

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,  
KOLKATA**

REGIONAL BENCH – COURT NO.2

**Excise Appeal No.75977 of 2016**

(Arising out of Order-in-Original No.93-96/Commr./DGP/2015-16 dated 26.02.2016 passed by Commissioner of Central Excise, Customs & Service Tax, Durgapur)

**M/s Ultratech Cement Limited**

Vill.-Banskopa, New EPIP, P.O.-Rajbandh, Durgapur-713212

**Appellant**

*VERSUS*

**Commissioner of CGST & Excise, Durgapur**

Satyajit Roy Sarani, City Centre, Durgapur-713216

**Respondent**

**WITH**

**Excise Appeal No.76502 of 2018**

(Arising out of Order-in-Appeal No.14/CE/RKL-GST/2018 dated 31.01.2018 passed by Commissioner (Appeals) of CGST & Excise, Bhubaneswar)

**M/s Ultratech Cement Limited**

Near Dhutra Railway Station, P.O.-Arda, Dist.-Jharsuguda, Odisha-768202

**Appellant**

*VERSUS*

**Commissioner of CGST & Excise, Bhubaneswar**

C.R.Building, Rajaswa Vihar, Bhubaneswar-751007, Odisha

**Respondent**

**APPEARANCE :**

Ms. Payal Bharwni, Chartered Accountant for the Appellant  
Shri S.S.Chattopadhyay, Authorised Representative for the Respondent

**CORAM:**

**HON'BLE MR.ASHOK JINDAL, MEMBER (JUDICIAL)**

**HON'BLE MR.K.ANPAZHAKAN, MEMBER (TECHNICAL)**

**FINAL ORDER NO.....75888-75889/2023**

DATE OF HEARING : 16 .06.2023

DATE OF DECISION : 16 .06.2023

**Per Ashok Jindal :**

Both the appeals are having identical issue. Therefore, both are disposed off by a common order.

2. The facts of the case are that the appellant is engaged in the manufacture of cement and clinked. During the impugned order, the appellant supplied cement to builders, hotels, Hospitals and Government manufacturing industries etc. for use in manufacturing activity i.e. construction. On all the bags of cement cleared to such customers, it is mentioned that the cement is not for sale and meant for industrial or institutional customers. The said cement was cleared by the appellants at the concessional rate of duty at Sl.No.1C of the Rate Notification No.4/2006-CE dated 01.03.2006 till 16.03.2012 and from 17.03.2012, the appellants cleared the cement at the rate prescribed at Sl.No.52 of Notification No.12/2012-CE dated 17.03.2012. The said rates are applicable if the sale price of the goods were required to be declared thereon in accordance with the Standards of Weights and Measures (Packaged Commodities) Rules, 1977 or the Legal Metrology (Packaged Commodities) Rules, 2011.

2.1 The benefit of the said Notification was denied to the appellant on the clearances of the above said buyers as such buyers cannot be recognised as industrial or institutional customers.

2.2 Both the show-cause notices were adjudicated . Differential duty was confirmed along with interest and penalties were imposed on both the appellants.

2.3 Against the said order, the appellant is before us.

3. Heard the parties and considered the submissions.
4. Considering the facts that the appellants' own case as reported in 2015 (317) ELT 505 (Tri.-Del.), this Tribunal has observed as follows :

**"5.** *It is seen that CESTAT in the case of M/s. Heidelberg Cement (India) Ltd. /M/s. Ultra Tech Cement Ltd. v. CCE, Nagpur/Raigad (supra) has clearly held that cement in 50 Kg bags sold to builders/developers qualifies as sales to institutional consumers and benefit of serial number 1C of Notification No. 4/2006-C.E., is available to such clearances. Regarding the demand pertaining to clearances to industries like M/s. Grasim Industries, M/s. Vikram Cement, M/s. Gwalior Chemical Industries Ltd., the adjudicating authority has opined that the said industries have not used such cement for manufacture of any excisable goods, having used cement for constructing factory building, residences and roads and repair work and hence such consumers cannot be called industrial consumers but at the same time, ready-mix-concrete producers who have actually used the cement for manufacturing excisable goods namely ready-mix-concrete, have also been denied the benefit available to industrial consumers. Further even if it is contended that the industries like M/s. Grasim Industries, Gwalior Chemicals, etc. did not use cement for producing excisable goods, they admittedly used the same for construction and would therefore qualify to be reckoned in the category of builders. Government also would qualify as institutional buyer. It is also not the case of Revenue that RSP was required to be printed on such sales as per the requirements of Metrology Act.*

**6.** *Further, the issue has been settled in favour of the appellants by judicial pronouncements in the case of M/s. Heidelberg Cement (India) Ltd. & M/s. Ultra Tech Cement Ltd. (supra), Mysore Cements Ltd. v. CCE, Bangalore-II (supra), Grasim Industries Ltd.*

*(Unit-I) v. CCE, Trichy, [2009 \(238\) E.L.T. 655](#) (Tri.-Chennai) as is fairly conceded by the Id. AR.”*

5. The issue is no more *res integra*, therefore, we hold that the demand of duty is not sustainable against the appellant as the cement in 50 kgs bags sold to the above buyers qualifies as sale to institutional/industrial customers to avail the benefit of the above cited Notification.
6. In that circumstances, we hold that no demand is sustainable against the appellant.
7. Accordingly, the impugned orders are set aside and the appeals are allowed with consequential relief, if any.

(Dictated and pronounced in the open court)

Sd/-  
**(Ashok Jindal)**  
**Member (Judicial)**

Sd/-  
**(K.Anpazhakan)**  
**Member (Technical)**

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