

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

Division Bench – Court No. – I

Excise Appeal No. 28296 of 2013

(Arising out of Order-in-Original No. 31/2013-C.Ex dt.30.08.2013 passed by Commissioner of Customs, Central Excise & Service Tax, Guntur)

The Ramco Cements Ltd

(Previously Madras Cements Ltd)
Kumarasamy Raja Nagar, Jaggayyapet Taluk,
Krishna Dist., Andhra Pradesh – 521 457

.....Appellant

VERSUS

**Commissioner of Central Tax
Guntur**

PB No.331, CR Building, Kannavarithota,
Guntur, Andhra Pradesh – 522 004

.....Respondent

and

Excise Appeal No. 21412 of 2014

(Arising out of Order-in-Original No. 05/2014-C.Ex dt.22.01.2014 passed by Commissioner of Customs, Central Excise & Service Tax, Guntur)

The Ramco Cements Ltd

(Previously Madras Cements Ltd)
Kumarasamy Raja Nagar, Jaggayyapet Taluk,
Krishna Dist., Andhra Pradesh – 521 457

.....Appellant

VERSUS

**Commissioner of Central Tax
Guntur**

PB No.331, CR Building, Kannavarithota,
Guntur, Andhra Pradesh – 522 004

.....Respondent

Appearance

Shri R. Parthasarathy, Consultant for the Appellant.
Shri V.R. Pavan Kumar, AR for the Respondent.

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

FINAL ORDER No. A/30409-30410/2025

Date of Hearing: 17.06.2025
Date of Decision: 10.10.2025

[Order per: A.K. JYOTISHI]

M/s The Ramco Cements Ltd (previously Madras Cements Ltd) (hereinafter referred to as appellant) are in appeal against the Order-in-Original dated 30.08.2013 passed by the Commissioner pursuant to SCN dt.02.11.2012 for the period October, 2007 to September, 2012 in Appeal No. E/28296/2013. They are also in appeal against the Order-in-Original dt.22.01.2014 passed by the Commissioner pursuant to SCN dt.03.10.2013 for the period October, 2012 to June, 2013 in Appeal No. E/21412/2014.

2. The facts, in brief, are that the appellants are manufacturers of cement and were selling cement packed in bags of 50 kg to dealers/distributors as also to industrial/institutional customers directly from the factory and also through the depots. The department, inter alia, felt that the appellants were paying Excise Duty on the value, exclusive of freight, which was incurred by the appellant for delivery of goods at the premises of the customers based on certain terms and conditions and specifications mentioned in the agreements and that the sale was on FOR destination basis. Therefore, relying on the provisions under section 4(3)(C)(iii) of the Central Excise Tariff Act, 1985 (in short – the Act) read with Rule 5 of Central Excise (Valuation) Rules, 2000 and especially relying on explanation (2), which provided that cost of transportation from the factory to the place of removal where the factory is not the place of removal shall not be excluded for the purpose of determining the value of excisable goods, the department demanded duty to the extent of cost of transportation from the factory gate to the buyer's premises, which was not added to the assessable value for discharging excise duty.

3. On adjudication, the appellants have mostly contested that they were eligible to discharge excise duty during certain period on the basis of MRP as per S.No.1(ii) of the Notification No. 04/2007-CE and since RSP or MRP includes freight element, it is not permissible to reassess the same goods without giving effect to the OIO dt.28.09.2012. Further, for the period March, 2011 to September, 2012, they are not liable to pay any tax on freight amount since it has been concluded that sale of cement bags of 50 kg to industrial customers are liable to be assessed on the basis of RSP. They have also relied on the Board Circular No.354/81/2000-TRU in support that where the delivery of goods is made at a place other than the factory,

then the assessable value shall be the transaction value without the addition of cost of transportation from the factory up to the place of delivery and also relied on various judgments including Escorts JCB Vs CCE, Delhi [2002 (146) ELT 31 (SC)] and Prabhat Zarda Factory Ltd Vs CCE [2002 (146) ELT 497 (SC)]. The adjudicating authority considered the statutory provisions and, inter alia, held that based on perusal of specimen copy of invoices and purchase orders, the rate mentioned in the purchase orders is inclusive of loading, transportation charges, all taxes and therefore, when the appellant was collecting the entire and exact amount quoted in the purchase order besides showing freight separately in the invoice and collecting it, it is obvious that they have collected the transportation charges. It was also an admitted position that the sale is on FOR destination basis. He also observed that their contention that invoices contain VAT details cannot be a valid ground to substantiate their case that the goods are sold at factory gate since terms and conditions of sale and related facts establishes that the sale has taken place at the customer's place only and therefore, the customer's place will be the place of removal. It was also observed that while excise duty was discharged on ex-works price, sales tax was paid on ex-works price plus excise duty and freight indicating that the sale has taken place at the delivery point and not at the factory gate and therefore, held that the place of removal in the instant case is as per section 4(3)(c)(iii) of the Act and not under section 4(3)(c)(i). He has also distinguished all the relied upon circulars and judgments. As regards dispute raised by the appellant concerning the total freight being only Rs.26,99,90,776/- and not Rs.81,43,95,474/-, relying on the earlier details furnished by the appellants themselves, the contention of the appellants was not accepted. On the issue of limitation, he, inter alia, has observed that the appellants never brought to the knowledge the conditions of the agreement/contract between them and their customers, which was important for deciding correct duty liability. Accordingly, demand of excise duty of Rs.7,61,34,476/- was confirmed along with interest and equal penalty under section 11AC. In Appeal No.E/21412/2014, demand of excise duty of Rs.4,08,18,405/- was confirmed along with interest and penalty of Rs.1,36,00,000/- under section 25(1) of Central Excise Rules, 2002.

4. Learned Advocate for the appellant is mainly contesting that the issue is essentially revolving around the fact as to what would be the place of

removal even in the case of admitted position that the sale is on FOR destination basis. They are relying heavily on the judgment of Hon'ble Supreme Court in the case of CC & CE, Nagpur Vs Ispat Industries Ltd [2015 (324) ELT 670 (SC)], where it was clearly held that place of removal will always be the factory gate or the depot and therefore, freight charges for transportation of cement bags from their factory/depot to their customer's place was rightly excludable. He has also relied on the following judgments of coordinate benches where relying on the judgment of Ispat Industries Ltd (supra), it was held that freight element was not includable.

- a) India Cements Ltd Vs CCE & ST, Hyderabad [2023 (10) CENTAX 158 (Tri-Hyd)]
- b) Sri Chakra Cements Ltd Vs CCE, Visakhapatnam-GST [Final Order – A/30009/2023 dt.01.02.2023]
- c) My Home Industries Pvt Ltd Vs CCE, Visakhapatnam [Final Order – A/30124-30127/2022 dt.28.11.2022]
- d) Vijai Electricals Ltd Vs CCE, C & ST, Hyderabad-I [2019 (11) TMI 301 – CESTAT Hyderabad]
- e) KJV Alloy Conductors Pvt Ltd & Ors Vs CCE & ST, Medchal-GST [2017 (7) TMI 55 – CESTAT Hyderabad]

5. On the other hand, learned AR submits that this issue has been dealt with extensively by the Larger Bench of this Tribunal in the appellant's own case i.e., The Ramco Cements Ltd Vs CCE, Puducherry [2023 (12) TMI 1332 – CESTAT Chennai (LB)] and also by this Tribunal in the case of Pawan Power & Telecom Ltd Vs CCT, Medchal-GST [2025 (5) TMI 1526 – CESTAT Hyderabad] and Schneider Electric India Pvt Ltd Vs CCT, Medchal-GST [2025 (3) TMI 1484 – CESTAT Hyderabad]. He, therefore, submits that the demand of duty has been rightly confirmed, as also since despite knowing the legal provisions, they had not computed their assessable value correctly and therefore, in the facts of the case, extended period has been rightly invoked.

6. Since both appeals involve similar factual matrix, we take up both the appeals together for disposal.

7. Heard both sides and perused the records.

8. The short question for determination in both the appeals is whether the freight charges, which were being collected by the appellant from the customers, were liable to be included in the assessable value for payment of Central Excise Duty or otherwise. The admitted position in this case is that the sales are on FOR destination basis and not ex-works. This is apparent from the specimen copies of sales invoices and purchase orders submitted by the appellant along with appeal. Therefore, it is obvious that while all-inclusive price per bag/ per MT was being agreed upon, the invoices raised were less than that to the extent of transportation cost and other expenses, taxes, etc. This has not been disputed. What instead is being disputed is that in terms of the judgment of Hon'ble Supreme Court in the case of Ispat Industries Ltd (supra), there cannot be any other place of removal other than factory gate/depot and hence, the sale has to be reckoned as ex-works for the purpose of payment of excise duty. Both sides have relied on various case laws in support where the Tribunals have either relied upon the judgment of Ispat Industries Ltd (supra) or they have relied upon the judgment in the case of Roofit Industries Ltd [2015 (319) ELT 221 (SC)]. We find that the issue as to how to decide what would be the place of removal post the judgments cited by both sides viz., Ispat Industries Ltd (supra) and Roofit Industries Ltd (supra), was extensively dealt with by the Larger Bench in the case of The Ramco Cements Ltd Vs CCE, Puducherry (supra). The facts in that case were that clearances were on FOR contract basis and the Larger Bench took into consideration various judgments including CCE & ST Vs Ultra Tech Cement Ltd [2018 (2) TMI 117 (SC)], Ispat Industries Ltd (supra), CCE, Mumbai-III Vs Emco Ltd [2015 (8) TMI 200 (SC)] and Roofit Industries Ltd (supra) and Escorts Ltd Vs CCE, Delhi-II [2004 (10) TMI 91 (SC)], etc. After extensively going through various citations, Board Circular dt.08.06.2018, etc., inter alia, held that in case where clearances of goods are against FOR contract basis, the authority needs to ascertain the place of removal by applying the judgments of the Hon'ble Supreme Court in Emco Ltd (supra), Roofit Industries Ltd (supra), the decision of the Hon'ble Karnataka High Court in Bharat Fritz Werner [2022 (7) TMI 352 (Kar.)] and the Circular dt.08.06.2018 of the Board to determine the admissibility of Cenvat credit on the GTA service up to the place of removal. We also note that there is no definition of place of removal during the relevant time under

Cenvat Credit Rules, 2004 and hence the same was adopted from parent Act i.e., section 4 of Central Excise Act.

9. In the case of Pawan Power & Telecom Ltd (supra), this Bench also under similar factual matrix, held that under particular factual matrix, the judgment in the case of Roofit Industries Ltd (supra) and Emco Ltd (supra) were relevant and not that of Ispat Industries Ltd (supra) as clearly price was on ex-works and thereafter, upheld the order passed by the Commissioner (Appeals). Further, in the case of Schneider Electric India Pvt Ltd (supra), after going through various case laws and submissions, inter alia, it was held that when it is an admitted fact that sale is on FOR basis, then the judgment in the case of Roofit Industries Ltd (supra) and Emco Ltd (supra) would be more appropriately applicable. Thereafter, we find that in the admitted factual matrix, the sale has taken place at the premises of the industrial/institutional customers and therefore, the freight element is not excludable from the assessable value/transaction value for the purpose of determination of duty. However, we find that there is some dispute which has not been adequately explained by the adjudicating authority viz., that wherever the sale was in terms of RSP, the question of inclusion or exclusion of freight would not arise. We find merit in this that when an ad valorem rate was based on RSP/MRP, the element of freight, per se, would not be applicable. This aspect was, however, not clearly brought out in the impugned order. Secondly, as regards quantum of freight charges collected, which became the basis for demand, is also discarded solely on the ground that appellants had themselves given the figure of transportation cost and no other evidence was brought disputing the same. We find that if the appellants are clear that actual freight is much lesser than what actually has been taken by the department, they are well within their right to establish the same for the purpose of recomputing the duty element. Therefore, these two issues need to be remanded back for redetermination of duty liability.

10. On the issue of limitation, we find that the appellants were clearly aware of the statutory provisions and in fact, had one round of litigation as regards correct applicability of the notification as well as coverage under RSP/MRP. Despite that they had not paid the excise duty inclusive of freight. At that point of time, there was no judgment in their favour, which could have been held to be the basis for their bonafide belief for not including the

same in a clear admitted position of their sale being on FOR destination basis and not ex-works basis. Moreover, we find that they have discharged the VAT/Sales Tax on the composite value including the freight and also that they had not shown their sales pattern in terms of purchase order/agreement, etc., to the department. Therefore, the department, in absence of these documents, would not have been able to decide the sales pattern and therefore, were not in a position to understand whether it was the sale ex-works or sale on FOR destination basis. Therefore, we find that the Commissioner has rightly held that extended period is invokable and that penalty is also imposable. Therefore, we do not find any infirmity insofar as the merit of the case is concerned, including invocation of extended period. However, we find that the demand needs to be recomputed on two accounts, viz., if there is any sale under RSP/MRP, which also got covered in this demand and also the recomputation of duty based on actual transportation charges collected by them from their customers. The appellants shall provide the necessary information to the department for recomputing this amount. Therefore, to this extent, the matter has to be remanded back to the adjudicating authority.

11. In view of the above, the appeals are allowed partly by way of remand.

(Pronounced in the Open Court on 10.10.2025)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

(ANGAD PRASAD)
MEMBER (JUDICIAL)