(2015) 11 SC CK 0004

In the Supreme Court Of India

Case No : Civil Appeal Nos. 984-986 of 2008

Commissioner of C. Ex., Mumbai — APPELLANT

Vs

Shapoorji Pallonji & Co. Ltd — RESPONDENT

Date of Decision : 19-11-2015

Acts Referred:

Citation : (2015) 326 ELT 24

Hon'ble Judges : A.K. Sikri and Rohinton Fali Nariman, JJ.

Bench : Division Bench

Advocate : S/Shri K. Radhakrishnan, Senior Advocate, Ms. Sushma Manchanda, Ms. B. Sunita Rao, Anurag and B. Krishna Prasad, Advocates, for the Appellant; S/ Shri Shyam Divan, Senior Advocate, Vikram Dhokalia, Ms. Manisha Sukla, Advocates for M/s. Dua Associates, for the Respondent

Final Decision : Allowed

Judgement

1. Tribunal by way of impugned judgment has allowed the appeals of the respondent/assessee holding that ''Ready Mix Concrete'' (RMC) does not amount to ''manufacture'' and, therefore, is not liable to excise duty. This Court in M/s. Larsen & Toubro Ltd. & Anr., ECC Construction Group v. Commissioner of Central Excise, Hyderabad, 2015 (10) SCALE 476 = 2015 (324) E.L.T. 646 (S.C.), otherwise holding that RMC would amount to ''manufacture'' and, therefore, liable for payment of excise duty. The Judgment of the Tribunal has to be, therefore, set aside on this ground alone.

2. We, however, find that the respondent had taken a specific plea before the Adjudicating Authority that the produce in question is not RMC but only ''Mix Concrete'' (MC). This contention was rejected by the Adjudicating Authority in Order-in-Original passed by it. The assessee had challenged those findings before the Tribunal. However, the Tribunal did not go into this aspect as it proceeded on the basis that even if it was RMC produced at site, the same shall be entitled to exemption under the requisite Notification. In view thereof, the matter needs to be remanded back to the Tribunal to decide the aforesaid factual

aspect viz. whether the produce in question is RMC manufactured at site or is it MC as contended by the assessee.

3. We may record the submission of Mr. K. Radhakrishnan, learned senior counsel appearing for the appellant that the finding of the Adjudicating Authority that the produce in question was RMC has been arrived at on the basis of statements of the officials of assessee itself which were never retracted by them. That may be so, still we are of the opinion that the assessee is to be given a chance to contest the finding of the Adjudicating Authority, once such a stand is taken before the Tribunal and there is no finding thereon recorded by the Tribunal. However, we make it clear that it will always be open to the appellant/ Department to justify the order passed by the Adjudicating Authority on the basis of material which is relied upon by the Adjudicating Authority including the statements of the officials of the assessee and effect thereof.

4. We, thus, allow these appeals, set aside the impugned order and remit the case back to the Tribunal to look into the matter afresh keeping in view our observations.

