CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD

Division Bench

Court – I

Excise Appeal No. 3298 of 2012

(Arising out of OIO No.70/2012 CEX dated 29.08.2012 passed by Commissioner of Central Excise, Customs & Service Tax, Guntur)

Madras Cements Ltd.
Kumaraswamy Raja Nagar, Jaggayyapet,
Krishna Dist., AP – 521 457

......Appellant

VERSUS

Commissioner of Central Tax
Guntur
CR Building, Kannavarithota,
Guntur, AP – 522 004

......Respondent

Appearance
Shri R. Partha Sarathy, Advocate for the Appellant.
Shri B. Sangameshwar Rao, AR for the Respondent.

Coram:
HON'BLE MR. ANIL CHOUDHARY (JUDICIAL)
HON'BLE MR. A.K. JYOTISHI, MEMBER (TECHNICAL)

FINAL ORDER No. A/30340/2023

Date of Hearing: 12.10.2023
Date of Decision: 12.10.2023

[Order per: ANIL CHOUDHARY]

Heard the parties.

2. The issue involved in this Appeal is whether the Appellant has rightly paid the Excise Duty on MRP basis for supply of cement in retail bags of 50 Kg to APHCL (Andhra Pradesh Housing Corporation Ltd).

3. The appellants are engaged in the manufacture of cementwhich were classifiable under the heading 25232910 /30 of the Central Excise Tariff Act, 1985. The cement manufactured is sold in bags of 50 kgs, and in bulk to industrial/institutional customers, dealers and direct consumers directly from the plant as well as through the depots located in several parts of India. The cement packed in 50 kgs and meant for retail sales were affixed with **MRP** as

required under the provisions of Package Commodity Rules and cement packed in 50 kgs and meant for industrial customers are exempted from the requirement of **MRP** printing under the Package Commodity Rules.

4. During the disputed period, the appellants were required to discharge duty liability on cement packed in 50 kgs as per the rates given in the Table appended to Notification No: 4/2006 CE which was amended subsequently on 1.4.2007,13.2008,17.12.2008 and 24.2.2009 by different Notifications.

5. While cement bags printed with **MRP** were cleared on payment of duty as per the rate indicated in Sl.No: 1A of the above cited Notification, cement bags of 50 kgs without **MRP**, were cleared on payment of duty as per the rates given from time to time against Sl.No: 1C of the Notification cited supra.

6. The appellant received an order from Andhra Pradesh State Housing Corporation Ltd. (**APSHCL**) for supply of cement bags meant for the beneficiaries under 'Indira Amma Housing Programme' introduced by the Govt.of Andhra Pradesh. As the price, of cement meant for **APSHCL** which in turn was to be delivered to the beneficiaries (under adjustment of amount payable), was far lesser than the open market price. The Govt. of Andhra Pradesh, stipulated that the MRP and other printed details on the bags have to be as per the specifications, so that the cement bags sold at lesser **MRP**, did not go to the open market.

7. The appellants discharged duty liability forCement bags sold to **APSHCL**, as per the rates given from time to time under Sl.No: 1A of the Table appended to Notification 4/2006 CE, as amended and the details were duly incorporated in their monthly returns.

8. In the month of Nov.2008, the Jurisdictional preventive officers, visited the appellant's plant and after perusing the records relating to sale of cements to APSHCL, observed that the appellants should have paid duty as per the rates given against Sl.No: 1C of the Notification 4/2006 and called for the details of clearances made in the past. The officers also recorded a statement from the Manager (Accounts) of the appellants on various issues including the supply of cement to **APSHCL.** The officers also collected the details of cement bags issued for self use within the plant as it was felt that in respect of such self use of cement bags with or without **MRP**, duty should have been paid as per the rates given from time to time against Sl.No: 1C of the Notification.

9. Based on the report of the Jurisdictional Preventive group, the Commissioner of Central Excise, Guntur, by his show cause notice dated 10.2,2012, sought to recover differential duty of **Rs.1,75,51,482/-** in respect of sale of cement bags to **APSHCL** and cement bags taken for self use during the period March 2008 to February 2011. In the show cause notice, it was contended that the sale of cement bags to **APSHCL** was not "**retail sales"** as per Standards of Weights and Measures (Package Commodity) Rules, 1997, (hereinafter referred to as **SWMR**). Similarly, it was contended that in respect of cement bags printed with MRP and taken for self use, the rate of duty, as per Sl.No: 1A was not applicable and differential duty was sought to be demanded by adopting the rates of duty specified from time to time against Sl.No: 1C of the Notification. In addition to duty recovery proceedings, penal and interest recovery proceedings were also contemplated under Section 11 AC and 11 AB of the CE Act, as it stood during the relevant period. The Commissioner of Central Excise, after giving hearing on 19.7.2012 and after taking in to account, the detailed written submission given at the time of personal hearing, confirmed the proposals made in the show cause notice and ordered for recovery of differential duty of **Rs.1,75,51,482**/- and also imposed equal penalty under Section 7 AC of the CE Act and also demanded interest under Section 11 AB of the Act.

10. The appellants have come before this Tribunal, on the basis of the following grounds.

10.1 The Commissioner has erroneously concluded that **APSHCL** would be covered by the institutional/industrial customers and he failed to appreciate that **APSHCL** was only an intermediary organisation of the Andhra Pradesh Government, to monitor the implementation of **Indira Amma Housing Programme**. **APSHCL** was not directly engaged in any construction activity in the case of Indira Amma Housing Programme and the cement bags sold to **APSHCL** were issued to the beneficiaries for construction of houses under the above referred scheme of the Govt. The cost of cement released to the beneficiary was treated as a part of the amount to be released to the beneficiaries. Therefore, **APSHCL** acted as an intermediary for distribution of cement bags to the individuals who were ultimate beneficiaries and hence they were not covered by the category Institutional/Industrial customer. The appellants submit that all the cement companies who supplied cement to APSHCL for distribution to the beneficiaries were required to affix MRP and therefore the appellants had to print MRP of Rs.190/- on the bags meant for **APSHCL.**

10.2 The appellants submit in between the cement manufacturers in AP and the ultimate beneficiaries under the 'Indira Amma Housing Scheme', **APSHCL** acted only as an instrumentality for distribution of cement bags and therefore, the cement bags printed with **MRP** were covered by the definition of retail pack given under Package Commodity Rules.

10.3 The appellants contend that the "retail sale" as per the **PCR** rule is not restricted to sales but also extends to distribution or delivery of such commodities through retail agencies or other instrumentalists for consumption by an individual or a group of individual or any other customer. In the case of appellants as well as for other cement plants, **APSHCL**, acted only as an instrumentality and even as per the letter of the Managing Director of **APSHCL** dated 20.10.2009, the cement bags purchased by them were issued to the beneficiaries for construction of their houses under Indira Amma Housing Programme. Therefore, it is contended that **APSHCL** never consumed the cement bags sold by the appellants and they were only meant for re distribution and the ultimate consumer being the beneficiaries under the above scheme.

10.4 The appellants further contend that in order to constitute "***retail sales"***, there is no pre requirement that there should be direct sales from the appellants to the beneficiaries, as in the case of sales through dealers, **APSHCL** in this case, had taken the role of a dealer or distributor or instrumentality for distribution of cement bags sold by the appellants.

10.5 The appellants had to print **MRP** on the cement bags sold to **APSHCL**, as per the clarification given by the Controller of legal Metrology AP in the month of 5.9.2008 to cement plants supplying cement bags to **APSHCL.** No adverse inference should have been drawn against the appellants to construe that MRP of Rs.190/- was affixed on cement bags with the sole intention of paying lesser rate of duty on the sale of cement bags to **APSHCL.**

10.6 The appellants contend that their sales to **APSHCL** were retail sales as per Package Commodity Rules and the cement bags supplied by them were in conformity with the requirement of retail package as per package commodity rules and hence the payment of duty as per the rates given against Sl.No: 1A of the Notification 4/2006 was in order.

10.7 The learned Commissioner's reasoning for not extending the concessional rate for cement bags taken for self use is not correct as no condition of sale is contemplated by the Notification 4/2006 to avail the concessional rate of duty applicable under Sl.No: 1A. Further, as manufacturers, the appellants were eligible to issue cement bags of any description i.e. bags with MRP, for self use, as long as duty on such bags was paid as per the rates given for sale of cement bags with **MRP** of less than Rs.190/-

11. The appellants submit that the dispute relating to the applicability of the rates of duty given against Sl.No: 1A of the Table of Notification 4/2006 was set at rest by CESTAT, Bangalore in the case of **CCEX, Hyderabad-III vs Sagar Cements Ltd**. **(2010-256 ELT-616- TRI- BANG**) and the above ruling of CESTAT was also upheld by the Hon'ble Supreme Court **(2011-271-ELT-A16-SC)**by dismissing the civil appeal filed by the CCE, Hyderabad. .The appellants further submit that the ratio laid down in the above ruling was followed in the following two cases.

a. Parashakthi Cement Industries Ltd. Vs CCE, Guntur [**2020 (6) TMI 329 (CESTAT-Hyderabad)]**

b. CCE, C & ST Hyderabad vs Orient Cements Ltd. [**2016 (7) TMI 1420 (CESTAT- Hyderabad)]**

12. There is also demand with respect to self consumption of cement by the Appellant/Assessee, wherein also, they have paid duty at MRP.

13. Opposing the Appeal, learned AR for Revenue relies on the Impugned Order. They further submit that as in the case of Sagar Cements, this Appellant was not having any directions from the Legal Metrology Department to print the MRP on the retail bags even if they have cleared to institutional sales.

14. Having considered the rival contentions, we find that the direction was issued in the case of Sagar Cements by Legal Metrology Department and there was no reason to take a view that such direction has not been given to the present Appellant. Accordingly, we find that the issue is squarely covered by the precedent ruling of this Tribunal in the case of Sagar Cements, which has been confirmed subsequently, by the Hon'ble Supreme Court. So far self consumption of cement, where duty is paid at MRP is concerned, this issue is

also covered by the judgment of Chennai Bench of this Tribunal in Appellant's own case vide Final Order No.40884/2023 dated 10.10.2023.

15. Accordingly, in view of the aforementioned findings and observations, we allow this Appeal and set aside the Impugned Order. Appellant shall be entitled to consequential benefits, in accordance with law.

(Dictated and pronounced in the Open Court)

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

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