CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH - COURT No. III

Excise Appeal Nos. 41340-41347 of 2015

(Arising out of Order-in-Appeal No. 22-29/2015 dated 01.04.2015 passed by Commissioner of GST & Central Excise (Appeals-I), 1775, J.N.Road, Anna Nagar (W) Extn., Chennai-600 101)

M/s. Chettinad Cement Corporation Ltd., ... Appellant
Ariyalur-Trichy Road,
Keelapalavur Post,
Ariyalur District-621 707.

VERSUS

The Commissioner of CGST & Central Excise ... Respondent
No.1, Williams Road,
Cantonment,
Trichy-620001.

APPEARANCE :

Shri R. Parthasarathy, Consultant for the Appellant
Ms. O.M. Reena, Authorized Representative for the Respondent

CORAM :

HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

FINAL ORDER Nos. 41572-41579/2024

DATE OF HEARING: 07.11.2024
DATE OF DECISION: 09.12.2024

Per: Mr. P. Dinesha

The assessee is a manufacturer of cement which is normally sold in bags of 50 kgs and bulk to dealers, distributors and industrial and institutional customers. During the period under dispute, the taxpayer had cleared the cement in bulk and those packed in 50 KG bags, without marking MRP which attracted – ad-Valorem duties was cleared by the assessee on payment of duty calculated on the transaction value. One of such sale of cement in bulk was to M/s. Chettinad Builders Private Limited – CBPL who used the cement in the manufacture of RMC and also sold on payment of excise duty if any, to their customers.

2. In the course of audit of the assessee by LTU, the audit team appears to have noticed the price charged for OPC 53 grade cement for one of the industrial customers was higher than the price charged to CBPL; they also appear to have noticed in the assessee's annual report for the year 2010–2011 that the taxpayer had declared CBPL as a related party in terms of Accounting Standard – 18 ['AS' for short] issued by the Institute of Chartered Accountants of India. This assertion in the Financial statement prompted the revenue to call for the details of clearances of cement made in bulk to CBPL right from 2008–2009 onwards, for verification. The same led to the issuance of 8 show cause notices for the periods 2008 to 2012. The primary reliance of the revenue at that point of time was the annual report of the taxpayer. The Revenue also indicated in the SCN that Rules 8 and 9 of Central Excise Valuation Rules, 2000 were not applicable since cement was not issued for further

manufacture of any assessable goods, but utilised for construction activities by the CBPL.

3. It appears that the taxpayer upon receipt of the above SCN contended that the said CBPL was neither related person nor an inter-related undertaking nor an associated company as defined under section 4 of the Central Excise Act [pg. 28 of the Appeal memo]. They also supported their claim by filing copies of invoices of CBPL relating to the sale of RMC, apart from declaration by the said CBPL that the cement sold by the appellant in bulk was used in the manufacture of RMC during the disputed periods. The adjudicating authority having considered the explanation of the appellant in common adjudication, proceeded to conclude the same vide common Order-In-Original Nos. LTUC/409-416/2013-ADC dated 31.10.2013. In the said order, the AA has mainly relied upon the definition under Section 4 ibid and the financial statements of the very appellant and thus confirmed the duty demands. Aggrieved by the same, the assessee appears to have approached the first appellate authority by *inter alia* urging that AA should have at the threshold decided whether CBPL was related person or not in terms of Section 4; he cannot borrow the provisions of Income Tax Act, 1962 or the Accounting Standard *ibid*. They prayed for the reversal of the order in original and the demands therein. However, even the first appellate authority

having dismissed their appeal, thereby upholding the demands confirmed by the original Authority, the present appeals have been filed before this forum.

4. Shri R. Parthasarathy, Ld. Consultant appearing for the appellant submitted that the authorities below had erred in placing reliance on the annual reports & Form 3CD of the Appellant. Further, Section 4 of the Act should have been considered by both the authorities a person is related person or not for the purpose of determination of accessible value and consequential duty and quantification has been defined. Hence, without any specific reference to income tax act or any of the accounting standards, the authorities should have decided the issue of 'related person' strictly in accordance with the provisions of section 4 *supra*. It was also pleaded that they were neither holding company by virtue of shareholding control or by virtue of managerial control, both the applicant as well as CBPL are separate legal entities under the Companies Act and therefore, only companies that are covered under Section 2(41) of the Companies Act, 1956 could alone be treated as 'related'. Hence, in the absence of the applicability of the above section of the Companies Act, the conclusion drawn by the authorities below has no legal basis. Both the authorities should not have relied on the AS 18 since there is no reference at all to the AS 18 in Section 4(3)(b) of the Act. Moreover, by virtue of their Constitution

CBPL is a separate legal entity having no common interest, either directly or indirectly, in the business of the appellant and just because CBPL happens to be an associated company, the same cannot be inferred as a related party.

5. It was also contended, without prejudice, that the transaction value relating to the supply of cement to CBPL should not have been interfered with and the price adopted for quantification of differential duty ought to have been construed as cum-duty price as per the ruling of Supreme Court in the case of Maruti Udyog Limited. In that view, even the penalty imposed is not in accordance with law. For the same reason, it was also contended that the invocation of extended period of limitation in terms of the proviso to section 11 A of the Act could not have been invoked.

6. *Per contra*, Smt. O.M. Reena, Ld. Addnl. Commissioner appearing for the Respondent, supported the findings of the lower authorities. She also drew our attention to the findings specifically of the adjudicating authority who has elaborately discussed the issue in the context of Section 4 of the Act and hence, the demand of differential duty was justified. Insofar as the invocation of extended period of limitation, she would submit that the audit party came across the annual report which had categorically declared the CBPL as their related party, which document was not known to the department

and nor was it a part of any of the documents filed before the Central Excise Authorities and, hence, it is a clear case of suppression. She would thus request the bench to uphold the impugned order.

7. We have considered the arrival contentions and carefully approached the documents placed on record.

8. After hearing both sides, we find that the only issue to be decided by us is, "*whether the applicant and the other entity, namely CBPL are 'Related persons' in terms of Section 4 of the Act*"?

9. Normally, when the department comes across statutory documents relating to a taxpayer, if authorities get some doubts as regards the possibility of the government being deprived of its dues, they issue statutory notices like Show-cause Notice as prescribed in the respective statute/s. Quite naturally, other than such document, the authorities would not be having any other documents and hence, such SCN issued calling upon the noticee to offer explanation along with supporting evidence/s. If the person receiving such statutory notice, instead of clarifying, rather counters the revenue Authority to adduce documentary evidence in support of its doubt/suspicion, then that will not cause an end to the litigation, rather would become the starting point.

10. Strangely, when SCN was issued requiring the explanation, the appellant's only explanation was that whatever declared in their Annual reports/Financial statements was only for the Income-tax purpose, as per AS 18 and hence, the Central Excise Authority cannot barrow anything from the same. But it has never bothered to explain what exactly is their relation, either in response to the SCN or at any point in time later, since it was relevant as they only declared CBPL as 'Associate' in their statutory documents. Even before us also, we do not find any attempt being made to clarify the relationship. This assumes relevance as the relied upon documents clearly indicate CBPL as an 'Associate'. Further, Show Cause Notice dated 04.12.2012 was issued on the premise that it was noticed by the Revenue that in respect of invoice No. 7038 dated 09.05.2011 to M/s. La Farge Aggregates and Concrete, Chennai, the price adopted for OPC 53 G was Rs.3626.47 per MT whereas a comparable sale effected to Chettinad Builders P. Ltd., Chennai Vide invoice No.6697 dated 09.05.2011 was at the rate of Rs.2256.43 per MT. In paragraph 3 of the Show Cause Notice, the authority after verifying the appellants reply dated 05.06.2012 and upon scrutiny of purchase order document, appears to have found that the said CBPL merely stated the requirement of quantity of final products like OPC, Slag, etc., and the rate at which it was to

be supplied to them which indicated that the price for supply of final goods to the said CBPL was dealt by the tax payer under section 4, transaction value as being done in respect of supply to any unrelated person.

11.1 We have considered the books of accounts/ schedules to Balance Sheet and P & L a/c; the relevant entry as appearing therein are as under:

Details of Transaction with Associates/Key Management Personnel the amount of which is in excess of 10% of the Total Related Party Transactions of similar nature.

	Year ended 31.03.2010 (Rs. in Lakhs)		Year ended 31.03.2009 (Rs. in Lakhs)	
	Associates	Key management Personnel	Associates	Key management Personnel
Purchase of Goods				
Chettinad Logistics P.Ltd	3649		7634	
Chettinad Structural & Engg. P.Ltd	0		1088	
Sale of Goods				
Chettinad Builders P.Ltd	1263		932	
Services				
Chettinad Builders P.Ltd	6604		6652	
Chettinad Logistics P.Ltd	1230		2264	
South India Corpn.Ltd	1840		67	
Chettinad Earthmovers P.Ltd	2109		2128	
Chettinad Structural & Engg. P.Ltd	0		541	
Deposit Accepted				
Chettinad Lignite Transport Services P. Ltd.	9295		3000	
Chettinad Hospitals P.Ltd	4000		17000	
Allied Minerals & Metals P Ltd	39980		0	
Chettinad Logistics P.Ltd	5300		8000	
Deposit Repaid				
Chettinad Logistics (P) Ltd.	9875		1000	
Chettinad Hospitals P.Ltd	37900		600	
Chettinad Lignite Transport Services P. Ltd	500		4000	
Allied Minerals & Metals P Ltd **	39980		0	
Interest				
Chettinad Logistics P.Ltd	888		1303	
Chettinad Lignite Transport Services P. Ltd.	9330		1068	
Chettinad Hospitals P.Ltd	2472		3471	
Dividend				
Dr.M.A.M.Ramaswamy		918		918
Sri M.A.M.R.Muthiah		558		558
Chettinad Software Services P.Ltd	261		261	
Remuneration				
Sri M.A.M.R.Muthiah		623		48

** Amount adjusted on amalgamation

A) Names of related parties and description of relationship and closing balance.

i Name of Associate

1. South India Corporation Ltd.
2. Chettinad Structural & Engineering P. Ltd
3. Chettinad Logistics Private Ltd.
4. Chettinad Builders Private Ltd.
5. Chettinad Port Services Private Ltd.
6. Chettinad International Coal Terminal Private Ltd.
7. Chettinad Financial Management Services Private Ltd.
8. Chettinad Software Services Private Ltd.
9. Haacienda Infotech and Realtors Private Ltd.
10. Chettinad Hospitals Private Ltd
11. Chettinad Corporation Private Ltd.
12. Chettinad Plantations Private Ltd.
13. SIC Travancore Private Ltd.
14. Chettinad Morimura Semiconductor Material Private Ltd.
15. Chettinad Quartz Product Private Ltd.
16. Chettinad Lignite Transport Services Private Ltd.
17. Chettinad Realtors Private Ltd.
18. Chettinad Energy Private Ltd.
19. Chettinad Pharmaceuticals Private Ltd.
20. Chettinad Electronics Private Ltd.
21. Chettinad e-publishing Private Ltd.
22. Chettinad Trucks and Equipments Private Ltd.
23. Chettinad Earth Movers Private Ltd.
24. Chennai Computer and Software Services Private Ltd.
25. Chettinad Clearing and Forwarding Private Ltd.
26. Chettinad Land and Building Development Private Ltd.
27. Chettinad Projects Development Private Ltd.
28. Chettinad Inland Water Transport Private Ltd.
29. Allied Minerals & Metals Pvt. Ltd

ii) Closing Balance Cr. Rs. 20187 Lakhs (Cr. Rs. 49037 Lakhs)

iii) The related party relationship is as identified by the Company and relied upon by the Auditors.

B) Key Management Personnel : Dr. M.A.M. Ramaswamy & Sri M.A.M.R. Muthiah.

Sitting fees of Rs.12000/- (Rs.8000/-) paid to Dr. M.A.M. Ramaswamy, Chairman.

Remuneration and sitting fees of Rs.623.54 Lakhs (Rs.48.48 Lakhs) paid to Sri M.A.M.R. Muthiah, Managing Director.

16) Earning per share

(Rs.in lakhs)

	2009-10	2008-09
Profit as per Profit & Loss account	9663	(421)
Add: Arrears of Depreciation	0	18147
Adjusted Net Profit for the year	9663	17726
Number of equity shares	382	295
Basic and Diluted earnings per share (In Rs.) (Face value of Rs.10 per share)	30.51	60.08

Chettinad cement

A) Names of related parties and description of relationship and closing balance.

i) Name of Associate

1. South India Corporation Ltd.
2. South India Corporation (Travancore) Private Ltd.
3. Chettinad Corporation Private Ltd.
4. Chettinad Plantations Private Ltd.
5. Chettinad Structural & Engineering Ltd
6. Chettinad Logistics Private Ltd.
7. Chettinad Lignite Transport Services Private Ltd
8. Chettinad Financial Management Services Private Ltd.
9. Chettinad Software Services Private Ltd.
10. Chettinad Builders Private Ltd.
11. Chettinad Realtors Private Ltd
12. Chettinad Hospitals Private Ltd
13. Chettinad Pharmaceuticals Private Ltd
14. Chettinad Electronics Private Ltd
15. Chettinad e-Publishing Private Ltd
16. Chettinad Trucks & Equipments Private Ltd
17. Chettinad Earth Movers Private Ltd
18. Haaciendaa Infotech and Realtors Private Ltd.
19. Chettinad International Coal Terminal Private Ltd.
20. Chettinad Clearing & Forwarding Private Ltd
21. Chettinad Land & Building Development Private Ltd.
22. Chettinad Projects Development Private Ltd
23. Chennai Computer and Software Services Private Ltd
24. Chettinad Inland Water Transport Services Private Ltd
25. Chennai Organic Chemicals and Fertilizers Private Ltd
26. Chettinad Morimura Semi Conductor Material Private Ltd
27. Chettinad Engineering and Allied Services Private Ltd
28. Chettinad Apparels Private Ltd
29. Chettinad Packers and Movers Private Ltd
30. Chettinad Power Corporation Private Ltd
31. Chettinad TV Network Private Ltd
32. Chettinad Radio Network Private Ltd
33. Durandel Foods Pvt.Ltd
34. Chettinad Container Terminal Private Ltd
35. Chettinad Energy Resource Private Ltd
36. Chettinad Electric Company Private Ltd
37. Chettinad Enerprises Private Ltd
38. Chettinad Dairy & Poultry Farms Private Ltd
39. Chettinad Coal Washeries Private Ltd
40. Chettinad Hitech Semi Conductor Materials Private Ltd

ii) Closing Balance Cr. ₹ 28204 Lakhs (Cr. ₹ 20487 Lakhs)

iii) The related party relationship is as identified by the Company and relied upon by the Auditors.

B) Key Management Personnel : Dr. M.A.M. Ramaswamy & Sri M.A.M.R. Muthiah.

Sitting fees of ₹ 6000/- (₹ 12000/-) paid to Dr. M.A.M. Ramaswamy, Chairman.

Remuneration and sitting fees of ₹ 500.93 Lakhs (₹ 623.54 Lakhs) paid to Sri M.A.M.R. Muthiah, Managing Director.

11.2 We have carefully considered the decisions of various higher judicial fora relied upon by the appellant during the course of hearing; in all those cases the Hon'ble courts have analysed the scope of 'related party' which was the core issue. In the case on hand, it is not the allegation of the Revenue that the said CBPL was a/was not a related party to the appellant, in any manner, but it was a clear admission by the appellant itself. We have observed from the very Show Cause Notice itself that the appellant had made disclosures in its Annual Reports, Form 3CD reports as to CBPL being its associated person, which triggered the whole issue. Further, in their reply to the Show Cause Notice, the appellant has referred to a table at Annexure-I to their reply wherein, it was attempted to explain that the selling price to CBPL was more than the selling price in respect of independent buyers. But however, very conspicuously they are silent on the 2 invoices specifically referred to in the Show Cause Notice. In the very same reply, the appellant has only harped on the non-furnishing of documentary evidence by the Revenue to prove that the said CBPL was their related party, very conveniently ignoring the fact that it was picked up from their own financial statements, as disclosed by them, which form the primary documentary evidence. The onus was therefore on the appellant to explain as to how the entry was made or why made, to be part of their financial statements wherein they themselves had declared CBPL as their related party.

12. In view of the above discussion, going by findings of the adjudicating authority and the Primary documentary evidence like the audited financial statements of the Appellant, the Revenue has discharged the initial burden but, however, the Appellant has not discharged the onus. Hence, we do not find any merit in the Appeals and consequently we dismiss the same.

(Order pronounced in open court on 09.12.2024)

sd/-	sd/-
(VASA SESHAGIRI RAO)	**(P.DINESHA)**
Member (Technical)	Member (Judicial)

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