

**IN THE CUSTOMS, EXCISE AND SERVICE TAX
APPELLATE TRIBUNAL
SOUTH ZONAL BENCH AT CHENNAI
[COURT III : Division Bench B1]**

**Appeal No.: C/42210/2014
(& 10 other appeals)**

Sl. No.	Appeal No.	Appellant	Respondent
1.	C/42210/2014	M/s. Antony Metals	C.C., Tuticorin
Arising out of Order-in-Original No. 35/2014 dated 24.07.2014 passed by the Commissioner of Customs, Tuticorin			
2.	C/40318/2015	M/s. Vincent & Sons	C.C., Tuticorin
Arising out of Order-in-Original No. 45/2014 dated 28.10.2014 passed by the Commissioner of Customs, Tuticorin			
3.	C/40686/2016	Shri. J Davidson Prop., M/s. Kenstar Exims	C.C., Tuticorin
Arising out of Order-in-Appeal No. 01/2016 dated 06.01.2016 passed by the Commissioner of Central Excise (Appeals – II), Trichy			
4.	C/40691/2016	M/s. Aathees Hard Flooring	C.C., Tuticorin
Arising out of Order-in-Appeal No. 11/2016 dated 06.01.2016 passed by the Commissioner of Customs & Central Excise (Appeals – II), Trichy			
5.	C/40700/2016	M/s. Triumph Enterprises & Investments Madurai (P) Ltd.	C.C., Tuticorin
Arising out of Order-in-Appeal No. 02/2016 dated 06.01.2016 passed by the Commissioner of Customs & Central Excise (Appeals – II), Trichy			
6.	C/40713/2016	M/s. P.S.S. Jayam & Co.	C.C., Tuticorin
Arising out of Order-in-Appeal No. 12/2016 dated 06.01.2016 passed by the Commissioner of Customs & Central Excise (Appeals – II), Trichy			
7.	C/40716/2016	M/s. PRP Exports	C.C., Tuticorin
Arising out of Order-in-Appeal No. 03/2016 dated 06.01.2016 passed by the Commissioner of Customs & Central Excise (Appeals – II), Trichy			
8.	C/40718/2016	M/s. S. Jawaharlal and Co.	C.C., Tuticorin
Arising out of Order-in-Appeal No. 13/2016 dated 06.01.2016 passed by the Commissioner of Customs & Central Excise (Appeals – II), Trichy			
9.	C/41172/2016	M/s. Al Kabir Impex Services	C.C., Tuticorin
Arising out of Order-in-Appeal No. 27/2016 dated 23.02.2016 passed by the Commissioner of Customs & Central Excise (Appeals – II), Trichy			
10.	C/40684/2015	M/s. Madhucon Projects Ltd.	C.C., Tuticorin
Arising out of Order-in-Original No. 47/2014 dated 28.10.2014 passed by the Commissioner of Customs, Custom House, Tuticorin			

Appearance:-

Shri. N. Viswanathan, Advocate
 Shri. R. Muraleedharan, Advocate,
 Shri. G. Derrick Sam, Advocate
 Shri. A. K. Jayaraj, Advocate
 for the Appellants

Shri. A. Cletus, ADC (AR)
 for the Respondents

CORAM:

Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)

Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of Hearing: 19.11. 2018

Date of Pronouncement: 19.02.2019

Final Order Nos. 40323-40332 / 2019

Per Bench :

The common facts in all these appeals are that the appellants herein had filed Bills-of-Entry for the import of cement from Pakistan through Tuticorin Port.

2.1 The appellants had availed concessional rate of countervailing duty (CVD) claiming exemption under Notification No. 04/2006-CE dated 01.03.2006 as amended, claiming one of the concessional rates provided in the following Clauses of the Notification :

- *1A(i) : cement whose retail price does not exceed Rs. 190 per 50 kg bag;*
- *1A(ii) : cement whose retail price exceeds Rs. 190 per 50 kg bag;*
- *1C : cement whether or not manufactured in a mini-cement plant not covered in Sl. No. 1B, other than those cleared in packaged form.*

The concerned Bills-of-Entry were assessed and the goods cleared by extending the concessional rates of duty for CVD as claimed. All these imports took place during the period from 01/2009 to 12/2011.

2.2 From investigations carried out subsequently, it appeared to the Department that cement imported were in 50 kg bags. They were capable of being sold to other buyers also in the retail market. Hence, importers cannot claim any concession under Clause 1C of the said Notification in as much as they were neither industrial nor institutional consumers. Further, imported cement has not been sold to institutional or industrial consumers directly in bulk packings without MRP being marked on them, but in retail market to various other buyers at different MRPs which are more than Rs. 190 per 50 kg bag. Hence, concessional rate of duty under the other Clauses claimed are also not available.

2.3.1 Show Cause Notices were issued to the various appellants herein and accordingly, proceedings were initiated against the appellants herein. In the following two cases, the adjudication proceedings were conducted at the level of Commissioner, as under:

Sl. No	Name of importer	Appeal No.	Period	SCN date	Difference in duty (CVD) (in Rs.)	Penalty imposed (in Rs.)	RF imposed (in Rs.)	Category of assessment
1.	M/s. Antony Metals, Traders	C/42210/2014	01/2009 to 12/2011	28.03.2013	26,63,381/-	26,63,381/-	80,00,000/-	• 1A(i) • 1A(ii)
2.	M/s. Vincent & Sons, Traders	C/40318/2015	05/2009 to 06/2011	25.05.2013	1,02,36,031/-	1,02,36,031/-	1,29,00,000/-	• 1A(i) • 1A(ii) • 1C

2.3.2 In the following cases, the adjudication proceedings were conducted at the level of Additional Commissioner, which on appeal, had been upheld by the Commissioner (Appeals), as under :

Sl. No	Name of importer	Appeal No.	Period	SCN date	Difference in duty (CVD) (in Rs.)	Penalty imposed (in Rs.)	RF imposed (in Rs.)	Category of assessment
3.	M/s. Triumph Enterprises (Madurai), Trader	C/40700/2016	01/2009 to 12/2011	20.12.2012	5,30,883/-	5,30,883/-	No RF imposed as goods not available for confiscation	• 1A(i) • 1A(ii) • 1C • TR
4.	M/s. PSS Jayam & Co., Trader	C/40713/2016	03/2009 to 09/2011	06.03.2014	4,93,627/-	4,93,627/-	No RF imposed as goods not available for confiscation	• 1A(ii) with 30% abate • 1A(ii) • 1C
5.	M/s. Jawaharlal & Co., Trader	C/40718/2016	01/2009 to 12/2011	27.02.2014	2,07,198/-	2,07,198/-	No RF imposed as goods not available for confiscation	• 1A(i) • 1A(ii)
6.	Shri. J. Davidson, Prop. (Kenstar Exim), Manufacturer	C/40686/2016	01/2009 to 12/2011	30.07.2013	15,09,822/-	15,09,822/-	No RF imposed as goods not available for confiscation	• 1A(i) • 1A(ii) • 1C • TR
7.	M/s. Aathees Hard Floorings Govt. Contractor &	C/40691/2016	01/2009 to 12/2011	03.03.2014	2,34,217/-	2,34,217/-	No RF imposed as goods not available for confiscation	• 1A(i) • 1A(ii) • 1C

	Manufacturer							
8.	M/s. PRP Export Manufacturer	C/40716/2016	01/2009 to 12/2011	05.02.2014	29,63,881/-	29,63,881/-	No RF imposed as goods not available for confiscation	• 1A(i) • 1A(ii) • 1C • TR
9.	M/s. Al Kabir Impex Services, CHA	C/4172/2016	01/2009 to 12/2011	27.02.2014	-	10,000/-	No RF imposed as goods not available for confiscation	• 1A(i) • 1A(ii) • 1C
10.	M/s. Madhucon Projects Ltd., Trader	C/40684/2015	01/2009 to 12/2011	25.09.2013	42,12,818/-	42,12,818/-	67,00,000/-	• 1A(i) • 1A(ii) • 1C

3.1 When the matter came up for hearing, Ld. Advocates/Counsel, namely, Shri. N. Viswanathan, Shri. R. Muraleedharan, Shri. G. Derrick Sam and Shri. A.K. Jayaraj, represented the appellants and contentions put forward by them can be broadly summarized as under :

(i) The duty being levied is the CVD equivalent of the duty leviable on like goods manufactured in India by application of the rate of duty prescribed under the Excise law. It is but necessary to equate them on par with a manufacturer as otherwise it will result in total anomaly and discrimination;

(ii) Judgement of the Hon'ble Supreme Court in the case of *M/s.*

Thermax Pvt. Ltd. – 1992 (61) E.L.T. 352 and *M/s. Hyderabad*

Industries Vs. U.O.I. – 1999 (108) E.L.T. 321 (S.C.) clearly lays

down the ratio that the importer has to be treated on par with a manufacturer for the purpose of levy of the CVD;

- (iii) Provisions contained in 33 of the Standards of Weights and Measures (Packaged Commodity), Rules also treats the importer as equivalent to a manufacturer only;
- (iv) Four out of eight importers are admittedly manufacturers who have admittedly used the cement by themselves;
- (v) Even the balance four importers have informed that they have sold the goods mostly to industrial or institutional buyers in bulk, which factual position has not been disputed or controverted by the Revenue and no single sale in the retail had been brought on record by the Revenue;
- (vi) The reliance placed on the amendment brought about to the definition of 'industrial consumer' or 'institutional buyers' with effect from 06.06.2013 to cover the sale by an importer to such consumers or buyers is also totally bad and unacceptable as the said amendment by no stretch of imagination differentiates the sale of the goods by the importer to such users for the period prior to the said date as sale in the retail market within the meaning of the said term under the

Standards of Weights and Measures (Packaged Commodity)

Rules;

- (vii) In these cases, the goods were directly sold to the consumer by the appellant without any intermediary person.

That being the case, the provision of Standards of Weights and Measures Act is not applicable. Consequently, the exemption under Clause 1C of Notification No. 04/2007-CE is held eligible in the CESTAT's Principal Bench in the case of *M/s.*

Diamond Cement Vs. Commissioner of Central Excise, Bhopal reported in 2017 (325) E.L.T. 177 (Tri. – Del.);

- (viii) The Hon'ble Karnataka High Court in the case of *EWAC*

Alloys Ltd. Vs. U.O.I. reported in 2012 (275) E.L.T. 193 (Kar.)

distinguishing the judgement of the Bombay High Court and holding that requirement of Rule 6 of the Standards of Weights and Measures (Packaged Commodity) Rules is not required to be complied with by a manufacturer selling packaged goods to industrial/institutional consumers through stockist also supports the case of the appellants;

- (ix) It is submitted at the outset that almost all the importers

involved have admittedly not sold the goods in the retail market and have either used the cement by themselves (four of the appellants) or sold only to institutional and industrial

consumers rendering the very investigation and issue of the notice to them faulty;

(x) The adjudicating authority though relied upon the provisions contained in the Central Excise (Determination of the Retail Sale Price of Excisable Goods) Rules, 2008 strictly do not apply to these cases since the Portland Cement is not an item notified under Section 4A of the Act; the authorities have not complied with the requirement of the rules framed therein by either undertaking the market enquiry to ascertain the retail price of the goods sold by each of the importers or determine the retail price of such goods if in case the MRP is said to be obliterated prior to one month of such sale. The absence of such exercise only shows that the officers have conceded that there has been no retail sales of the goods and therefore, all the assessments ought to have been done only under Clause 1C of the impugned Notification;

(xi) The fact that the price determination pertains to the retail sale price of the goods, the authorities ought to have known that the contemporaneous adoption of the price, as provided under the Customs Valuation Rules, have no application in the present cases;

(xii) The lower authorities confirming the demand by extending Clause 1A(ii) of the Notification for the only reason that the cement was in packaged form overlooking the proviso contained in the said Notification and was printed with MRP is not correct or proper in view of the following judgements and Circulars :

- *Circular No. 411/44/98 dated 31.07.1998; 625/16/2002-CX dated 28.02.2002 and 124/02/2008 dated 12.06.2008;*
- *M/s. Grasim Industries Vs. C.C.E., Trichy – 2009 (238) E.L.T. 655;*
- *M/s. Mysore Cements Vs. C.C.E., Trichy – 2010 (249) E.L.T. 398 (Tri. – Bang.) as confirmed by the Karnataka High Court in 2010 (259) E.L.T. 30 (Kar.);*
- *M/s. Heidelberg Cement (India) Ltd. Vs. C.C.E., Raigard – 2015 (315) E.L.T. 53 (Tri. – Mum.);*
- *M/s. Bharti Telemedia Ltd. Vs. C.C., Navasheva – 2016 (331) E.L.T. 138 (Tri. – Mum.);*
- *Commr. Vs. M/s. Lafarge India P. Ltd. – 2017 (348) E.L.T. 289 (Tri.);*
- *M/s. ITC Ltd. Vs. C.C.E. – 2004 (171) E.L.T. 433 (S.C.).*

(xiii) The Notification having not imposed any post-import condition also warrants the roving enquiry made by the authorities which also did not result in bringing on record any retail sale by the appellants or the RSP at which the imported cement was sold by them. These require the orders passed by the lower authorities to be set aside.

(xiv) In the first place, the Orders passed by the Commissioner confiscating the goods without the same being seized or available with the Department or at least, a bond obtained from the importer for production, is totally bad in law;

(xv) It is a fact on record that at the material time, there was no self-assessment and all the goods were assessed and out-of-charge Order in terms of Section 47 of the Act was given. This being the position, the issue of the notice for confiscation of the goods, is itself not maintainable without the Revenue reviewing the Order passed under Section 47 of the Act as has been held by the Tribunal in the case of *M/s. Décor India* approved by the Hon'ble Supreme Court of India as reported in 1997 (94) *E.L.T. A51 (S.C.)*;

(xvi) At the time of importation, all the relevant documents and declaration including invoices issued by the exporters were submitted for assessment. The Assessing Officer has gone through and accepted the declaration and documents and have allowed the import of the cement on payment of duty at the rate mentioned in Clause 1A(i), 1A(ii) or 1C as per his discretion and powers, and assessed the bills after going through the relevant documents filed. The impugned Order

cannot be said to be nullified for resorting the review mechanism, since the goods are assessed by the Officer and not self-assessed by the importer. Judgement of the Hon'ble Supreme Court in the case of *Collector Vs. M/s. Décor Industries Reported in 1997 (94) E.L.T. A51 (S.C.)* supports the above contention. Moreover, when the impugned Order recorded that the import of cement was RSP based, it is the incumbent duty of the Assessing Officer to make enquiry and to make the assessment based on the documents submitted before him and the Department cannot be permitted to carry out any subsequent exercise to trace the goods imported till they are sold. In other words, the officers should have determined the RSP of the cement at the time of import and not subsequent to the clearance of the goods, unreasonably alleging that they had misdeclared or nor properly declared the RSP;

3.2 Further, Ld. Advocates/Counsel also put forth contentions in respect of the individual appeals as under :

Sl. No.	Appellant	Appeal No.	Submission
1.	M/s. Antony Metals	C/42210/2014	Demand for 66 Bills of Entry only. Major sales have been made to institutional buyers only on wholesale (such as Hollow Brick Manufacturer, Building Contractors, Hotel & Educational Institutes) for construction purpose – statement dated 17.08.2011. Major

			sales in bulk quantity as per invoice and sold to immediate buyer and not in retail to ultimate consumer. No instrumentalities in between. Retail sale not proved.
2.	M/s. Vincent & Sons	C/40318/2015	Adjudicating authority admits sale of cement on wholesale to industrial consumers. Demand made based on sale price of M/s. Antony Metals, another importer.
3.	M/s. Triumph Enterprises (Madurai)	C/40700/2016	Demand made based on sale price of M/s. Antony Metals – major sales have been made to institutional buyers on wholesale, admitted in or in Appeal. Benefit denied since importer is not an industrial consumer. Various rates assessed including tariff rate.
4.	M/s. PSS Jayam & Co.	C/40713/2016	Demand made based on sale price of M/s. Antony Metals – Benefit denied since importer is not an industrial consumer. No RSP less than Rs. 190/- declared.
5.	M/s. Jawaharlal & Co.	C/40718/2016	Major sales have been made to institutional buyers – Hollow Brick Manufacturer. RSP is less than the cost of import. Demand made based on sale price of M/s. Antony Metals. Benefit denied since importer is not an industrial consumer.
6.	Shri. J. Davidson, Prop. (Kenstar Exim)	C/40686/2016	Manufacturer of Hollow Blocks and cement consumed for their own use and not sold in retail. Demand made based on sale price of M/s. Antony Metals. Benefit denied and reason for rejection of RSP is that landed cost seems to be more than RSP. Importer is not an industrial consumer but in reality, he is an industrial consumer only.
7.	M/s. Aathees Hard Floorings	C/40691/2016	Goods used for construction of Government contract. Demand made based on sale price of M/s. Antony Metals – cement consumed for their own use and not sold in retail, admitted in Order-in-Original. Benefit denied since importer is not an industrial consumer. Determination of RSP Rules, 2008 wrongly applied.
8.	M/s. PRP Export	C/40716/2016	Goods used for construction of Government contract. Demand made based on sale price of M/s. Antony Metals – cement consumed for construction of their own factory and not sold in retail. Benefit denied since importer is not an industrial consumer. RSP of cement imported is less than the cost of import, both by original authority and adjudicating authority.

3.3 In respect of Appeal No. C/40684/2015-DB, the following additional submissions pertaining to that case were made by Ld. Counsel Shri. A.K. Jayaraj :

- a) The imports were made from actual manufacturer in Pakistan. The transaction is through High Sea Sales. The Bill of Lading, manufacturer invoices and High Sea Seller invoices all can be tallied to establish the fact that the same were imported from the manufacturer;
- b) The cement imported was used for construction, civil activities for own consumption by the appellant-importers. It is the appellants who declared this fact repeatedly starting from the date of import;
- c) The assessments were finalized after due verification and no questions were raised regarding concession claimed by the appellant/importer and the same was allowed. Without any additional evidence contrary to the original assessment, the present proceedings were initiated. Even now, the Department is confirming the differential duty only on the ground that the appellant-importer failed to produce the evidence of actual use. When the initial claim of actual use was accepted by the officers with no

conditions put for further proof, the Revenue now cannot take the stand that the appellant has failed to establish the actual use;

d) The demand is contested on limitation also. As already noted, these imports were assessed based on the declarations made by the appellants claiming the said concession available to the actual user. In case of any doubt, due verification or follow-up should have been done by the officers;

e) To set aside the approved assessment by the competent officers, contrary evidence of misuse of the concession post-importation should have been brought out by the Revenue. In the present case, there is no contrary evidence against the claim of the appellant of actual use. Hence, there can be no case of fraudulent mis-statement with intention to evade duty. No evidence to that effect at all is available.

4. On the other hand, Ld. AR Shri. A. Cletus appearing on behalf of the respondent reiterated the correctness of the impugned Orders. He also made submissions which can be broadly summarized as under :

(i) When an importer seeks the benefit of exemption Notification, it must be seen whether he has fulfilled the requirements to be eligible for exemption. Conditions of Notification No. 04/2006 pertain to post clearance issues;

(ii) Hence, the investigation conducted after assessment of clearance of the goods is very much in order;

(iii) For the same reason, since the importers had mis-declared vital facts at the time of assessment for wrongly claiming the benefit of Notification No. 04/2006-CE and the same was detected only by subsequent investigation, the action of issuing Show Cause Notices pursuant to assessment is perfectly in order.

5. Heard both sides and have gone through the facts.

6. The issue that comes up for resolution in all these cases is whether the initiation of proceedings by the Revenue to deny the benefit of Notification No. 04/2006-CE will pass the test of law or not.

7. From the facts on record, what is not disputed is that in all these cases the Bills-of-Entry filed by the appellants herein, claiming various Clauses of Notification No. 04/2006-CE for concessional rate of CVD, were assessed and allowed clearance for home

consumption. At this stage, we find merit in one of the contentions of the Ld. Counsel that the concept of self-assessment of Customs Duty *inter alia* in respect of imported goods by the importer came into effect only by the Finance Act, 2011 with effect from 08.04.2011. The new Section 17 of the Customs Act, 1962 which came to be introduced with effect from 08.04.2011 provided for self-assessment of duty on imported goods by the importer himself. As per the clarifications given in Board Circular No. 17/2011-Cus. dated 08.04.2011, the importer, at the time of self-assessment, will ensure that he declares the correct classification, applicable rate of duty, value of benefit of exemption Notification claimed, if any, in respect of the imported goods while presenting Bill of Entry. In this regard, we also find that a large number of the quantum of the imports in all these cases had been effected before 08.04.2011.

8.1 We first intend to take up the plea of limitation made by the appellants herein. In cases, we find that the Show Cause Notices have been issued at least more than one year after the disputed imports. In the other cases, Show Cause Notices have been issued more than two years after the imports had been made. At the same time, we note that the Show Cause Notices have been issued on the premise that the differential duty is liable to be recovered under

Section 28 of the Customs Act, 1962 for the extended period of five years.

8.2 However, we do not find any cogent evidence that has been unearthed by the Department to corroborate the allegations that the importers have sold the imported cement at higher rates, in retail, etc. This being so, we are afraid that the Department has not been able to establish ingredients like suppression, mis-statement of facts, etc., with incontrovertible evidence to justify invocation of extended period of limitation to initiate the impugned proceedings.

9.1 The proceedings have largely relied upon the statements of importers and some sale invoices. However, no evidence to connect the sale invoices with the impugned imports have been unearthed by the Department. In these circumstances, we hold that the proceedings in all these cases will certainly be hit by limitation. Further, we find that the very same issue has already been addressed by the Tribunal in the case of *M/s. Diamond Cement Vs. Commissioner of Central Excise, Bhopal – 2017 (352) E.L.T. 177 (Tri. – Del.)* on the matter of eligibility to concessional rate under serial number 1C of Notification No. 04/2007-CE. The relevant portion of the judgement is reproduced as under :

"2. The brief facts of the case are that the assessee-appellants are manufacturer of the cement. They are selling the cement to the agencies on MRP basis, but in some cases selling directly to the consumers which includes the Government agencies, builders, institutions and individuals. When the goods are sold directly to the above-mentioned entities, then the assessee-appellants claimed that the MRP based exemption should be provided and they are entitled to avail the concessional rate of duty.

3. In the impugned order, the concessional rate of duty under Serial No. 1C of the Notification No. 4/2007-C.E., dated 1-3-2007 for clearances of packaged cement made by the parties to the institutional and industrial consumers was allowed, but the same was not allowed to the individuals. Hence, both the parties have filed the cross appeals.

4. With this background, we have heard Ms. Pinky Arora, learned counsel for the assessee-appellants and Shri Yogesh Agarwal, learned DR for the Department.

*5. After hearing both sides and on perusal of the record, it appears that the assessee-appellants have sold the goods directly to the consumer which includes the Government agencies, builders, institutions and individuals without involving a retail sale agency or other institutions, and has, therefore, not fulfilled the criteria of "retail sale". Hence, the definition of "**Retail Sale**" as per Rule 2(q) of Standards of Weights and Measures (Packaged Commodities) Rules, 1977 will not apply. This ratio was laid down by this Tribunal in a number of cases which includes Prism Cement Ltd. v. CCE, Bhopal, Final Order Nos. 53855-53856/2016, dated 28-9-2016, wherein it was observed that when the sales are direct without any intermediary person and it was not meant for **resale**, then the concessional rate of duty can be availed by the assessee-appellants, especially when the cement packages were cleared without marketing of RSP and with an endorsement of "**not for resale**".*

6. Thus, in view of the above, the sale to the individual without any intermediary person is entitled for concessional rate of duty and is covered by the above-mentioned decision of this Tribunal.

7. Following the ratio of the aforesaid decision, we set aside the impugned order and allow the appeal filed by the assessee-appellants with consequential relief.

8. In the result, the appeal filed by the assessee-appellants is allowed and the cross-appeal filed by the Department is dismissed."

9.2 Although the matter relates to a domestic manufacturer, we find that the ratio therein is applicable on all fours to the impugned

disputes since it involves eligibility of CVD, which is equal to Central Excise Duty leviable.

10. So also, this very Bench in the case of *M/s. Global Star Logistics & Ors. Vs. Commissioner of Customs, Tuticorin in Final Order Nos. 40271-40292/2018 dated 31.01.2018* in respect of appellants who had claimed identical CVD concession in terms of serial number 1C of Notification No. 04/2006-CE dated 01.03.2006 as amended, held as under :

“6. On the first issue we have perused the sample invoice and import documents. It is clear that Bills of Entry filed along with invoices contain details of goods imported. The exporters details with evidences linking up with high sea sale invoices further linked up with Bill of Entry. Hence, the import from the designated exporter who is declared as manufacturer of cement based on the details in the invoices cannot be disputed. No contrary evidence that purchase is from a trader has also been submitted by the Revenue.

7. Regarding the second issue of actual user condition for the imported cement, we note that the appellants all along claimed fulfilment of such condition. Though same is post-importation, actual use based condition, the assessments were finalized accepting the claim of the appellant for such concessional duty. It would appear that officers had opportunity to satisfy themselves about the actual user condition. In case of possible doubt on such fulfilment, the requirement is to resort to provisional assessment and call for post-importation actual user confirmation. This was not done in the present case which will show that the assessing officer is satisfied with the claim made by the appellants. The Revenue can initiate demand proceedings of differential duty by denying the exemption later, only upon unearthing the evidences of misuse of such end-use condition. Such evidences have not been brought before us. The impugned orders observe that the appellants failed to establish actual user. No such condition regarding manner establishing such fact was put at the time of assessment and clearances. The claim in the Bills of Entry at the time of import as well as in the written submissions made before the lower authorities by the appellant-importer categorically states about not selling the imported product to any other person. No evidence to that effect has also been brought by the Revenue. In such situation, the eligibility to the CV duty concession as claimed by the appellant during the material time cannot be questioned much later without any evidence.

8. *In view of above discussion and analysis, we find that there is no merit in the impugned orders denying CV duty concession wherever available to the importer-appellants of such conditions. Accordingly, the impugned orders are set aside and all the appeals are allowed with consequential reliefs, if any, as per law."*

11. From the discussions, findings and conclusions hereinabove and also following the ratio of the decisions of the Tribunal cited supra, we are of the considered opinion that the demands will not survive, both on limitation as well as on merits. It is seen that penalties have been imposed on the CHA alleging they have abetted in wrongly availing the benefit of exemption. Since the demands are set aside, we find that the penalties on CHA also cannot sustain. The impugned Orders are set aside.

12. The appeals are therefore allowed.

(Pronounced in open court on 19.02.2019)

(Madhu Mohan Damodhar)
Member (Technical)

(Sulekha Beevi C.S.)
Member (Judicial)

Sdd