

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

REGIONAL BENCH - COURT No. III

Excise Appeal No. 41416 of 2017

(Arising out of Order-in-Appeal No.43/2017 dated 03.04.2017 passed by Commissioner of Customs & Central Excise (Appeals-2), No.1, Williams Road, Cantonment, Tiruchirappalli 620 001)

M/s.The Ramco Cements Ltd. **.... Appellant**
Govindhapuram Works,
Ariyalur-Senthurai Road,
Ariyalur District 621 713.

VERSUS

**The Commissioner of GST &
Central Excise,** **... Respondent**
Trichy GST Commissionerate,
No.1, Williams Road, Cantonment,
Tiruchirappalli 620 001.

APPEARANCE :

Shri R. Parthasarathy, Consultant for the Appellant
Shri N. Satyanarayana, Authorized Representative
for the Respondent

CORAM :

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

FINAL ORDER No.41396/2025

DATE OF HEARING : 27.06.2025
DATE OF DECISION : 27.11.2025

Per: Shri P. Dinesha

Brief and relevant facts as could be gathered from the impugned order are that the refund claim was filed by Appellant consequent on payment of duty towards the clearance of 742.840 MTs of cement (OPC 53 Grade-Bulk) made to M/s.EKK & Co., Perumbavoor, Ernakulam District for the period 05.01.2016 to 02.03.2016. The refund has been claimed on the ground that the said clearances were intended for implementation of projects under World Bank Loan Assistance vide Loan Number 8254 IN by the Project Management Team, Kerala State Transport Project, Thiruvananthapuram and hence, eligible for Excise Duty exemption provided under Notification No.108/95-CE dated 28.08.1995 as amended. The Appellant stated that due to oversight their dispatch system considered this as 'duty payment cement' and had wrongly paid Rs.3,75,466/- as excise duty and that the same is fully qualified for duty exemption. Accordingly, they filed the said refund claim. The said clearances appeared to be covered under Proviso (C) to the Notification No.108/95-CE dated 28.08.1995 as amended, and according to the above provision, the manufacturer ought to have produced the required

certificate laid down therein before effecting clearance of the said goods. It is however seen that the clearances have been made during the period from 05.01.2016 to 02.03.2016, whereas the manufacturer and the claimant have produced the required certificate to the jurisdictional Assistant Commissioner vide appellant's letter dated 07.03.2016 only on 09.03.2016 after effecting the clearance of 742.840 MTs of Cement. The Appellant therefore appeared to be ineligible for the exemption provided inasmuch as they had failed to comply with the requirement of the Notification. The invoices for the above clearance have been issued clearly indicating the applicable duty of excise.

2. The claimants (Appellant) have produced two letters from M/s.EKK & Co., the buyer, both dated 17.03.2016, one stating that they have not availed Cenvat credit for the duty value of Rs.75,466/- and another one stating that they have not paid the excise duty amount of Rs.3,75,466/-. The debit entries in the ledger account of the claimant pertaining to the buyer and the credit entries in the ledger account of the buyer pertaining to the claimant against the invoices in question were found to be inclusive of excise duty. The amount shown as closing balance in M/s.EKK& Co. ledger in the books of M/s.Ramco as well as in the customer ledger for

the period 01.01.2016 to 31.03.2016 was found to be Rs.6,99,249/- and which was not exactly the amount of excise duty claimed as refund. It was thus concluded by Revenue that there was no conclusive or corroborative proof that the incidence of excise duty has not been passed on to the buyer. The Appellant have not brought out invoice wise correlation to prove the actual payments received with reference to the thirty five invoices relating to the above said exempted clearances. Therefore, the question of unjust enrichment was not satisfactorily proved.

3. A SCN dated 25.07.2016 was issued to Appellant proposing to reject the refund claim. After due process, the Original Authority rejected the refund claim vide Order-in-Original No.28/2016-Cx.(Refund) dt. 26.08.2016. Being aggrieved by the order of Original Authority, Appellant filed Appeal before First Appellate Authority who vide the impugned Order in Appeal No.43/2017 dated 03.04.2017 upheld the OIO. Hence this appeal has been filed by the Appellant/Assessee before this forum.

4. Heard Shri R. Parthasarathy, Id. Consultant for the Appellant/Assessee and Shri N.Satyanarayana, Ld. Assistant Commissioner for the Respondent/Revenue.

5. The issue to be decided in this Appeal is, whether the Appellant is eligible for the refund of already paid duty under proviso (C) to the Notification No.108/95-CE dated 28.08.1995 as amended is correct or not?"

6. We have carefully considered the rival contentions and also perused the impugned order; after going through the documents placed *vis-à-vis* the contentions urged before the authorities, we are of the view that the denial of refund by the authorities below is incorrect, for the following reasons.

7. The authorities below have never suspected the claim of the Appellant that the excisable goods were supplied for the projects funded by the World Bank Loan Assistance. The Appellant claimed to have filed supporting documents in support of availment of CENVAT credit for the duty value, non-payment of excise duty, debit entries in the ledger account of payments pertaining to buyer, credit entries in the ledger account of the buyer pertaining to the claimant against invoices in question, the closing balance of another claimant as reflected in the ledger in the books of the Appellant, supporting letter to this effect from the contractor declaring that no duty was reimbursed to the Appellant and that they had not taken any CENVAT credit for the duty paid

by the Appellant for the supplies made during the period when the certificate was not produced. The Assessee is also not disputing the fact of delay in submission of the required certificate for clearance made during 05.01.2016, 20.03.2016 which, according to the Department, was required to be submitted at the commencement of or before affecting clearance of the goods. We find that the above requirement does not or should not result in taking away the very right of taking CENVAT credit and the consequential refund, if otherwise found to be in order since the refund claim made by the appellant was only of the duty that was paid and borne by them.

8. Moreover, there is no reason to suspect unjust enrichment since both the parties to the contract have agreed about the non-payment of excise duty and non-reimbursement of the same. Hence, we are of the view that the rejection of refund by the authorities is not in accordance with the provisions of Notification No.108/95-CE dated 28.08.1995 since the spirit of the above Notification is to exempt all excisable goods from payment of duty for implementation of road project which is approved under World Bank Loan Assistance Schemes.

9. In view of the above, we set aside the impugned order and allow the Appeal with consequential benefits, if any, as per law.

(Order pronounced in open court on 27.11.2025)

sd/-

(VASA SESHAGIRI RAO)
Member (Technical)

sd/-

(P. DINESHA)
Member (Judicial)