

Excise duty payment on RMC manufactured at site – Latest Supreme Court decision effect:

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Ready Mix Concrete (RMC) is being off late used often in the construction industry, which reduces the time and also the cost effective, before the concept of RMC there concrete mix was prepared in the site of construction and was used there. With the robust system of RMC, may of the contractor and builders are installing a captive RMC plant within the site. All such contractors/builders are claiming exemption from payment of excise duty vide notification 12/2012-CE dated 01.03.2012 vide Sl. 144, which exempts "*Concrete mix manufactured at the site of construction for use in construction work at such site*" now the question that arises here is whether claiming exemption for RMC manufactured at site qualifies exemption under this notification. This article aims at providing the varied position of durability of RMC and the latest position.

How RMC is produced?

The Ready Mix Concrete (RMC) is manufactured from a RMC plant consists of stone crushers, conveyors, vibrator screen to segregate different sizes of stone aggregates, and a sand mill to produce sand from stones. A central batching plant is also installed in which all aggregates are weighted, batched by electrical controls and limit switches. Cement from silo is carried to the batching plant by a screw conveyer operated with automatic weighing gauges. Water is fed through flow meters after subjecting such water to chemical analysis. The mixture of stone aggregates, sand, cement and water is mixed in a mixer. The shelf life of the mixture so obtained is increased by addition of chemicals. This mix is loaded on a transit mixer mounted on truck chassis which is transported to the site of the customers and the same is discharged at site for use in further construction of building etc.

Brief background of classification:

Upto 28.02.1997, RMC has no specific classification in the central Excise tariff and CBEC vide its Circular No. 237/71/96-CX., dated 12-8-96 clarified that RMC is classifiable under chapter heading 38 23 (Non-refractory mortars and concrete) however Hon'ble tribunal in case of Associated Cement Co. Ltd. v. Commissioner — 2001 (138) [E.L.T.](#) 911 (Tri.-Mum.) ruled that RMC is classifiable under chapter heading 68 07 (all other articles of cement not elsewhere specified and not under chapter 38 ibid and said view was affirmed by Hon'ble SC by dismissing department appeal. This was approved by CBEC vide its circular No. 601/38/2001-CX, dated 20-11-2001

However to rest all the litigation w.e.f 01.03.1997, a separate classification for RMC is prescribed under chapter 38. The same was clarified by board vide its circular dated 20-11-2001 (referred supra). Presently RMC is classifiable under tariff heading 38245010 chargeable at tariff rate of 6% and further in terms of Notification No. 1/2011- C.E. dated 01.03.2011 as amended (Sl.No.46) an option to pay the excise duty at concessional rate of 2% is also available subject to non-availing of CENVAT credit.

Brief background of dutiability:

Notification No. 12/2012-CE dated 01.03.2012 as amended (Sl. No. 144) gives excise duty exemption for *“Concrete mix manufactured at the site of construction for use in construction work at such site”* after referring to chapter 38 (Prior to 2012 also various notifications were issued from time to time containing the exact wordings). And the question falls for consideration is whether the expression ‘concrete mix’ can be construed to include RMC within its fold consequently avail exemption in terms of above referred notification.

As per trade understanding, both Ready Mix Concrete (RMC) and concrete mix (CM) are same and all RMC plant operators are claiming the benefit of above mentioned exemption if manufactured & used at same construction site. However both CBEC & revenue authorities from the year 1997 (i.e. from the inception of introducing separate classification for RMC) tries to differentiate RMC from concrete mix and raised the duty demands citing exemption is only for concrete mix. The legal background of the issue is briefed herein below:

The Circulars and decisions wherein it was held that RMC is not eligible for Exemption holding that it is different from concrete mix

- a. CBEC Circular No. 368/1/98-CX., dated 06-01-98 wherein vide Para 7 it was clarified that *“In view of the above and keeping in mind the distinction between Ready Mix Concrete and ‘Concrete Mix’ it is clarified that Ready Mix Concrete is an excisable product classifiable under sub-heading 3824.20, chargeable to duty at the appropriate rate whereas “Concrete Mix” manufactured at the site of construction for use in construction at such site, is fully exempt vide Notification No. 4/97-C.E., dated 1-3-1997 (S. No. 51)”*
- b. Tribunal in the case of Continental Foundation Joint Venture (CFJV) v. Commissioner — 2002 (150) E.L.T. 216 (Tri. - Del.) wherein it was held that *“we are of the view that the product manufactured by the appellants is RMC falling under sub-heading 3824.20 of the Central Excise Tariff and shall be subject to the corresponding rate of duty. This RMC is not eligible to the exemption under Sl. No. 51 of the Table attached to Notification No. 4/97-C.E. as this*

notification exempts concrete mix manufactured and used at the site of construction and not the RMC”

- c. Tribunal in the case of Larsen & Toubro Ltd. v. Commissioner 2005 (190) [E.L.T.](#) 132 (Tri. - Bang.) while upholding the findings of original adjudicating authority, it was observed that *“He also observed that what distinguishes RMC from other cement concretes is the manner in which it is manufactured, the high degree of precision and stringent quality control observed in the selection and processing of ingredients, namely aggregates, cement, sand, additives and water. After a detailed examination, he has come to the conclusion that the product manufactured by the appellants is only RMC.”*

The above decisions and clarifications gives the following differentiation between RMC and concrete mix

- a. RMC is manufactured by adopting a very advanced and sophisticated process
- b. Manner in which it is manufactured, the high degree of precision and stringent quality control observed in the selection and processing of ingredients, namely aggregates, cement, sand, additives and water
- c. While the concrete mix is made as per code IS: 456-1978 the RMC is made as per the specifications provided under the code IS: 4926-1976.
- d. The manufacture at the project site in itself would not be the determining factor whether the product is concrete mix or RMC. It is the method of manufacture which would determine its nature/character.

These are the following decision, which held RMC eligible for exemption

- a. Larger bench in case of Chief Engg. Ranjit Sagar Dam v. Commissioner — 2006 (198) [E.L.T.](#) 503 (Tribunal-LB) held that *“As we have held, above that the entry at serial No. 51 of notification No. 4/97, exempts all “Concrete Mixes” which fall under Chapter 38, and as it is not disputed that the product of the appellant gets covered under Chapter 38, the reference is answered in favour of the appellants”*
- b. Larsen & Toubro Ltd. v. UOI 2006 (198) E.L.T. 177 (Mad.) wherein it was held *“7. Though there is some inconsistency in para-4 of the Notification issued by the Board, since the learned Standing Counsel for the respondents had clarified that Ready Mix Concrete is exempted only if it is manufactured at site by the promoter or builder for use as the case may be for its own construction at the site of construction.*
8. The learned Additional Central Government Standing Counsel further represented that duty is leviable in respect of Ready Mix Concrete if it is manufactured in a Ready Mix unit installed for the purpose, supplied on transported through containers to sites of construction, which is different from the sites of mixing plant. In the light of the said stand taken by Mr.

Veeraraghavan, Additional Central Government Standing Counsel, it is unnecessary to examine the contentions set out in the writ petition.”

However recently Hon’ble Supreme Court in case of Larsen & Toubro Ltd. v. CCE 2015-TIOL-236-SC-CX resting all the litigation and held that Concrete mix & RMC are different therefore RMC is not eligible for the exemption. Relevant portion of judgment are as follows:

“the only question is as to whether RMC manufactured and used at site would be covered by notification. Answer has to be in the negative inasmuch as Notification No. 4 dated March 01, 1997 exempts only 'Concrete Mix' and not 'Ready Made Mixed Concrete' and we have already held that RMC is not the same as CM”

With the advent of Supreme Court declared law, it is obligatory on part of RMC plant operators to pay duty even on the RMC used for the construction within the site. However Paper writer strongly believes that this decision may be reviewed as the certain crucial factors have not been considered by Apex court except holding that exemption notification has to be strictly construed and in case of doubt, benefit has to be given to the Revenue. Among others, the following crucial factors were not considered:

- a. The fact that exemption notification refers to only Chapter 38 and not to any heading or sub-heading. If the law makers did not intend to exempt RMC falling under sub-heading like 3824.50 ibid, they would have categorically said so.
- b. In common parlance there is no much difference between RMC and concrete mix

Be that as it may, considering the binding effect of Supreme Court decision inter alia in terms of Article 141 & 144 of constitution of India, there is urgent necessity to avoid heavy demands from revenue department who definitely & obviously hit with frivolous notices for last 5 years citing the above SC decision.

In this scenario all the builders and contractor having the batching plant at site shall have to start paying the excise duty, cost benefit analysis may be made to opt for the payment of 6% with CENVAT or 2% without any CENVAT. Small builders may also examine the applicability of exemption under notification 8/2003-CE dated 01.03.2003 which provide exemption for the clearance upto 150L popularly known as SSI exemption. Further the valuation for this purpose may have to be adopted as per Rule 8 of the Central Excise Valuation (determination of price of excisable goods) Rules, 2000, which is 110% of cost of production, however in case there is also a sale to unrelated buyer then valuation may have to be adopted on such sale value in terms of Rule 4 of the said rules.

The following remedy may have to be perused

- a. Make representation to CBEC and requesting for notification under Section 11C of Central Excise Act, 1944 for the past
- b. Make a representation for inclusion of RMC in the exemption notification for future

The following could be the course of action for compliance:

- a. Paying applicable duties along with interest for the last one year i.e. within the normal period of limitation along with the intimation to the Department.
- b. Start paying duties henceforth (preferably under protest)