CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL MUMBAI

REGIONAL BENCH - COURT NO. I

Excise Appeal No. 86779 of 2016

(Arising out of Order-in-Original No. PUN-EXCUS-003-COM-0102 to 0116-15-16 dated 31.03.2016 passed by the Commissioner of Central Excise, Pune-III, Commissionerate.)

Ultra Tech Cement Ltd. **.... Appellant**
Reddipalayam Cement Works,
Reddipalayam, Dist. Ariyalur,
Tamilnadu- 621 704.

Versus

Commissioner of Customs, Excise and Service Tax, Pune-III **.... Respondent**
ICE House, 41-A, Sassoon Road,
Opposite Wadia College, Pune- 411 001.

WITH

Excise Appeal No. 86780 of 2016

(Arising out of Order-in-Original No. PUN-EXCUS-003-COM-0102 to 0116-15-16 dated 31.03.2016 passed by the Commissioner of Central Excise, Pune-III, Commissionerate.)

Ultra Tech Cement Ltd. **.... Appellant**
Reddipalayam Cement Works,
Reddipalayam, Dist. Ariyalur,
Tamilnadu- 621 704.

Versus

Commissioner of Customs, Excise and Service Tax, Pune-III **.... Respondent**
ICE House, 41-A, Sassoon Road,
Opposite Wadia College, Pune- 411 001.

AND

Excise Appeal No. 86781 of 2016

(Arising out of Order-in-Original No. PUN-EXCUS-003-COM-0102 to 0116-15-16 dated 31.03.2016 passed by the Commissioner of Central Excise, Pune-III, Commissionerate.)

Ultra Tech Cement Ltd. **.... Appellant**
Reddipalayam Cement Works,
Reddipalayam, Dist. Ariyalur,
Tamilnadu- 621 704.

Versus

Commissioner of Customs, Excise and Service Tax, Pune-III **.... Respondent**
ICE House, 41-A, Sassoon Road,
Opposite Wadia College, Pune- 411 001.

AND

Excise Appeal No. 86782 of 2016

(Arising out of Order-in-Original No. PUN-EXCUS-003-COM-0102 to 0116-15-16 dated 31.03.2016 passed by the Commissioner of Central Excise, Pune-III, Commissionerate.)

Ultra Tech Cement Ltd. **.... Appellant**
Reddipalayam Cement Works,
Reddipalayam, Dist. Ariyalur,
Tamilnadu- 621 704.

Versus

Commissioner of Customs, Excise and Service Tax, Pune-III **.... Respondent**
ICE House, 41-A, Sassoon Road,
Opposite Wadia College, Pune- 411 001.

AND

Excise Appeal No. 86784 of 2016

(Arising out of Order-in-Original No. PUN-EXCUS-003-COM-0102 to 0116-15-16 dated 31.03.2016 passed by the Commissioner of Central Excise, Pune-III, Commissionerate.)

Ultra Tech Cement Ltd. **.... Appellant**
Reddipalayam Cement Works,
Reddipalayam, Dist. Ariyalur,
Tamilnadu- 621 704.

Versus

Commissioner of Customs, Excise and Service Tax, Pune-III **.... Respondent**
ICE House, 41-A, Sassoon Road,
Opposite Wadia College, Pune- 411 001.

AND

Excise Appeal No. 86785 of 2016

(Arising out of Order-in-Original No. PUN-EXCUS-003-COM-0102 to 0116-15-16 dated 31.03.2016 passed by the Commissioner of Central Excise, Pune-III, Commissionerate.)

Ultra Tech Cement Ltd. **.... Appellant**
Reddipalayam Cement Works,
Reddipalayam, Dist. Ariyalur,
Tamilnadu- 621 704.

Versus

Commissioner of Customs, Excise and Service Tax, Pune-III **.... Respondent**
ICE House, 41-A, Sassoon Road,
Opposite Wadia College, Pune- 411 001.

AND

Excise Appeal No. 86786 of 2016

(Arising out of Order-in-Original No. PUN-EXCUS-003-COM-0102 to 0116-15-16 dated 31.03.2016 passed by the Commissioner of Central Excise, Pune-III, Commissionerate.)

Ultra Tech Cement Ltd. **.... Appellant**
Reddipalayam Cement Works,
Reddipalayam, Dist. Ariyalur,
Tamilnadu- 621 704.

Versus

Commissioner of Customs, Excise and Service Tax, Pune-III **.... Respondent**
ICE House, 41-A, Sassoon Road,
Opposite Wadia College, Pune- 411 001.

AND

Excise Appeal No. 86788 of 2016

(Arising out of Order-in-Original No. PUN-EXCUS-003-COM-0102 to 0116-15-16 dated 31.03.2016 passed by the Commissioner of Central Excise, Pune-III, Commissionerate.)

Ultra Tech Cement Ltd. **.... Appellant**
Reddipalayam Cement Works,
Reddipalayam, Dist. Ariyalur,
Tamilnadu- 621 704.

Versus

Commissioner of Customs, Excise and Service Tax, Pune-III **.... Respondent**
ICE House, 41-A, Sassoon Road,
Opposite Wadia College, Pune- 411 001.

AND

Excise Appeal No. 86790 of 2016

(Arising out of Order-in-Original No. PUN-EXCUS-003-COM-0102 to 0116-15-16 dated 31.03.2016 passed by the Commissioner of Central Excise, Pune-III, Commissionerate.)

Ultra Tech Cement Ltd. **.... Appellant**
Reddipalayam Cement Works,
Reddipalayam, Dist. Ariyalur,
Tamilnadu- 621 704.

Versus

Commissioner of Customs, Excise and Service Tax, Pune-III **.... Respondent**
ICE House, 41-A, Sassoon Road,
Opposite Wadia College, Pune- 411 001.

AND

Excise Appeal No. 86791 of 2016

(Arising out of Order-in-Original No. PUN-EXCUS-003-COM-0102 to 0116-15-16 dated 31.03.2016 passed by the Commissioner of Central Excise, Pune-III, Commissionerate.)

Ultra Tech Cement Ltd. **.... Appellant**
Reddipalayam Cement Works,
Reddipalayam, Dist. Ariyalur,
Tamilnadu- 621 704.

Versus

Commissioner of Customs, Excise and Service Tax, Pune-III **.... Respondent**
ICE House, 41-A, Sassoon Road,
Opposite Wadia College, Pune- 411 001.

AND

Excise Appeal No. 86793 of 2016

(Arising out of Order-in-Original No. PUN-EXCUS-003-COM-0102 to 0116-15-16 dated 31.03.2016 passed by the Commissioner of Central Excise, Pune-III, Commissionerate.)

Ultra Tech Cement Ltd. **.... Appellant**
Reddipalayam Cement Works,
Reddipalayam, Dist. Ariyalur,
Tamilnadu- 621 704.

Versus

Commissioner of Customs, Excise and Service Tax, Pune-III **.... Respondent**
ICE House, 41-A, Sassoon Road,
Opposite Wadia College, Pune- 411 001.

Appearance:

Shri Rajesh Ostwal, Advocate a/w Shri Charu Agrawal, Chartered Accountant for the Appellants

Shri Rajiv Ranjan, Authorized Representative for the Respondents

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85428-85438/2026

Date of Hearing: 13.03.2026

Date of Decision: 13.03.2026

Per: S.K. MOHANTY

Heard both sides and perused the case records.

2. Briefly stated, the facts of the case are that the appellants are engaged *inter alia*, in the manufacture of Cement, falling under Chapter 25 of the First Schedule to the Central Excise Tariff Act, 1985. The appellants manufacture cement in their various plants. In respect of those plants, the department had issued the Show Cause Notices (SCNs) which culminated into the present adjudication order. During the disputed period from March 2008 to January 2012, the appellants had sold cement to the independent buyers and also stock transferred the same to their Ready Mix Concrete (RMC) units for captive consumption, in order to manufacture of the final product i.e., RMC. For stock transferring the cement to their RMC units, the appellants had determined the assessable value in terms of Rule 8 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 for discharging the Central Excise duty liability. However, the department had contended that the value of cement cleared to the RMC units should have been determined under Rule 4(1)(a) of the Central Excise Act, 1944 read with Rule 4 of the Rules of 2000. On the basis of such understanding, show cause proceedings were initiated against all the units of the appellants for payment of the differential Central Excise duty. The SCNs issued to the appellants were commonly adjudicated vide the impugned order dated 31.03.2016 by the learned Commissioner, Central Excise, Pune, in confirming the proposals made therein. Feeling aggrieved with the said impugned order dated 31.03.2016, the appellants have preferred these appeals before the Tribunal.

3. The issue involved in this appeal for consideration by the Tribunal is, whether for stock transfer of cement to the RMC units, the assessable value is required be determined under Rule 8 of the Rules of 2000 as claimed by the appellants, or under Rule 4 of the said rules, as held by the department. Rule 8 of the Rules of 2000, prior to its amendment w.e.f. 01.12.2013, has provided that in order to fall under its purview, the entire manufactured goods are required to be stock transferred to the other units and wherever there is sale to the independent buyer, then the case would not fall under the scope of

such rule. However, Rule 8 *ibid* was amended vide Notification No. 14/2013 C.E.(N.T.) dated 22.11.2013. The effect of such amendment is that even an assessee can sell the part quantity of the manufactured goods to the independent buyer(s), as well as stock transfer a part quantity to their other manufacturing units, and that in case of captively use of the goods in the other manufacturing unit(s), then the valuation is required to be done under Rule 8 of the said rules.

4. We find that the issue arising out of the present dispute is no more open for any debate, in view of the Final Order No. A/87621/2024 dated 04.11.2024 passed by this Bench of the Tribunal, in the case of the appellants themselves (Excise Appeal No.87474/2015). The relevant paragraphs recorded in the said order are extracted herein below:

> *"4.1 Rule 8 ibid, during the relevant period in dispute (prior to 01.12.2013), reads as under:*
>
> > *"RULE 8: Where the excisable goods are not sold by the assessee but are used for consumption by him or on his behalf in the production or manufacture of other articles, the value shall be one hundred and ten per cent of the cost of production or manufacture of such goods".*
>
> *4.2 Rule 8 of the Rules of 2000 was substituted (w.e.f. 01.12.2013) vide Notification No. 14/2013-C.E. (N.T.), dated 22.11.2013. Such substituted rule reads as under:*
>
> > *"RULE 8: Where whole or part of the excisable goods are not sold by the assessee but are used for consumption by him or on his behalf in the production or manufacture of other articles, the value shall be one hundred and ten per cent of the cost of production or manufacture of such goods."*
>
> *5. The effect of both the un-amended as well as the amended provisions under Rule 8 ibid were that for the period prior to 01.12.2013, the un-amended rule used to be applied, where the goods were not sold, but were used entirely, for consumption by the manufacturer, or on his behalf, in the manufacture of other articles. However, the position w.e.f. 01.12.2013, under the amended Rule 8 was different, providing that the captive consumption of goods would also fall under the ambit of the said rule, even if, a part of the excisable goods is sold to the independent buyer(s). In other words, the distinctive features, as a result of such amendment in the statute, were that for the period prior to 01.12.2013, the entire excisable goods were required to be used for captive consumption, for manufacture of the other articles; and that, for the period after 01.12.2013, the manufacturer was permitted to sell a part of the*

manufactured excisable goods and to use the remaining part, for captive consumption, in order to manufacture the further excisable goods.

6. The appellants have claimed that their case is governed under the amended provisions of Rule 8 ibid, since the amendment took place in Rule 8 ibid, is clarificatory in nature and thus, should be given the effect retrospectively. We find that the amendment made by Notification dated 22.11.2013 (supra) in Rule 8 ibid was by way of substitution. The meaning assigned for the phrase 'substitution' in various dictionaries have been discussed by the Hon'ble Supreme Court, in the case of Government of India vs. Indian Tobacco Association - 2005 (187) E.L.T. 162 (S.C.), as under:

> *"15. The word "substitute" ordinarily would mean "to put (one) in place of another"; or "to replace". In Black's Law Dictionary, Fifth Edition, at page 1281, the word "substitute" has been defined to mean "To put in the place of another person or thing", or "to exchange". In Collins English Dictionary, the word "substitute" has been defined to mean "to serve or cause to serve in place of another person or thing"; "to replace (an atom or group in a molecule) with (another atom or group)"; or "a person or thing that serves in place of another, such as a player in a game who takes the place of an injured colleague"."*

7.1 The concept of "deemed value" was adopted under the erstwhile Section 4 of the Central Excise Act, 1944 for the purpose of determining the central excise duty payable on the excisable goods, irrespective of the price(s), actually charged for a class of buyer or different classes of buyers, to whom the goods were sold, and such deemed value was determined on the basis of "normal wholesale price". The said concept of "deemed value" was effective up to 30.06.2000. The said statutory provision was amended w.e.f. 01.07.2000, wherein the concept of "transaction value" was made the basis for assessing the excisable goods cleared by a manufacturer, for the purpose of payment of Central Excise duty. Section 4(1)(a) of the Act of 2000 has provided certain conditions, which cumulatively are required to be satisfied by an assessee for consideration of the aspect of transaction value. The conditions are that there must be sale of excisable goods; the sale is for delivery at the time and place of the removal; the assessee and the buyer are not related; availability of sale price; and the price is the sole consideration for the sale. If any one of the conditions specified in Section 4(1)(a) of the Act of 2000 is not satisfied, then the value of excisable goods shall be determined under Section 4(1)(b) ibid. For the purpose of the said sub-section, the Valuation Rules, 2000 were framed. The provisions for captive consumption of goods are dealt with in Rule 8 ibid.

7.2 On reading of the amended provisions contained in Section 4 ibid, it would transpire that the concept of 'transaction value' was brought into the statute book, with the objective and purpose of accepting different transaction values for each and every transaction, which may be charged by an assessee to different customers, for assessment purposes. As per the said amended provisions, so long as the transactions are based upon purely commercial consideration, where buyer and the seller have no relationship with each other, and price is the sole consideration for sale, the transaction would fall under the purview of Section 4(1)(a) ibid, for consideration as transaction value for the purpose of duty assessment.

7.3 Deriving the concept of transaction value contained in Section 4 ibid, the appellants had determined the value, at which clinkers would be removed from the factory to the independent buyers and such value declared by the appellants was also accepted by the department as the transaction value. However, in respect of the clearance of clinkers made to the appellants' own grinding units, the department had changed the stand and disputed that the provisions of Rule 4 of the Rules of 2000, alone would be applicable and the provisions of Rule 8 ibid should not be reckoned to, for the purpose of determining the value of clearances made for captive consumption by such other grinding units. We also accept the fact that such interpretation placed by the department is correct, if one reads the provisions of the un-amended Rule 8 ibid alone, without taking reference to any other provisions contained in the Central excise statute. However, on holistically reading of the valuation provisions, particularly Rule 4 and 8 of the Rules of 2000 and Section 4 of the Act of 1944, it transpires that there was an apparent anomaly in adopting 110% of the cost of production as the value, only in the case, where the entire excisable goods are captively consumed by the assessee and there is no involvement of any sale to the independent buyer. On the contrary, when part quantity of goods is sold to the independent buyers, then curtailment of the benefit of captive consumption, to adopt the sale value charged to the independent buyer, has created two separate methods of determining value, for same type of transactions made.

7.4 In our considered view, the legislative intent behind substitution of Rule 8 ibid was to adopt uniformity with regard to valuation of goods for captive consumption, as well as, for sale of goods to independent buyers. Thus, it can be said that the Central Government had issued the subsequent notification dated 22.11.2013 (supra), with the intention to rectify the anomaly, arisen out of the provisions of Rule 8 ibid, effective upto 30.11.2013. Hence, we are of the view that the substitution of Rule 8 ibid w.e.f. 01.12.2013 would be applied retrospectively and cannot be considered as having prospective *effect. It is a settled principle of law that if subsequent amendment, amends an earlier one in such a way, as it incorporates itself or a part of itself into the earlier, then the amendment must be construed as 'retrospective'. This is for the reason that the word 'substituted' would mean 'to put one in the place of another' or 'to replace'.*

8. In the case of Zile Singh vs. State of Haryana and Others (2004) 8 Supreme Court Cases 1, the Hon'ble Supreme Court have held that substitution of legal provision will have retrospective effect, as it repeals the old rule and brings into existence the new rule in its place. The relevant paragraphs in the said judgement are extracted herein below:

> *"23. The text of Section 2 of the Second Amendment Act provides for the word "upto" being substituted for the word "after". What is the meaning and effect of the expression employed therein - "shall be substituted"? 24. The substitution of one text for the other pre-existing text is one of the known and well-recognised practices employed in legislative drafting. 'Substitution' has to be distinguished from 'supersession' or a mere repeal of an existing provision. 25. Substitution of a provision results in repeal of the earlier provision and its replacement by the new provision (See Principles of Statutory Interpretation, ibid, p. 565). If any authority is needed in support of the proposition, it is to be found in West U.P. Sugar Mills Assn. v. State of Rajasthan v. MangilalPindwal, Koteswar U.P., State Vittal of Kamath v. K. Rangappa Baliga and Co. and A.L.V.R.S.T. Veerappa Chettiar v. S. Michael. In West U.P. Sugar Mills Association case a three-Judges Bench of this Court held that the State Government by substituting the new rule in place of the old one never intended to keep alive the old rule. Having regard to the totality of the circumstances centring around the issue the Court held that the substitution had the effect of just deleting the old rule and making the new rule operative. In MangilalPindwal case this Court upheld the legislative practice of an amendment by substitution being incorporated in the text of a statute which had ceased to exist and held that the substitution would have the effect of amending the operation of law during the period in which it was in force. In Koteswar case a three-Judge Bench of this Court emphasized the distinction between 'supersession' of a rule arid 'substitution' of a rule and held that the process of substitution consists of two steps: first, the old rule is made to cease to exist and, next, the new rule is brought into existence in its place."*

9. Further, we also find that consequent upon substitution of Rule 8 in the Rules of 2000, the CBEC has issued the Circular No. 975/9/2013-CX dated 25.11.2013, explaining the scope of the substituted Rule 8 ibid vis-à-vis the old Rule 8 ibid. The said circular clearly states that even though a part quantity of the excisable goods is sold, and part of the goods is captively consumed, the assessable value of the captively consumed *goods has to be determined under Rule 8 ibid. It was further stated that the amendment in the rules, concerning the present issue, has already been clarified by the CBEC in their earlier Circular dated 01.07.2002.*

10. We find that the order passed by the Larger Bench of the Tribunal, in the case of Ispat Industries Ltd. Vs. Commissioner of C. Ex. Raigad – 2007 (209) E.L.T. 185 (Tri.-LB) is distinguishable from the facts of the present case. Inasmuch as the benefit of amendment provided in Rule 8 ibid by Notification No.14/2013-C.E. (N.T.) dated 22.11.2013 and the corresponding Circular dated 25.11.2013 (supra), clarifying the legislative intention that each removal of excisable goods has to be assessed separately and therefore, Rule 8 ibid would only apply, even in the case, where part quantity of the goods are sold to the independent customers, have not been addressed to by the Larger Bench. Non-consideration of the benefit provided under the said notification dated 22.11.2013 may be owing to the reason that the same was not issued and published in the official gazette at the time of passing of the order by the Larger Bench."

5. In view of above, we do not find any merits in the impugned order, insofar as it has held that the valuation in case of stock transfer should be done under Rule 4 of the Rules of 2000. Therefore, the impugned order is set aside and the appeals are allowed in favour of the appellants.

(Dictated and pronounced in open court)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

SM