# CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
## NEW DELHI

PRINCIPAL BENCH - COURT NO. 1

**Excise Appeal No. 3463 of 2010 with**
**Excise Cross Appeal No. 3688 of 2010**

(Arising out of Order-in-Original No. 12/COMMR/CEX/ADJ/SGR/2010 dated 29.07.2010 passed by the Commissioner of Central Excise, Bhopal)

DATE OF HEARING : 24.01.2017
DATE OF DECISION : 24.01.2017

**M/s Diamond Cement .... Appellants**
(Rep by Sh. Anurag Kapoor, Adv.)

VERSUS

**CCE, Bhopal .... Respondent**
(Rep. by Sh. H.C. Saini, DR)

**CORAM : HON'BLE MR. JUSTICE (DR.) SATISH CHANDRA, PRESIDENT**
**HON'BLE MR. V. PADMANABHAN, MEMBER (TECHNICAL)**

**FINAL ORDER NO. 50521/2017 & 50522/2017**

**PER JUSTICE (Dr.) SATISH CHANDRA :**

Both the appeals – (i) A.No E/3463 of 2010; and (ii) A.No. E/3688 of 2010 are cross-appeals filed by the assessee-Appellants as well as Department against the Order-in-Original No. 12/COMR/CEX/ ADJ/SGR/2010 dated 29.07.2010 passed by the Commissioner of Central Excise, Bhopal.

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. 4/07-CE dated 01.03.2007 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 institutionally, 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. vs CCE, Bhopal,** Final Order No. 53855-53856/2016 dated

28.09.2016, 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 re-sale”.**

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.

(Dictated & pronounced in the open court)

**(V. PADMANABHAN)**
**MEMBER (TECHNICAL)**

**(JUSTICE Dr. SATISH CHANDRA)**
**PRESIDENT**

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