

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s).5994-5995 OF 2007

COMMNR. OF CENTRAL EXCISE, BELAPUR

Appellant (s)

VERSUS

M/S. SIMPLEX INFRASTRUCTURES LTD. & ANR.

Respondent(s)

(With appln(s) for stay and office report)
(FOR FINAL DISPOSAL)

Date: 10/04/2008 These Appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.H. KAPADIA
HON'BLE MR. JUSTICE B. SUDERSHAN REDDY

For Appellant(s) Ms. Binu Tamta, Adv.
Ms. Upasana Tiwari, Adv.
for Mr. B. Krishna Prasad, Adv.

For Respondent(s) Ms. Meenakshi Arora, Adv.
Mr. Haresh Mehta, Adv.
Mr. Suvrajyoti Gupta, Adv.
Mr. Harsh Paekh, Adv.

UPON hearing counsel the Court made the following
ORDER

The Appeals are allowed with no order as to costs, in terms
of the signed order.

(N. ANNAPURNA)
COURT MASTER

(MADHU SAXENA)
COURT MASTER

(Signed order is placed on the file)
IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.5994-5995 OF 2007

Commnr. of Central Excise, Belapur

...Appellant(s)

Versus

M/s. Simplex Infrastructures Ltd. & Anr.

...Respondent(s)

ORDER

These Civil Appeals are filed by the Department and are

directed against the order of the Customs Excise & Service Tax Appellate Tribunal, dated 6th November, 2006, in Appeals Nos.E/2480/2006 and E/2481/2006.

Respondent-assessee claimed exemption in respect of Ready Mix Concrete (RMC) on the ground that the said item was manufactured at site. However, on 10th August, 1998, show cause notice was issued by the Department to the assessee alleging suppression on number of grounds. The show cause notice was for the period July, 1993 to March, 1998. At this stage itself, we may clarify that in view of our judgment in the case of M/s. Continental Foundation Joint Ventures Holding, Nathpa, H.P. Vs. Commissioner of Central Excise, Chandigarh-I in Civil Appeal No.3139 of 2002, the Department is not entitled to invoke Section 11-A of the Central Excise Act for the entire period. Accordingly, we restrict the show cause notice dated 10 th August, 1998 to the period 10th

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February, 1998 to March, 1998. Therefore, for deciding these Civil Appeals, we are only concerned with the period 10th February, 1998 to March, 1998.

As stated above, if RMC is produced at site, then alone the assessee is entitled to exemption under the requisite Notification. We may state that the word 'site' has not been defined in the Notification though it so defined in the later Circular. We may also state that with the advancement of technology, there could exist batching plants which are mobile. Ultimately, the question which would arise for determination would depend upon the facts of each case. In the present case, the Commissioner, as an adjudicating authority, has held that cement concrete obtained at Pen and Padghe sites conforms to the definition of RMC as prescribed in Bureau of Indian Standards definition of RMC. However, according to the Commissioner, the respondent-assessee has manufactured RMC during the above period in the said places, namely, Pen and Padghe and, thereafter, they have cleared the same to the construction sites of the customers/clients of the assessee herein without payment of central excise duty and without

observing the central excise formalities.

When the matter came in Appeal before the Tribunal, the Tribunal has stated in its order that there was no dispute between the parties that RMC was manufactured at site. We do not know on what basis the said finding is

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recorded by the Tribunal, particularly when the Commissioner in the above order has held that RMC has been manufactured at Pen and Padghe and thereafter moved to the construction site. Therefore, it cannot be said that there was no dispute that RMC was manufactured at site.

In the above circumstances, we set aside the impugned order of the Tribunal and we remit the matter to the Tribunal to decide, in accordance with law, the dichotomy which arises in the present case between the existence of the batching plant, its location, its mobility and the area of the site. We make it clear that we express no opinion on the merits of the case. We remit this matter only on the basis of the statement made in the impugned order of the Tribunal that the above position was not disputed. Keeping the arguments on both sides open and further giving liberty to both sides to file additional documents, we set aside the impugned order and we remit the matter to the Tribunal for fresh consideration in accordance with law.

The Appeals are allowed accordingly with no order as to costs.

.....J.
(S.H. KAPADIA)

.....J.
(B. SUDERSHAN REDDY)

New Delhi,
April 10, 2008.