

Excise Appeal No.40008 of 2019  
Excise Appeal No.40385 of 2020  
Excise Appeal No.40585 of 2020

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE  
TRIBUNAL,  
SOUTH ZONAL BENCH, CHENNAI  
COURT HALL No.III**

**EXCISE APPEAL No.40008 OF 2019**

(Arising out of Order-in-Appeal No.158/2020-TRY (CEX) dated 25.09.2018 passed by Commissioner of GST & Central Excise (Appeals), Coimbatore, Circuit Office No.1, Williams Road, Cantonment, Tiruchirappalli 620 001)

**M/s.Shapoorji Pallonji & Company Pvt. Ltd. ... Appellant**

SP Infocity, Module 4A, II Floor,  
'A' Block, 40 MGR Salai,  
Kandanchavadi,  
Chennai 600 096.

Versus

**The Commissioner of GST & Central Excise ...Respondent**

Trichy Commissionerate  
No.1, Williams Road, Cantonment,  
Tiruchirappalli 620 001.

**WITH**

**EXCISE APPEAL No.40385 OF 2020**

(Arising out of Order-in-Appeal No.06/2020-TRY (CEX) dated 18.02.2020 passed by Commissioner of GST & Central Excise (Appeals), Coimbatore, Circuit Office No.1, Williams Road, Cantonment, Tiruchirappalli 620 001)

**M/s.Shapoorji Pallonji & Company Pvt. Ltd. ... Appellant**

SP Infocity, Module 4A, II Floor,  
'A' Block, 40 MGR Salai,  
Kandanchavadi,  
Chennai 600 096.

Versus

**The Commissioner of GST & Central Excise ...Respondent**

Trichy Commissionerate  
No.1, Williams Road, Cantonment,  
Tiruchirappalli 620 001.

Excise Appeal No.40008 of 2019  
Excise Appeal No.40385 of 2020  
Excise Appeal No.40585 of 2020

**AND**

**EXCISE APPEAL No.40585 OF 2020**

(Arising out of Order-in-Appeal No.86/2020 dated 21.08.2020 passed by Commissioner of GST & Central Excise (Appeals), Coimbatore, Circuit Office, Madurai)

**M/s.Shapoorji Pallonji & Company Pvt. Ltd. ... Appellant**

SP Infocity, Module 4A, II Floor,  
'A' Block, 40 MGR Salai,  
Kandanchavadi,  
Chennai 600 096.

Versus

**The Commissioner of GST & Central Excise ...Respondent**

Central Revenue Building  
No.4, Lal Bhadur Shastri Road,  
Bibikulam,  
Madurai 625 001.

**APPEARANCE :**

Mr. N. Prasad, Advocate  
For the Appellant

Ms. Anandalakshmi Ganeshram, Superintendent (A.R)  
For the Respondent

**CORAM :**

**Hon'ble Ms. SULEKHA BEEVI, Member (Judicial)**  
**Hon'ble Mr. M. AJIT KUMAR, Member (Technical)**

**Date of Hearing : 13.06.2023**  
**Date of Decision :16.06.2023**

**FINAL ORDER No.40441-40443/2023**

**ORDER : Per Ms. SulekhaBeevi, C.S.**

The issue involved in all these appeals being the same they were heard together and are disposed of by this common order.

2. Brief facts of the case are that appellant is engaged in the business of construction of buildings and civil structure. They manufacture of 'Concrete ready to use mix known as Ready Mix Concrete' (hereinafter referred to as RMC, for short) falling under Central Excise Tariff Heading (CETH) No.38245010 of CETA, 1985.

3. On the basis of specific intelligence gathered by the office of Directorate of General of Goods and Service Tax Intelligence, Trichy that the appellant has manufactured and cleared RMC at their worksite without taking Central Excise registration and without payment of Central Excise duty, investigation was initiated. In the investigation, it was revealed that appellant-company was undertaking engineering and construction of buildings and used RMC manufactured at the construction sites. They were not making any sale of these RMCs manufactured at site and the entire quantity was captively consumed for construction purpose. The appellant had obtained service tax registration for paying service tax for various services provided and received under reverse charge mechanism but had not obtained central excise registration for manufacture of excisable goods. It appeared that the appellant has undertaken manufacture of RMC and had not discharged excise duty on the said excisable goods. That RMC and Concrete Mix being different, the duty exemption eligible to CM is not applicable to RMC.

4. Show cause notices were issued proposing to demand duty along with interest and for imposing penalty. The original authority confirmed the demand along with interest and imposed penalty. On appeal, Commissioner (Appeals) upheld the same. Hence the appellants are now before the Tribunal.

5. On behalf of the appellant, Ld. Counsel Shri N. Prasad, at the outset, fairly submitted that the issue on merits stands covered against the assessee by the decision of the Hon'ble Supreme Court in the case of *Larsen & Toubro Ltd. ECC Construction Group Vs CCE Hyderabad* - 2015-TIOL-236-SC-CX. In para-21 of the order, the Hon'ble Apex Court has held that RMC is not same as Concrete Mix (CM) and that the Notification No.4/1997 dated 01.03.1997 exempts only 'Concrete Mix' and not 'Ready Made Mixed Concrete'.

6. The Ld. counsel did not put forward any argument on the merits of the case and has confined the arguments on the ground of limitation.

7. It is submitted that the issue was contentious and litigated before various forums. There was much doubt as to whether RMC can be considered as 'Concrete Mix' and the exemption as per Notification No.4/1997-CE dated 01.03.1997 would be available. The issue being interpretational in nature, the demand raised invoking the extended period cannot sustain. To support the argument that the issue was contentious before various forums, Ld. Counsel has placed a list of dates and events with regard to the litigation on the issue tabulated as under :

Excise Appeal No.40008 of 2019  
Excise Appeal No.40385 of 2020  
Excise Appeal No.40585 of 2020

**LIST OF DATES AND EVENTS**

<b>Sl. No.</b>	<b>Date</b>	<b>Events</b>
1	23.05.1997	The Central Board of Excise and Customs by paragraph 4 in its Circular No. 315/31/97-CX dated 23.05.1997 holds that Ready Mix Concrete and concrete mix are two separate distinguishable commodities. It is stated in the aforesaid instructions of the Board, that RMC, even if it is manufactured at site of construction, is chargeable to excise duty @ 13% under sub-heading No. 3824.20 of Central Excise Tariff Act, 1985. It is clarified that, exemption available for concrete mix manufactured at the site of construction for use in construction work at site available under Entry 51 of Notification No. 4/97-CE dated 01.03.1997 is not available for, Ready Mix Concrete manufactured at the site of construction.
3	13.09.2002	The Hon'ble High Court of Madras, by judgement rendered in WP No. 15035 of 1997 reported as 2006 (198) ELT 177 (Mad) records the statement made on behalf of the Revenue that the Ready Mix Concrete, is entitled for exemption, if manufactured at the site of construction and duty is attracted, only if manufactured at a place other than the site of construction. After so recording the statement made on behalf of the Revenue, the Writ Petition was disposed off, by the Hon'ble High Court.
2	28.04.2005	The Division Bench of this Hon'ble Tribunal, in the case of Larsen & Toubro Limited Vs. CCE reported as 190 ELT 132 holds that the assessee is not entitled to exemption on the goods known as 'Ready Mix Concrete' under Notification No. 4/1997-CE dated 01.03.1997.
4.	26.07.2005	A Division Bench of this Hon'ble Tribunal disagreed with the earlier judgement in the case of Continental Foundation Joint Venture vs. CCE, Chandigarh, reported as 2002 (150) ELT 216 and refers the question of availability of exemption for Ready Mix Concrete manufactured at site to a larger bench.
5	23.01.2006	The Larger bench of this Hon'ble Tribunal in this case of Chief Engineer, Ranjit Sagar Dam vs. Commissioner of Central Excise., Chandigarh, holds that Ready Mix Concrete manufactured at site will also be eligible for exemption under Notification No. 4/97-CE dated 01.03.1997. The judgement of the larger bench of this Hon'ble Tribunal is reported as 2006 (198) ELT 503 (Tri) (LB).
6	06.11.2006	The West Zonal bench of this Hon'ble Tribunal allowed

Excise Appeal No.40008 of 2019  
Excise Appeal No.40385 of 2020  
Excise Appeal No.40585 of 2020

		an appeal filed by the present Appellant by following the judgement of larger bench of the Hon'ble Tribunal in the case of Chief Engineer, Ranjit Sagar Dam vs. Commissioner of Central Excise, reported as 2006 (198) ELT 503 (Tri) (LB)
7	16.04.2007	A Division Bench of the Hon'ble Punjab and Haryana High Court dismisses a Department appeal against the judgement of the larger bench of this Hon'ble Tribunal in the case of Chief Engineer, Ranjit Sagar Dam vs. Commissioner of Central Excise, reported as 2006 (198) ELT 503 (Tri) (LB). The judgement of the Hon'ble Punjab and Haryana High Court is reported as (2007) 217 ELT 345 (P&H).
8	06.10.2015	<p>The Hon'ble Supreme Court of India, delivered a common judgement disposing the appeal filed by the assessee against the judgement of this Hon'ble Tribunal dated 24.10.2005 and an appeal filed by the Revenue against the judgement of the larger bench of this Hon'ble Tribunal, in the case of Chief Engineer, Ranjit Sagar Dam vs. Commissioner of Central Excise, reported as 2006 (198) ELT 503 (Tri) (LB). The Judgement of the Hon'ble Supreme Court of India, is reported as Larsen &amp; Toubro Limited vs CCE Hyderabad – 2015 (324 ELT) Page 646.</p> <p>By its common judgement, the Hon'ble Supreme Court dismisses the assessee's appeal and allows the Revenue's appeal while holding that RMC manufactured at site is not concrete mix which is entitled for exemption under Notification No. 4/1997-CE dated 01.03.1997.</p>
9	19.11.2015	The Hon'ble Supreme Court of India, in an appeal filed by the Revenue, sets aside an order passed by this Hon'ble Tribunal dated 06.11.2006 and remands the matter back to the West Zonal Bench of this Hon'ble Tribunal.
10	03.08.2016	The West Zonal Bench of this Hon'ble Tribunal takes up appeals of the present Appellants, in E/2895-2897/2006-MuM pursuant to the remand of the Hon'ble Supreme Court dated 19.11.2015. This Hon'ble Tribunal allows the appeals on the ground of limitation and holds that extended period of limitation cannot be invoked, since the legal position during the period of dispute was in doubt and therefore the Assessee had a bonafide view that there was no liability. The aforesaid judgement of this Hon'ble Tribunal is reported as 2016 (344) ELT 1132 – (Tri) (Mumbai).

8.1 It is seen that Division Bench of the Tribunal in the case of *Larsen & Toubro Ltd. Vs CCE Hyderabad* vide order dated 28.04.2005 as reported in 2005 (190) ELT 132 (Tri.-Bang.) held that exemption as per Notification No.4/1997 is not eligible for RMC.

8.2 The Larger Bench vide order dt. 23.01.2006 held that RMC manufactured at site will be eligible for exemption under Notification No.4/97 as reported in 2006 (198) ELT 503 (Tri-LB).

8.3 Later, the Hon'ble Apex Court vide judgment dt. 06.10.2015 set aside the decision of the Larger Bench of the Tribunal and held that RMC and concrete mix are different products and that only concrete mix is eligible for Exemption under Notification No.4/97.

8.4 The litigatory travel of the issue as to whether RMC & CM are one and the same product and whether RMC is eligible for the exemption available to CM has been given by the counsel. The learned counsel prayed that the issue being an interpretational one, the show cause notices issued invoking extended period cannot sustain.

9. The following table was furnished by the appellant to submit that when the period of limitation is taken as one year, the entire period of dispute would fall within the extended period.

Reference of the Appeal before this Hon'ble Tribunal	SCN No. & Date	Period involved	Normal Period	Extended Period	Order-in-original No. and date	Order-in-Appeal No. and date
2	3	4	5	6	7	8
E-40008 of 2019	77/2017 dated 19.06.2017	Jan. 2015 to Feb. 2016		Jan. 2015 to Feb. 2016	24 of 2017 dated 19.12.2017	158 of 2018 dated 25.09.2018
E-40385 of 2020	07 of 2018 dated 26.10.2018	Apr. 2014 to Sept. 2015		Apr. 2014 to Sept. 2015	04 of 2019 dated 14.03.2019	06 of 2020 dated 18.02.2020
E-40585 of 2020	06 of 2018 dated 06.09.2018	Aug. 2013 to Oct. 2015		Aug. 2013 to Oct. 2015	02 of 2019 dated 27.02.2019	86 of 2020 dated 21.08.2020

10. The Ld. Counsel argued that apart from alleging that appellant has suppressed facts there is no positive act brought out by the department to prove that the appellant has suppressed facts with intention to evade payment of central excise duty. The appellant had always cooperated with the department and furnished details whenever requested for. On such circumstances, the demand invoking the extended period cannot sustain. Ld. Counsel prayed that the appeals may be allowed on the ground of limitation.

11. Ld. A.R Ms. Anandalakshmi Ganeshram appeared and argued for the department. The decision rendered by the Hon'ble Apex Court in the case of *L&T Ltd. ECC Construction Group Vs CCE Hyderabad (Supra)* was relied by Ld.A.R to argue that the issue stands covered in favour of Revenue. It is submitted by Ld.

A.R that it was very clear from the clarification issued by the Board that RMC was a distinct marketable product from concrete mix and therefore the exemption Notification No.4/97 is not eligible. The decision in the case of *DLF Projects Ltd. and Others Vs CCE Delhi - 2017 (11) TMI 474, CESTAT NEW DELHI* was relied by the Ld. A.R to submit that the Tribunal in the said case held that assessee has willfully suppressed material facts of manufacturing and clearing RMC without payment of duty from the knowledge of the department and evidently misdeclared and misstated the facts with the intention to evade payment of duty by irregularly availing the benefit of notification and therefore show cause notice issued invoking the extended period was correct. Ld. A.R submitted that non-payment of duty would not have come to light but for the investigation conducted by the department. Show cause notices issued invoking the extended period are therefore legal and proper.

12. Heard both sides.

13. At the outset, it has to be stated that the issue on merits stands covered against the assessee by the decision in the case of *Larson & Toubro ECC Construction Group Vs CCE Hyderabad - 2015-TIOL 236-SC-CX*. It has been categorically held by the Hon'ble Apex Court that Notification No.4/1997-CE dated 01.03.1997 exempts only 'Concrete Mix' (CM) and that the said exemption is not available to "Readymade Mix Concrete" (RMC) manufactured at site and that RMC and concrete mix are not one

and the same. The issue on merits is therefore held against the assessee and in favour of the Revenue.

14. Ld. Counsel has argued on the grounds of limitation. The details of the SCN, disputed periods involved in each appeals are furnished in the table above. From the dates and events of the litigation, it is established that the issue as to whether RMC is also eligible for the Exemption Notification No.4/97-CE, other notifications and whether RMC and concrete mix are one and the same was under confusion and was under litigation before various forums. We also see that department has not been able to establish with cogent evidence that there is any positive act of suppression on the part of the appellant with intent to evade payment of duty. The details for demand of duty has been derived from the accounts and documents furnished by the appellant. The judgment relied by Ld. A.R is not applicable to the facts of the present case for the reason that in the said case it was observed by the Delhi Bench that there is positive act of suppression on the part of the appellant.

15. In the case of *Continental Foundation Jt. Venture Vs CCE, Chandigarh* – 2007 (216) ELT 177 (SC) the Hon'ble Apex Court allowed the plea of the assessee that the SCN is time barred as there were no grounds to invoke extended period and also because there were doubts as to whether RMC is a dutiable product. The relevant para reads as under :

“7. Mr. Joseph Vellapally, learned senior counsel for the appellant submitted that there were various circulars operating at different points of time. There was no clarity or unanimity in the views expressed by the authorities themselves. In fact, correctness of the judgment by CEGAT in *Continental Foundation Joint Venture’s* case (supra) was doubted and the matter was referred to larger bench. In *Chief Engineer Ranjit Sagar Dam v. Commissioner of C. Ex., Jalandhar (2006 (198) E.L.T. 503* (Tri.-LB) larger bench of the Tribunal has held that the view expressed in *Continental Foundation Joint Venture’s* case (supra) was not the correct view.

8. In response, learned counsel for the respondents submitted that the circulars dated 1-2-1996, 23-6-1997 and 6-1-1998 have no relevance and the judgment in *Chief Engineer Ranjit’s* case (supra) does not reflect the correct position.

9. We are not really concerned with the other issues as according to us on the challenge to the extended period of limitation ground alone the appellants are bound to succeed. Section 11A of the Act postulates suppression and, therefore, involves in essence *mens rea*.

10. The expression “suppression” has been used in the proviso to Section 11A of the Act accompanied by very strong words as ‘fraud’ or “collusion” and, therefore, has to be construed strictly. Mere omission to give correct information is not suppression of facts unless it was deliberate to stop the payment of duty. Suppression means failure to disclose full information with the intent to evade payment of duty. When the facts are known to both the parties, omission by one party to do what he might have done would not render it suppression. When the Revenue invokes the extended period of limitation under Section 11A the burden is cast upon it to prove suppression of fact. An incorrect statement cannot be equated with a willful misstatement. The latter implies making of an incorrect statement with the knowledge that the statement was not correct.

11. Factual position goes to show the Revenue relied on the circular dated 23-5-1997 and dated 19-12-1997. The circular dated 6-1-1998 is the one on which appellant places reliance. Undisputedly, CEGAT in *Continental Foundation Joint Venture* case (supra) was held to be not correct in a subsequent larger Bench judgment. It is, therefore, clear that there was scope for entertaining doubt about the view to be taken. The Tribunal apparently has not considered these aspects correctly. Contrary to the factual position, the CEGAT has held that no plea was taken about there being no intention to evade payment of duty as the same was to be reimbursed by the buyer. In fact such a plea was clearly taken. The factual scenario clearly goes to show that there was scope for entertaining doubt, and taking a particular stand which rules out application of Section 11A of the Act.

**12.** As far as fraud and collusion are concerned, it is evident that the intent to evade duty is built into these very words. So far as mis-statement or suppression of facts are concerned, they are clearly qualified by the word 'wilful', preceding the words "mis-statement or suppression of facts" which means with intent to evade duty. The next set of words 'contravention of any of the provisions of this Act or Rules' are again qualified by the immediately following words 'with intent to evade payment of duty.' Therefore, there cannot be suppression or mis-statement of fact, which is not wilful and yet constitute a permissible ground for the purpose of the proviso to Section 11A. Mis-statement of fact must be wilful.

**13.** That being so, the adjudicating authorities were not justified in raising the demand and CEGAT was not justified in dismissing the appeals.

**14.** On the ground of adjudication beyond the normal period of limitation and non-availability of the extended period of limitation, the appeals are allowed. No costs."

16. In the case of *Gaursons Promoters Pvt. Ltd. Vs CCE Noida* - 2019 (2) TMI 1026 CESTAT ALLAHABAD, the Tribunal set aside the demand on the ground of limitation as the issue was interpretational in nature. The relevant para of the Tribunal's decision is noticed as under :

"3. We note that though the issue stands decided against the assessee on merits by the Hon'ble Supreme Court decision in the case of M/s Larsen & Toubro Ltd. referred (Supra) but we note that Para 23 of the said judgement of Hon'ble Supreme Court has itself observed that there was doubt in the field and following the said decision, Tribunal in the case of M/s Shapoorji Pallonji & Co. Ltd. and in the case of M/s Larsen & Toubro referred (Supra) has extended the benefit of limitation to the assessee.

4. By following the said decision, we also hold that the extended period is not available to the Revenue. Accordingly, demand for the period falling outside the normal period, is set aside along with setting aside of penalty upon the appellant. However, the demand falling within the limitation period is required to be upheld. We order accordingly and direct the Original Adjudicating Authority to quantify the same."

17. In the case of *Nagarjuna Construction Co. Ltd. Vs CGST, CUSTOMS & CE Bhopal - 2019 (3) TMI 773 CESTAT NEW DELHI* the demand raised by invoking extended period was set aside. The Tribunal has observed as under :

“6. Having considered the rival contentions, we are satisfied that the show cause notice in question, invoking the extended period of limitation has been issued by way of change of opinion, there being no condition precedent available for invocation of extended period of limitation. In this view of the matter, we hold that the show cause notice is not maintainable. Accordingly, we allow the appeal and set aside the impugned order. The appellants are entitled to consequential relief in accordance with law.”

18. From the above discussions, we are of the considered opinion that SCNs issued invoking the extended period in these appeals are time-barred and therefore cannot sustain. The impugned orders are set aside on the ground of limitation.

19. Appellants succeed on the ground of limitation. In the result, appeals are allowed with consequential relief, if any, as per law.

(Pronounced in open court on 16.06.2023)

Sd/-

**(M. AJIT KUMAR)**  
Member (Technical)

Sd/-

**(SULEKHA BEEVI, C.S.)**  
Member (Judicial)

gs