CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH – COURT No. III

Customs Appeal No. 41624 of 2016

(Arising out of Order-in-Appeal No. 73/2016 dated 22.06.2016 passed by Commissioner of Customs & Central Excise (Appeals-2), No. 1, Williams Road, Cantonment, Tiruchirappalli – 620 001)

M/s. SSN Trading Co. **...Appellant**
I-D Santhiniketan,
No. 6, VP Rathinasamy Nadra Road,
Bibikulam,
Madurai – 625 002.

Versus

Commissioner of Customs **...Respondent**
Tuticorin Commissionerate,
Custom House,
New Harbour Estate,
Tuticorin – 628 004.

APPEARANCE:

For the Appellant : Mr. N. Viswanathan, Advocate
For the Respondent : Mr. Vineet Goyal, Authorised Representative

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

FINAL ORDER No. 41449 / 2025

DATE OF HEARING : 03.11.2025
DATE OF DECISION : 09.12.2025

Per Mr. VASA SESHAGIRI RAO

This appeal has been filed against Order-in-Appeal No. 73/2016-TTN-CUS dated 22.06.2016 (hereinafter referred to as 'impugned Order'), whereby the Commissioner (Appeals II), Tiruchirappalli upheld the Order-in-Original 2260/2013 dated 14.10.2015 confirming differential duty

demand on imported cement on the grounds of alleged disapplication under Sl. No. 1A(ii) of Notification No. 4/2006-CE and rejecting the benefit of concessional rate under Sl. No. 1C of the said Notification.

2.1 The facts briefly stated are that M/s. SSN Trading Co., Madurai (hereinafter referred to as 'the Appellant') imported Cement of Pakistani origin through Tuticorin Port under 3 Bills of Entry classified under CTH 2523 2910 during various periods. The Appellant availed concessional CVD in terms of Notification No. 04/2006-CE dated 01.03.2006, as amended—two Bills of Entry under Clause 1(C) (for cement other than that cleared in packaged form) and one Bill of Entry under Clause 1A(ii) (for cement in packaged form with RSP exceeding ₹190). SIIB, Tuticorin initiated post-clearance investigation alleging that the cement was imported in packaged 50-kg bags and that the Appellant had mis-declared the Retail Sale Price (RSP) as ₹190/- per bag at the time of import, thereby wrongly availing the benefit of Clause 1(C) and short-paying CVD. Based on this allegation, a differential duty of ₹16,278 /- was demanded under Section 28(4) of the Customs Act, 1962 for alleged suppression and mis-declaration, along with interest under Section 28AA and equal penalty under Section 114A.

After adjudication, the demand, interest and penalty were confirmed.

2.2 Aggrieved, the Appellant filed an Appeal before the Commissioner (Appeals), who after due process of Law, rejected the Appeal.

2.3 Once again aggrieved, the Appellant has approached this Tribunal.

3. The Ld. Advocate Mr. N. Viswanathan appeared for the Appellant and advanced detailed submissions and the Ld. Authorized Departmental Representative Mr. Vineet Goyal, appeared for the Revenue and reiterated the findings of the lower authorities.

4. We have heard both sides, carefully perused the appeal records, the relevant notifications, the judicial precedents cited, and the applicable statutory provisions. In the light of the above, the following issues arise for our determination as to: -

i. Whether cement imported and sold exclusively to industrial/institutional consumers is eligible for Sl. No. 1C benefit, irrespective of packaging and RSP printing?

ii. Whether Revenue can adopt contemporaneous RSP of domestic cement to re-fix RSP of imported cement?

iii. Whether extended period under proviso to Section 28 is invokable?

iv. Whether imposition of equal penalty under Section 114A is justified?

5. The Appellant submitted that the present dispute concerns the levy of CVD on imports of Portland Cement from Pakistan through Tuticorin, where the Department—based solely on post-clearance SIIB investigation—sought to reclassify the goods under clauses 1A(i)/(ii) of Notification No. 4/2006-CE by invoking Section 4A MRP-based valuation, despite the cement having been duly assessed and cleared under clause 1C as bulk supply to institutional/industrial buyers with no retail sale.

6. The Appellant submits that a batch of identically-situated matters involving the same issue, same notification, same port, same importer category and same investigative facts were decided by this Tribunal *vide* Final Order Nos. 40323–40332/2019 dated 19.02.2019, wherein the demands were unconditionally set aside on merits as well as limitation, holding that (i) importers could not be treated as retail sellers, (ii) clause 1C applied where no RSP-based retail sales

occurred, (iii) contemporaneous indigenous cement RSP could not be adopted for imported cement declared with its own RSP, (iv) no evidence existed of retail sale, and (v) extended period was unsustainable. The Department's appeals were subsequently withdrawn before the Hon'ble Madras High Court on monetary grounds. Since the present case is indistinguishable on facts and law, the Appellant prays that the same ratio be followed and the impugned order be set aside.

7. We find that

7.1 The Appellant has imported Ordinary Portland Cement under 3 Bills of Entry on different dates out of which 2 Bills which have been imported under Sl. No. 1C of CVD Notification No. 4/2006-CE as amended.

7.2 The Respondent have rejected the RSP of imported goods and adopted the higher contemporaneous RSP of domestic goods.

7.3 We note that at the relevant time, there was no self-assessment; hence the out-of-charge (OOC) order under Section 47 was an assessment order. The SCN sought to revise the assessment without review under Section 129D, appeal against assessment, or reassessment proceedings.

The principle from Decor India (affirmed by the Supreme Court, 1997 (94) ELT A51) dictates that once an out-of-charge (OOC) order is made without self-assessment, it functions as an assessment order and cannot be reopened by a simple show-cause notice (SCN). To revise such an assessment, customs authorities must use specific legal procedures outlined in the Customs Act, such as a review under Section 129D or reassessment proceedings

"A notice for confiscation or demand of duty is not maintainable unless the order of assessment under Section 47 is first reviewed." And in the present case, no such review has occurred.

Accordingly, the SCN itself is without jurisdiction, rendering the demand void.

7.4 We observe that a key contention of Revenue is that the cement was imported not in bulk, but in standard 50 kg bags, with MRP printed, and therefore must fall under Sl. No. 1A(ii) of Notification No. 4/2006-CE.

7.5 We find this contention untenable because Sl. No. 1C is specifically applicable to bulk clearances, such as sales to industrial or institutional consumers and the benefit was applicable if the retail sale price (RSP) was not required to be declared on packages under the Standards of Weights

and Measures (Packaged Commodities) Rules, 1977. This was based on the third proviso to the explanation in Sl. No. 1C. Packages for industrial or institutional consumers are not considered retail sales and are thus exempt from the RSP declaration requirement. The entire issue has emanated from a SIIB Investigation after clearance of goods. Although cement was imported in 50 kg bags, the Revenue has not produced any evidence to show:

- a single sale in retail, or
- a single sale through a distributor/dealer network.
- not produced any buyer who is not an industrial/institutional consumer,

The investigation has not revealed any RSP-based retail sale, nor any deviation from industrial consumption.

Thus, packaging alone cannot change the nature of transaction from industrial to retail.

This position has been reaffirmed in the earlier batch matters decided by this Tribunal involving identical circumstances, where it was held: -

> *"Packaging of cement in 50 kg bags does not defeat eligibility under Sl. No. 1C when all sales are to industrial/institutional consumers."*

Thus, even cement in 50 kg retail-type bags qualifies for Sl. No. 1C so long as the buyers are industrial/institutional consumers, which stands established on record and the fact

that Goods are in Bags does not Convert Industrial Sale into Retail Sale

We therefore hold that the fact that the appellant imported cement in 50 kg packaged bags does not disentitle them from the benefit of Sl. No. 1C of Notification No. 4/2006-CE. The essential criterion for Sl. No. 1C is the nature of the buyer (industrial/institutional), not the form of packaging, and this condition is fully satisfied. Accordingly, the lower authorities erred in rejecting the exemption merely because the cement was packaged or had printed MRP.

7.6 We find that the Revenue seeks to substitute importers declared RSP (lower) with domestic cement manufacturers' RSP (higher) as contemporaneous import price. This approach fails because: -

- RSP must be the RSP of the imported goods, not domestic goods;
- No evidence that the importer sold goods at RSP higher than declared;
- No evidence of retail sale unearthed by investigation;
- All sales were in bulk, which negates retail marketability.

7.7 Adoption of indigenous RSP for imported goods has been held impermissible in earlier Tribunal rulings

including the batch matters referred supra. Thus, the demand based on enhanced RSP is factually baseless and legally untenable.

7.8 We also find that this Tribunal, in several connected batch matters involving identical fact patterns in the case of *M/s. Antony Metals, and 10 others 2019 (2) TMI 1258 - CESTAT CHENNAI* has already held that: -

> *Notification 4/2006-CE does not impose a post-import condition; once the importer establishes that the sales are to industrial or institutional consumers, benefit under Sl. No. 1C cannot be denied merely due to MRP printed or packaging.*

The above ratio squarely applies to the case at hand.

We therefore hold that the appellant is eligible for Sl. No. 1C.

7.9 We find that the Notice has invoked the Extended Period. For invocation of extended period requires suppression, fraud, or wilful misstatement. In this case

a) all import documents were presented to Customs;

b) RSP printed on bags was disclosed;

c) buyers were correctly declared;

d) OOC order was passed after full Customs verification.

e) Revenue has not produced any evidence of deliberate suppression.

f) The dispute, at best, concerns interpretation of Notification, for which invoking extended period is impermissible.

Therefore, we have to hold that the invocation of extended period is unsustainable.

7.10 Once extended period fails, penalty under Section 114A automatically fails. Further, penalty requires *mens rea* which has not been demonstrated. The appellant acted based on interpretation consistent with earlier Tribunal decisions. Hence, equal penalty under Section 114A cannot survive.

8. The Appellant in this case has relied upon a batch of identically-situated matters involving the same issue, same notification, same port, same importer category and same investigative facts were decided by this Tribunal *vide* Final Order Nos. 40323–40332/2019 dated 19.02.2019, wherein the demands were unconditionally set aside on merits as well as limitation.

We have perused the decision in *M/s. Antony Metals, and 10 others 2019 (2) TMI 1258 - CESTAT CHENNAI* decided by this Tribunal and we find that the present case is squarely covered by the above decision

9. Based on our above findings and the ratio of the above decision, we have no hesitation to set aside the impugned Order-in-Appeal No. 73/2016 dated 22.06.2016 on

merits as well as on grounds of limitation and allow the Appeal.

10. The Appeal is allowed with consequential benefits as per Law.

(Order pronounced in open court on 09.12.2025)

Sd/-
(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)

Sd/-
(P. DINESHA)
MEMBER (JUDICIAL)

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