

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

**Misc. Application Nos. 76260 /2018 &
Appeal Nos.E/370/2009**

(Arising out of Order-in-Original No.21/Commissioner/09 dated 31.03.2009 passed by the Commissioner of Central Excise & Service Tax, Jamshedpur)

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

...APPELLANT(S)

VERSUS

Commissioner of Central Excise, JSR

...RESPONDENT (S)

APPEARANCE

Shri Ravi Raghavan and Shri Deepto 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/76041/2018 & FO/A/77087/2018

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. The appeal is directed against the Order-in-Original No.21/Commissioner/09 dated 31.03.2009. 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	Rs.350 per tonne	--

		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;		
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 MRPs, the highest MRP 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 after issuance of show cause notice, the adjudicating authority confirmed the payment of duty with interest and penalties in the impugned order, which is under challenge.

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

11. Ld. Advocate submitted that the impugned order is not sustainable for the following main reasons;

(i) Clearances made to Deputy Commissioner, Singhbhum were not to be treated as retail sale, but were in the form of sale to institutional customers. Accordingly, the rate of duty applicable will be only Rs.400 MT as per Sl.No.1C of the Notification. There is no justification for demand of duty at the tariff rate of Rs.600 MT.

(ii) For clearances made to retail customers, the RSP varied from Rs.190 to Rs.250 per 50 Kg bag. Each bag is affixed with one RSP only; hence the department is not justified in taking the highest RSP for determination of duty. He relied on the following decisions (i) CCE vs. Smithkline Beecham

Consumer Health Care Ltd.[2001(133) ELT 717 (T)] and (ii) CCE vs. Bell Granito Ceramic Ltd. [2009(235) ELT 171 (T)] to support the argument that the assessee can have different RSPs for different areas. Accordingly, he submitted that the duty is to be paid on each consignment for RSP between Rs.190-250 @12%. He also added that the duty as above was already paid by the appellant at the time of clearances.

iii) He submitted that the present issue involves interpretation of the Notification and as such there can be no justification for imposition of penalty. He relied on various case laws:

- (a) Comm. Of C.Ex & Customs, Raipur vs. Lafarge India Pvt. Ltd. [2017(348) ELT 289 (Tri.-Del.)]
- (b) ACC Ltd. vs. Comm. Of C.Ex., Coimbatore [2018(359) ELT 572 (Tri.-Chennai)].
- (c) Mysore Cements Ltd. vs. Comm. Of C.Ex., Bangalore-II [2010(249) ELT 398 (Tri.-Bang.)]
- (d) Dalmia Cements (Bharat) Ltd. vs. Commr. Of C.Ex. & Cus., Tirupati [2018(361) ELT 917 (Tri.-Del.)]
- (e) Sanghi Industries Ltd. vs. Commr. Of C.Ex.& S.T., Rajkot [2018(361) ELT 909 (Tri.-Ahmd.)]
- (f) Commr. Of Central Excise, Bhopal vs. Jaypee Rewa Plant [2018(360) ELT 98 (Tril.De.)]

12. Ld. DR justified the impugned order. He referred to the fact that even for clearances of goods to Deputy Commissioner, Singhbhum, the appellant had embossed RSPs and hence were liable to pay duty under Section 4A.

13. Heard both sides and perused the appeal records.

14. At the outset we consider the dispute regarding the clearances made to Deputy Commissioner, Singhbhum, Jamshedpur. Even though RSP has been embossed on such bags, it is obvious that such clearances do not fall in the category of retail sale, but are in the nature of sale to institutional customers. The Notification No.4/2006 specifically provides that clearances made in those cases where RSPs were not required to be declared under the

Standards of Weights and Measures (Packaged Commodities) Rules, 1977 are to be charged to duty at the rate as in the case of goods cleared in other than packaged form. Such goods are chargeable @400 per MT in terms of Sl. No.1C of the Notification *ibid*. Hence, we find no justification to charge excise duty @Rs.600 per MT (tariff rate). In the result, we restrict the differential duty demand to the difference between Rs.400 per MT (as per 1C) and Rs.350 per MT (as per 1A).

15. Now we turn to clearances made to retail customers by affixing RSP ranging from Rs.190 to 250. These are covered by Sl.No.1A of the Notification *ibid* and will be chargeable to duty @ advalorem rate of Rs.12% of the RSP printed. There is no justification for charging excise duty at tariff rate in view of the fact that different RSPs have been affixed only for clearances to different areas. But there is only one RSP on a single package and there was no case of two or more RSPs printed on any single package. Consequently the mischief of Explanation -III of the Notification will not be incurred. Since duty is already paid @12% of the RSP, the demand for differential duty made in the impugned order is set aside, in respect of clearances to retail customers.

15. Lastly we consider the issue of penalty. The issue of the present case is a question of interpretation of the Notification No.4/2006. It cannot be said that the appellant had any malafide intention and hence there is no justification for imposition of any penalty, which is set aside.

16. In the result, appeal is partly allowed.

(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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