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

Division Bench – Court No. – I

Excise Appeal No. 27248 of 2013

(Arising out of Order-in-Appeal No. 12/2013 (G) CE dt.14.03.2013 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals), Guntur)

M/s Sri Chakra Cements Ltd
6-3-668/10/66, Durganagar Colony,
Punjagutta, Hyderabad – 500 082 **......Appellant**

VERSUS

Commissioner of Central Excise & Service Tax, Guntur
PB No.331, CR Building, Kannavarithota,
Guntur, Andhra Pradesh – 520 004 **......Respondent**

Appearance

Shri P.V.B. Chary, Advocate for the Appellant.
Shri K. Raji Reddy, AR for the Respondent.

Coram: **HON'BLE MR. A.K. JYOTISHI, MEMBER (TECHNICAL)**
HON'BLE MR. ANGAD PRASAD, MEMBER (JUDICIAL)

FINAL ORDER No. A/30373/2025

Date of Hearing: 09.06.2025
Date of Decision: 19.09.2025

[Order per: A.K. JYOTISHI]

M/s Sri Chakra Cement Limited (hereinafter referred to as Appellant) are in appeal against the Order of the Commissioner (Appeals) dt.14.03.2013 (impugned order). The Commissioner (Appeals) has dropped the demand to the extent supplies were made to SEZ and also for captive consumption of clinkers and non-maintenance of record. However, he upheld the demand to the extent of cement cleared to APSHCL and self-consumption. On the issue of limitation, he found that since the appellants were not disclosing supply to APSHCL and for self-consumption, hence, department has rightly invoked extended period for issuing SCN.

2. The issue, in brief, is that the appellants were manufacturing cement and clinkers, inter alia, in 50 KG bags to institutional consumers i.e., APSHCL. They had also cleared certain cement in 50 KG bags for self-consumption. The department felt that they were covered under the category of industrial consumer.

3. Learned Advocate for the appellant submits that during the disputed period from March, 2007 to 23.02.2009, they were discharging Central Excise duty under Notification No.4/2007-CE dt.1.3.2007 as per S.No.1A, where the applicable rate was Rs.350/- per tonne, whereas, the department claimed that the same would be covered under S.No.1C of the said notification attracting Rs.400/- per tonne. The Appellant submits that the issue as to whether the duty was payable as per S.No.1C or under S.No.1A was finally decided by the Hon’ble Supreme Court on 15.04.2011, wherein the decision of the Tribunal in the case of Rain Commodities Limited Versus CCE, Tirupati [2011 (267) ELT 286 (Tri-Bangalore)] was upheld. The Tribunal confirmed that the duty was payable as per S.No.1C and not S.No.1A. The appellants are now not contesting this issue on merit as the view of the Department as regards applicability of S.No.1C stands finalised. Therefore, their main submission is that keeping in view the history of this dispute and judicial pronouncements and in the backdrop of the fact that there was no malafide intent and the appellants were merely adopting S.No.1A, which was upheld by the Tribunal in the case of Sagar Cement Limited and others [2010 (256) ELT 616 (Tri-Bang)], vide its order dt.12.04.2010, wherein it was held that supplies made to APSHCL are eligible for exemption under S.No.1A and the said view was confirmed by Apex Court.

4. Learned AR reiterates the findings of the Commissioner (Appeals).

5. Heard both sides and perused the records.

6. Since the confirmation of demand on merit is no longer being contested in respect of demand upheld by the Commissioner (Appeals), we only take up the issue of whether in the facts of the case, the invocation of extended period for demand is correct or otherwise. The Commissioner (Appeals) has upheld the invocation solely on the ground that they had not disclosed the fact relating to clearances to APSHCL and self-consumption in

their ER-1 return. There is no other substantive ground adduced in support that they had deliberately withheld this information or there was any malafide intent behind non-disclosure. On the other hand, we find that the issue as to which serial number of the notification would be applicable under similar situations was being contested at different levels and the view adopted by the appellant was in fact confirmed by the Tribunal in the case of Sagar Cements Ltd (supra). This was also appealed by the Department. We also note that in the case of Grasim Industries Limited vs CCE, Trichy [2009 (238) ELT 655 (Tri-Chennai)] vide Order dt.20.10.2008, the department had taken a stand that the assessee i.e., Grasim Industries Ltd were not eligible for assessment under S.No.1C, whereas, the Tribunal held that the said S.No.1C was applicable. The department challenged this decision also. In the meanwhile, in the case of Rain Commodities Limited (supra), it was finally held that duty was payable under S.No.1C. Therefore, in terms of decision by the Hon'ble Supreme Court in the case of Rain Commodities Limited on 15.4.2011, the issue was finally settled. Hence, on merit, the appellants are neither contesting nor there is any case for them. However, they are contesting the invocation of larger period.

7. We also note that in this case the demand was issued for the period March, 2007 to 23.02.2009. On 13.12.2011, it is also noted that the officers had visited the appellant's premises in 2008 itself. However, the moot issue to be examined is that this issue was being agitated before different judicial and quasi-judicial bodies and conflicting views were expressed as regards applicability of S.No.1A and 1C of the notification. Therefore, we find that it is more of an interpretation issue till the time the matter was finally set to rest in terms of order of Hon'ble Supreme Court in the case of Rain Commodities judgement (supra). It is also apparent that the SCN was issued only on 13.12.2011, once The Hon'ble Supreme Court had dismissed the appeal of the department against the Rain Commodities Limited. Therefore, it is apparent that there has been a change of opinion insofar as applicability of S.No.1A and 1C to the facts of the case is concerned, keeping in view different judgments and stand of the department during the intervening period. We also note that there is no other substantial ground for invoking extended period and therefore, we feel that there was certain bonafide belief for the appellant to follow S.No.1A during the material time, even though it was ultimately not found to be correct. In fact, we also find

force on the reliance placed on the judgement of Modipon fibres company vs CCE, Ghaziabad [2012 (284) ELT 561 (Tri-Del)] by the coordinate bench, wherein, it was held that that it was unfair to infer that assessee was aware of the law laid down by Hon'ble Supreme Court immediately after the date of pronouncement of the judgement. Therefore, in the given facts, we find that invocation of extended period for demand is bad in law and therefore, not sustainable.

8. Therefore, on merit, department stand is tenable, however, the demand is clearly time bared and therefore, it is liable to be set aside on the grounds of limitation.

9. Appeal allowed.

(Pronounced in the Open Court on 19.09.2025)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

(ANGAD PRASAD)
MEMBER (JUDICIAL)

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