IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
EAST REGIONAL BENCH : KOLKATA

Misc. Application No. 76261 /2018 &
Appeal No.E/195/2010

(Arising out of Order-in-Original No.50-51/Commissioner/09 dated 22.12.2009 passed by the Commissioner of Central Excise & Service Tax, Jamshedpur)

Commissioner of Central Excise, JSR

…APPELLANT(S)

VERSUS

M/s. Nuvoco Vistas Corporation Ltd (erstwhile Lafarge India Pvt. Ltd.)

…RESPONDENT (S)

APPEARANCE

Shri Ravi Raghavan and Shri Deepro Sen, Advocates for the Appellant
Shri A.Roy, Suptd.(AR) for the Respondent.

CORAM:
HON'BLE SHRI P. K. CHOUDHARY, JUDICIAL MEMBER
Hon'ble SHRI V.Padmanabhan, Member (Technical)

Date of Hearing/Decision : 04.12.2018

ORDER NO.MO/76042/2018 & FO/A/77088/2018

Per Bench :

The appellant assessee has filed the present Miscellaneous Application for substitution of the Cause Title.

2. The advocate appearing on behalf of the Applicant, has produced a "Certificate of Incorporation pursuant to change of name" issued under Rule 29 of the Companies (Incorporation) Rules, 2014, on 12.03.2017, for the purposes of change of the name of the Company. He submits that the said Certificate demonstrates that the name of the Company has been changed from M/s Lafarge India Ltd. to M/s Nuvoco Vistas Corporation Ltd.

3. Heard both sides and perused the said Certificate dated 12.03.2017. It is seen from the record that the name of the Company has been changed from M/s Lafarge India Ltd. to M/s Nuvoco Vistas Corporation Ltd. vide Certificate dt.12.03.2017 issued under Rule 29 of the Companies (Incorporation) Rules, 2014. The present name of the Appellant Company is **M/s Nuvoco Vistas Corporation Ltd..**

4. In the result, the Miscellaneous Application for change of Cause Title is allowed.

5. Revenue is in appeal against the Order-in-Original No.50-51/Commisioner/09 dated 22.12.2009. The period of dispute is from November, 2007 to March, 2009. The appellant is a manufacturer of cement which is cleared to both institutional buyers as well as to retail buyers. The latter clearances were made with the Retail Sale Price (RSP) embossed on the packets. The dispute covers the period from March, 2007 to October, 2007. The appellant made clearances to Deputy Commissioner, Singhbhum, Jamshedpur in 50 kg bags on which RSP of Rs.189 was fixed. They also cleared cement to retail customers in 50 kg bags on which RSP was fixed ranging from Rs.190 to Rs.250 per bags. Clearances of cement were made by the appellant by availing Notification No.4/2006-CE dated 01.03.2006. The relevant provisions of the Notification are reproduced below for ready reference:

Table

Sl.No.	Chapter or heading or subheading or tariff item of the First Schedule	Description of excisable goods	Rate	Condition No.
(1)	(2)	(3)	(4)	(5)
1.	…………	………………………………………..	………………	………….

1A	2523 29	All goods, whether or not manufactured in a mini cement plant, not covered in S.No.1 and cleared in packaged form of retail sale price not exceeding Rs.190 per 50 kg bag or of per tone equivalent retail sale price not exceeding Rs.3800;	Rs.350 per tonne	--
1B	…………	……………………………………..	………………	…………
1C	2523 29	All goods, whether or not manufactured in a mini cement plant, not covered in S.No.1B , other than those cleared in packaged form	Rs.400 per tonne	--

Explanation - ……………………………………..
1……………………………………………………………….
(i)…………………………………………………………..
(ii)………………………………………………………….
2……………………………………………………………….
Provided…………………………………………………
Provided………………………………………………….
Provided also that where the retail sale price of the goods are not required to be declared under the Standards of Weights and Measures (Packaged Commodities) Rules, 1977, and thus not declared, the duty shall be determined as is in the case of goods cleared in other than packaged form;
3. Where on the package, more than one retail sale price is declared, the maximum of such retail sale prices shall be deemed to be the retail sale price;"

Sl.No.1A was later amended by Notification No.23/2007 dt. 03.05.2007 providing for 12% advalorem for cement of RSP over Rs.250 per bag of 50 kg.

6. As per above provisions, the Notification provides for a concessional rate of duty of Rs.350 per MT for cement cleared in packaged form having retail sales price not exceeding Rs.190 per 50 Kg bag and 12% of the Retail sale Price for cement cleared in packaged form having retail sales price exceeding Rs.190 but not exceeding Rs.250 per 50 Kg bag. The above rates are prescribed in terms of Sl.No.1A of the Notification. Sl.No.1C provides concessional rate of duty of Rs.400 per MT for cement cleared in other than

packaged form as well as those cases where RSPs are not required to be declared under the Standards of Weights and Measures (Packaged Commodities) Rules, 1977.

7. The appellant paid duty for clearances made to the Deputy Commissioner (RSP Rs.189 @ Rs.350 MT). In respect of clearances made to other retail customers, duty was paid @12% of the RSP.

8. The Department took the view that cement of all varieties were notified under Section 4A of the Central Excise Act, 1944 and further that since the same type of cement is being sold at different RSPs, the highest RSP is to be taken (which is more than Rs.250) and consequently the rate of duty payable on the cement cleared by the appellant should be charged to duty @ Rs.600 MT.

9. On the above lines show cause notice was issued. However, the adjudicating authority, vide the impugned order approved the payment of Central Excise duty @ 12% of the RSP and dropped the demand for differential duty. This order has been challenged by Revenue in the present appeal only on the limited question whether the respondents were eligible to claim exemption (under Sl.No.1A) against supplies of cement made to Deputy Commissioner, Singhbum and other such customers since these were allegedly not required to be affixed with MRP. The department has contended that in respect of such clearances, the respondent will be liable to pay duty @Rs.400 PMT in terms of Sl.No.1C of the Notification.

10. The Revenue is represented by Shri A.Roy, Suptd.(AR) and the respondent is represented by Shri Ravi Raghavan and Shri Deepro Sen, Advocates.

11. Ld. Representative of Revenue reiterates grounds of appeal.

12. On rival submission ld. Advocate for the respondent submits that no supplies were made during the disputed period to Deputy Commissioner, Singhbhum. He further asserted that during the period of dispute no supplies were made to other similar institutional suppliers also and as such the grounds proposed in the departmental appeal is not maintainable.

13. Heard both sides and perused the appeal records.

14. The adjudicating authority has dropped the entire demand by accepting the duty already paid by the appellant@12% of the RSP as per the Sl.No.1A of the Notification ibid. The limited grounds advanced by the Revenue in appeal is that if clearances were made to Deputy Commissioner Singhbhum are similar institutional customers, such clearances will be chargeable @Rs.400 Per MT. While we find no infirmity in the proposal the respondent has asserted categorically that no such supplies were made during the disputed period. As such we reject the Revenue's appeal but with the direction to the adjudicating authority to charge duty @Rs.400 Per MT if any such clearances have been made in the disputed period.

15. In view of the above the appeal filed by the Revenue is rejected with the above observations.

(Order Portion have already been Pronounced in the Open Court)

S/d.

(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

S/d.

(V.Padmanabhan)
MEMBER (TECHNICAL)

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