CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL MUMBAI

REGIONAL BENCH - COURT NO. I

Excise Miscellaneous Application No. 86166 of 2026
In
Excise Appeal No. 87734 of 2016

(Arising out of Order-in-Appeal No. PK/43/RGD/2016 dated 21.09.2016 passed by Commissioner of Central Excise, (Appeals-II), Mumbai, Zone-II)

Bulk Cement Corporation (India) Ltd. **.... Appellant**
Plot No. W-7, KWC, Kalamboli, Dist. Raigad,
Navi Mumbai, Maharashtra- 410 218.

Versus

The Commissioner, CGST and Central Excise **.... Respondent**
Raigad Commissionerate
3rd Floor, Utpad Shulk Bhawan, Plot No. C-24,
Sector-E, Bandra Kurla Complex,
Bandra (East), Mumbai- 400 051.

Appearance:

Shri Prakash Shah a/w Shri Mohit Raval, Advocates for the Appellant
Ms Bina Kawle, Authorized Representative for the Respondent

CORAM:
HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)

FINAL ORDER NO. A/86090/2026

Date of Hearing: 03.09.2026
Date of Decision: 03.09.2026

Per: S.K. MOHANTY

Heard both sides and perused the case records.

2. Applicant/Appellant has filed this miscellaneous application, praying for amendment of the cause title of the respondent in the appeal filed by them. It has been stated that the respondent's name in the appeal memorandum as '*The Commissioner of Central Excise and Service Tax, Raigad'*, may be changed and to be read as "*The Commissioner, CGST and Central Excise, Raigad Commissionerate",* consequent to change in the jurisdiction of such adjudicating authority. Prayer made by the applicant is considered and accordingly, the changed name of the respondent is

being incorporated in the present order. The miscellaneous application is disposed of.

3. Brief facts of the case are that the appellant is engaged *inter alia*, in the activities of packing of cement received from M/s. ACC Ltd. and selling the same to the buyers either in packed condition or as such, in bulk form. Cement is classified as an excisable commodity under Chapter Heading 252329 of the First Schedule to the Central Excise Tariff Act, 1985. The activity of packing and re-packing of cement amounts to manufacture, as per Section 2 (f) (iii) of Central Excise Act, 1944. On receipt of cement from M/s. ACC Ltd. under the cover of Central Excise invoices, the appellant avails CENVAT Credit of Central Excise duty mentioned therein. Cement received from M/s. ACC Ltd. are stored in the silos installed within the factory premises of the appellant. Cement stored in the factory premises are sold by the appellant after packing the same either in the bags or supplying the same in bulk through the specially designed vehicles viz., 'bulkers'. Owing to the design of the bulkers used for delivery of the cement, entire quantity could not be unloaded and cement short-received at the buyer's end is returned to the factory in the same bulker, against which the appellant issued a credit note for such short receipt quantity. Thereafter, the appellant availed CENVAT Credit of Central Excise duty on the returned quantity, based on the duplicate transporter copy of the invoice endorsed by the buyer. Such CENVAT Credit has been availed by the appellant in terms of sub-rule (1) read with sub-rule (3) of Rule 16 of the Central Excise Rules, 2002. Availment of credit by the appellant on receipt of the cement in the factory was objected to by the department on the ground that as per the requirement of sub-rule (1) of Rule 16 *ibid,* no records were maintained to demonstrate that the cement originally sold from the factory were received in the factory premises for carrying out the purpose under the said rule. The Show Cause Notice (SCN) dated 30.11.2010 issued in this regard was adjudicated vide the order dated 25.02.2016, wherein the original authority had confirmed the CENVAT demand of Rs.22,55,714/- along with interest and also imposed equal amount of penalty on the appellant under Rule 15 of the CENVAT Credit Rules, 2004 read with Section 11AC of the Central Excise Act, 1944. On appeal against the said adjudication order dated 25.02.2016, the Ld. Commissioner (Appeals) vide the impugned order dated 16.09.2016 has upheld confirmation of the adjudged demands and rejected the appeal

filed by the appellant. Feeling aggrieved with the impugned order dated 16.09.2016, the appellant has preferred this appeal before the Tribunal.

3. The appellant had contended that the proceedings initiated by the department for recovery of the CENVAT demand is barred by limitation of time inasmuch as the period of dispute involved in the present appeal is from March 2007 to November 2008, whereas the SCN was issued on 30.11.2010, which is beyond the normal period provided under Section 11A *ibid.* The appellant has contended that since there is no element of fraud, willful mis-statement, suppression of facts etc., with intent to evade payment of Central Excise duty, the same should have been confirmed within one year from the relevant date and since the SCN was issued beyond the normal period of one year, the same is clearly barred by limitation of time.

4. I have examined the case records, more particularly, the letter dated 07.01.2008 of the Jurisdictional Range Superintendent addressed to the appellant and the letter dated 24.06.2008 issued by the appellant to the Range Superintendent. On reading of the said letters, I find that the activities undertaken by the appellant for removal of bulk cement in the bulkers and receipt of the left over cement available in the bulkers in the factory were known to the department, for which the permission letter was also issued, permitting the appellant to avail the CENVAT Credit on the quantity received in the factory. Thus, under such circumstances, the charges made in the SCN, alleging involvement of the ingredients viz. fraud, collusion, willful mis-statement etc., cannot be leveled against the appellant. In absence of non-fulfillment of the said ingredients, the department was statutorily required to issue the SCN within one year from the relevant date. In the case in hand, since the SCN was issued on 30.11.2010, proposing for recovery of CENVAT demand for the period March 2007 to November 2008, I am of the considered view that show cause proceedings are clearly barred by limitation of time. Further, the department had also not brought on any iota of evidence to substantiate that the appellant is in fact indulged into the activities of fraud etc., with intent to evade the government revenue. Therefore, in my considered view, the adjudged demands confirmed by the department beyond the normal period of limitation cannot be sustained.

6. In view of the forgoing discussions, the impugned order is set aside and the appeal is allowed in favour of the appellant only on the ground of limitation.

(Dictated and pronounced in open court)

(S.K. Mohanty)
Member (Judicial)

SM