, invoking extended period of limitation is also unsustainable. In this regard, Learned CA relied on the decisions;

i. **Continental Foundation Jt. Venture Vs. Commissioner of C. Ex, Chandigarh-I, 2007 (216) E.L.T 177 (S.C).**

ii. **Shapoorji Pallonji & Co. Ltd. Vs. Commissioner Of C. Ex., Mumbai, 2016 (344) E.L.T. 1132 (Tri. - Mumbai).**

iii. **Larsen & Toubro Ltd. Vs. Commissioner of Central Excise, Ahmedabad-II, (2024) 19 Centax 157 (Tri.-Ahmd).**

8. Learned CA also draws our attention to the show cause notice (SCN) where it is categorically stated that "whereas from the forgoing it appears that M/s. NSPPL have engaged M/s. Cementor Engineering as a vender for supply and managing batching plant in connection with the proposed development of Residential apartment complex. M/s. Cementor Engineering are required to supply Ready Mix Concrete (RMC) for the Apartment complex from the raw material like 12 mm jelly, 20 mm jelly, lubricating sand, admixtures supplied by them.

9. The Learned Authorized Representative for the Revenue reiterated the findings in the impugned order.

10. Heard both sides and perused the records.

11. On pursual of the records. We find that as per the contract entered by the Appellant with M/s. Cementor Engineering, it is the responsibility of M/s Cementor Engineering to supply Ready Mix Concrete (RMC) to the Appellant and in such a case, Appellant cannot be held as manufacturer of such Ready Mix Concrete (RMC). This issue was considered by this Tribunal in the matter of **CC, Udaipur Vs. Sonex Marmo Grani Pvt Ltd – 2023 9 Centax 198 (Tri.-Del.)** wherein it is held that**;**

"19. Further, we note that in the present case, the transaction between job worker and principal manufacturer are on principal to principal basis. It is not in doubt that the marble slabs/tiles were manufactured by the job worker and the duty liability as per excise laws is only on the manufacturer. The duty liability can be shifted to the supplier of raw materials or semi-finished goods only if the supplier gives an undertaking in terms of the notification. We cannot accept the learned counsel's argument that this is a procedural lapse. We are of the opinion that this is a substantial condition which cannot be taken as a procedural condition, as it shifts the duty liability from the job worker to the supplier of raw materials or semi-finished goods. Until and unless this condition of giving undertaking is fulfilled, the duty cannot be fastened on the supplier of raw materials or semi-finished goods, as they were not the manufacturers of marble slabs/tiles. We note there are several case laws that have held that the condition of the exemption notification has to be construed strictly and if any condition is not fulfilled the same cannot be applied to a situation."

12. In view of the above discussion the Appellant cannot be considered as a manufacturer to confirm central excise duty demand along with interest and to impose penalty. Therefore, the impugned order is liable to be set aside and is set aside with consequential relief, if any, in accordance with law.

13. Accordingly, the appeal is disposed.

(Order was pronounced in open court on 23.01.2026)

(P.A.Augustian)
Member (Judicial)

(Pullela Nageswara Rao)
Member (Technical)

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