

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL
BANGALORE**

REGIONAL BENCH - COURT NO. 1

Central Excise Appeal No. 20641 of 2021

(Arising out of Order-in-Appeal No.TVM-EXCUS-000-APP-533-2020 dated 22.12.2020 passed by the Commissioner of Central Tax, Central Excise & Customs (Appeals), Cochin.)

**M/s. Marymatha Infrastructure
Private Limited**

(Formerly Mary Matha Construction Company)
Marymatha Square, Arakuzha Road,
Muvattupuzha, P.O.,
Ernakulam – 686 661.
Kerala

Appellant(s)

VERSUS

**The Commissioner of Central Tax,
Central Excise and Customs
(Appeals)**

Central Revenue Building,
I.S. Press Road,
Kochi – 682 018.

Respondent(s)

APPEARANCE:

Shri M. S. Nagaraja, Advocate for the Appellant.

Shri Vikalp Jain, Superintendent (AR) for the Respondent.

**CORAM: HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MRS. R. BHAGYA DEVI, MEMBER
(TECHNICAL)**

FINAL ORDER NO. 20548 / 2026

DATE OF HEARING: 12.01.2026

DATE OF DECISION: 24.04.2026

PER: D.M. MISRA

This appeal is filed against Order-in-Appeal No.TVM-EXCUS-000-APP-533-2020 dated 22.12.2020 passed by the

Commissioner of Central Tax, Central Excise & Customs (Appeals), Cochin.

2. Briefly stated the facts of the case are that the appellants were manufacturing and clearing Ready Mix Concrete without payment of excise duty, accordingly, the department requested the appellant to furnish details of manufacture and clearance of Ready-Mix Concrete and connected records for the relevant period. In response, the appellant through their letter dated 22.01.2015 submitted details of production and utilisation of Ready-Mix Concrete from 10.11.2014 to 14.01.2015. It is informed that the plant is solely for use of Construction of Central Portion of Thanneermukkom Barrage (3rd Stage work) under an Agreement dated 27.06.2014 with Superintending Engineer, Kuttanad Development Circle, Kottayam. Consequently, investigation was initiated by the department by recording statement and retrieving records. On completion of investigation, show-cause notice was issued to them on 16.07.2018 proposing to classify Ready-Mix Concrete under subheading 3824.20 (now 3824 5010) and recovery of duty of Rs.17,53,833/- along with interest and proposal for penalty. On adjudication, the demand was confirmed with interest and penalty. Aggrieved by the said order, they filed an appeal before the learned Commissioner (A), who in turn rejected their appeal. Hence, the present appeal.

3. At the outset, the learned advocate for the appellant has submitted that effective rate of excise duty in terms of Sl. No.144 of Notification No.12/2012-CE dated 17.03.2012 was 'Nil' rate of duty in respect of concrete mix manufactured at the site of construction for use in construction work. The appellant was a Government Contractor and entrusted the construction of civil structures including water treatment projects, bridges, etc., and undertake the work of Kuttanad Package-FMP-Modernisation of

Thanneermukkam Bund to manage salinity and minimize ecological decay, construction of the central portion of Thanneermukkam Barrage (3rd Stage work) in Alappuzha District under an Agreement dated 27.06.2014 with the Superintending Engineer, Kuttanad Development Circle, Kottayam. He has submitted that the concrete mix manufactured in the said plant is conveyed in full to the Thanneermukkam Bund for construction of the central portion of the bund and no quantity is sold outside. The distance of plant to the construction site is less than 2 kilometre and that the product is transported to the site in lorries / trucks owned by the Appellant. Further, he has submitted that necessary permission was obtained from the Executive Engineer for installing the batching plant at the site. He has submitted that in response to the department's show-cause notice, the appellant has replied that since the preparation of the concrete mix was not feasible at the construction site, the only possible mode was to prepare concrete mix at one of the banks and convey/transport it to the work site, according it was carried out on the land owned by the State Irrigation Department. The Executive Engineer, Kuttanad Development Division, Thanneermukkam through letter dated 18.03.2016 has furnished the process for manufacture and installation of the temporary concrete mix plant located at the land belonging to the Irrigation Department. The manufacturing process involves aggregates are fed to the bin which convey to the mixer through skipping unit, cement water and admixture are conveyed to the mixer – after mixing dispensed to the transit mixer. The details of plant are 4 aggregate bins, 2 cement silos, extractor belt, air compressor, air blower, skip unit, control cabin, control panel, mixer unit, etc. He has submitted that the plant and machinery used by the appellant at the allotted site do not include stone crushers, conveyors, vibrator screen to segregate different sizes of stone aggregates and a sand mill to produce sand from stone,

etc., which are typically required for manufacture of Ready-Mix Concrete in a factory. It is his contention that department could not bring on record any evidence to show that the appellant has used retarders and plasticizers as admixture. Referring to the judgment of the Hon'ble Supreme Court in the case of **Larsen and Toubro Ltd. vs. CCE, Hyderabad: 2015 (324) ELT 646 (SC)**, he has submitted that the process of manufacture of Ready Mix Concrete and the materials used as observed in the said judgment are different than the materials used by the appellant for manufacture of concrete mix; therefore, what the appellant's manufacture are concrete mix which are manufactured nearer to the site, hence, admissible to the benefit of the exemption Notification No.12/2012-CE dated 17.03.2012. Also, in support, he has referred to the Circular No.368/1/98 dated 06.01.1998. Further, he has submitted that the process of manufacture at the allotted site was only mixing of aggregates, cement, water and admixture which was conveyed to the transit mixer over short distance to the work site. The Transit Mixer was used since the concrete mixer was required to be transported from the site allotted near the bank of the lake to the construction site situated in the middle of the lake. All the details about the plant and machinery and the process of manufacture have been directly collected by the Department from the Executive Engineer, Irrigation Department, Kuttanad Division, which has been furnished to the Department, thus no facts have been suppressed nor fabricated by the appellant to claim the benefit of the exemption Notification. Further, he has submitted that the procedure adopted by the appellant to produce the plain and reinforced concrete mix was as per as per IS 456:2000 which was different from the Ready-Mix Concrete. He has submitted that untreated water is used as concrete mix requires only ordinary water. Further, the addition of admixture, does not increase the shelf life of the concrete as the mixture already has

an initial setting time of 30 to 60 minutes, which is sufficient for transportation and use at the site. The admixture used by them in the present case was only to increase the workability and pliability of the concrete mix which is necessary for all types of concrete mixtures. He has submitted that Ready Mix Concrete is produced as per IS 4926:2003 and the ingredients of the process of manufacture are different.

4. Further, he has submitted that demand issued invoking extended period of limitation and confirmed by the learned Commissioner (A) is unsustainable in as much as no facts has been suppressed from the knowledge of the department nor mis-declared to the department. As soon as the information was called for relating to manufacture of concrete mix in the plant nearer to the bank of the river, the same was submitted through their letter dated 22.01.2015; whereas the show-cause notice was issued 3½ years after the information was furnished by the appellant. Therefore, the confirmation of demand invoking suppression of fact with intent to evade payment of duty cannot be sustained.

5. The learned Authorised Representative (AR) for the Revenue reiterated the findings of the learned Commissioner (A).

6. Heard both sides and perused the records. The issue involved in the present appeal for consideration is whether the appellants are eligible to the benefit of exemption Notification No.12/2012-CE dated 17.03.2012 in respect of the concrete mix claimed to be manufactured by them; whereas the Revenue's claim is that they have manufactured Ready Mix Concrete (RMC) at the site, hence, not eligible to the benefit of the said Notification.

7. Undisputed facts are that the appellants are engaged in Construction of Central Portion of Thanneermukkom Barrage (3rd Stage work) under an Agreement dated 27.06.2014 with Superintending Engineer, Kuttanad Development Circle, Kottayam. Since the construction site was inside the river, by an Agreement dated 03.07.2014, as the project required huge quantity of cement concrete mix and there was no land available near the work site, they were allotted a place in Ward No. XIII of Vechoor Grama Panchayath owned by the Irrigation Department at Ambika Market in Kuduvechoor Kara, Vechoor Village, Vaikom Taluk, Kottayam District, for a dedicated concrete mixing plant. The Executive Engineer in their letter to the department dated 08.02.2016 confirmed the allotment of work to the appellant and also informed that there is no possibility of stocking materials and equipments for mixing concrete as the site of the project is in the middle portion of Vembanad Kayal. The appellant was, accordingly, allotted to the instant mixing plant equipment at Ambika Market exclusively for the project. Further, it is not in dispute that the Executive Engineer informed the department about the machineries installed in the said site which comprises of 4 aggregate bins, 2 cement silos, extractor belt, air compressor, air blower, skip unit, control cabin, control panel, mixer unit, etc., which confirms the list of machinery provided by the appellant on 19.04.2016. The appellants vide letter dated 19.4.2016 intimated the department about the processes undertaken by them for manufacture of concrete mix i.e., feeding of the materials viz., fine aggregate, coarse aggregate, cement, admixture and water to the mixture unit, then the concrete dispensed to the transit mixture for conveying to the construction site situated in the mid portion of the Kayal, which has also been confirmed by the Executive Engineer through its letter dated 18.03.2016. The claim of the Revenue is that the

process of mixing results into Ready-Mix Concrete, hence, the benefit of Notification cannot be extended to the appellant.

8. The learned advocate heavily relied upon the decision of the Hon'ble Supreme Court in the case of **Larsen and Toubro Ltd.** (supra) submitting that due emphasis should be given to the process undertaken and the machineries used to understand the resultant product is concrete mix or Ready-Mix Concrete. The Hon'ble Supreme Court in **Larsen and Toubro Ltd.'s** case (supra) had observed that concrete mix and Ready-Mix Concrete are two different products. It is observed that the process undertaken to manufacture both the product and the machineries deployed for manufacturing these products would indicate whether the resultant is concrete mix or Ready-Mix Concrete. Their Lordships observed as:

"19. We are also inclined to agree with the stand taken by the Revenue that it is the process of mixing the concrete that differentiates between CM and RMC. In the instant case, as it is found, the assessee installed two batching plants and one stone crusher at site in their cement plant to produce RMC. The batching plants were of fully automatic version. Concrete mix obtained from these batching plants was delivered into a transit mixer mounted on a self propelled chassis for delivery at the site of construction is in a plastic condition requiring no further treatment before being placed in the position in which it is to set and harden. The prepared chassis which was mounted was to ensure that when the concrete mix is taken to the actual place of construction, it keeps rotating. It is also significant to mention that for producing the concrete mix, material used was cement, aggregates, chemically analysed water and admixtures, namely, retarders and plasticizers. As the L&T was constructing cement plant of a very high quality, it needed concrete also of a superior quality and to produce that aforesaid sophisticated and modernised process was adopted. The adjudicating authority in its order explained the peculiar feature of RMC and the following extracts from the said discussion needs to be reproduced :

"32. *Central Excise Tariff does not define Ready Mix Concrete. Therefore, as per the established case-laws on the subject it is necessary to look for the meaning of this expression as understood in the market viz., as understood by the people who buy and sell this commodity. In this connection it would be relevant to refer to the following excerpts from an article - what is ready mix concrete, appearing in internet website of National Ready Mix Concrete Association, USA :-*

(i) Concrete, in its freshly mixed state, is a plastic workable mixture that can be cast into virtually any desired shape. It starts to stiffen shortly after mixing, but remains plastic and workable for several hours. This is enough time for it to be placed and finished. Concrete normally sets or hardens within two to 12 hours after mixing and continue to gain strength within months or even years.

(ii) Ready Mix Concrete refers to concrete that is delivered to the customer in a freshly mixed and non-hardened state. Due to its durability, low cost and its ability to be customized for different applications, Ready Mix Concrete is one of the world's most versatile and popular building materials.

(iii) Admixtures are generally products used in relatively small quantities to improve the properties of fresh and hardened concrete. They are used to modify the rate of setting and strength, especially during solid and cold weather. The most common, is an air-entraining agent that develops millions of tiny holes in the concrete, which imparts the durability to concrete in freeing and thawing exposure. Water reducing Admixtures enable concrete to be placed at the required consistency while minimizing water used in the mixture, thereby increasing the strength and improving durability. A variety of fibers are incorporated in the concrete to control or improve aberration and impact resistance."

20. After referring to some text as well, the adjudicating authority brought out the differences between Ready Mix Concrete and CM which is

conventionally produced. The position which was summed up showing that the two products are different reads as under:

"From the literature quoted above it is clear that Ready Mix Concrete is an expression now well understood in the market and used to refer to a commodity bought and sold with clearly distinguishable features and characteristics as regards the plant and machinery required to be set-up for its manufacture and the manufacturing processes involved, as well as its own properties and the manner of delivery. RMC refers to a concrete specially made with precision and of a high standard and as per the particular needs of a customer and delivered to the customer at his site. Apparently due to the large demand resulting from rapid urbanization and pressure of completing projects on time, consumption of RMC has steadily grown replacing the conventional/manual concreting works. Today leading cement companies have entered the field by setting-up RMC plants in which L&T ECC is one. RMC is slowly replacing site or hand mixed concrete because of the distinct advantages due to technology, speed and convenience. Furthermore, absence of the need to deal with multiple agencies for procuring and storing cement, sand, blue metal and water as well as the absence of the need to handle unorganized labour force are factors influencing customers to go in for RMC in preference to CM."

21. In this backdrop, 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 1, 1997 exempts only 'Concrete Mix' and not 'Ready Made Mixed Concrete' and we have already held that RMC is not the same as CM."

9. Further, the learned advocate for the appellant placed reliance on the Circular No.368/19/98-CX dated 06.01.1998 and argued that the machineries required for Ready-Mix Concrete has been stated in the said Circular which includes stone crushers, conveyors, vibrator screen to segregate different sizes of stone aggregates and a sand mill to produce sand from stone,

etc., therefore, the mixing of concrete carried out by the appellant cannot be said to be Ready-Mix Concrete. Further, the appellant has not added any retarders and plasticizers which is quite essential in the case of Ready-Mix Concrete to increase the shelf life. We find that the difference between the concrete mix and Ready-Mix Concrete mainly rest on the machinery used, the process of manufacture and use of retarders and plasticizers which enhances the setting time of Ready-Mix Concrete. We find that retarders and plasticizers were not added in the present case, as no evidence has been brought in this regard by the Revenue nor argued that retarders and plasticizers were used as admixture and added to the concrete mix. Besides, it is the claim of the appellant that concrete mix manufactured by the appellant are as per IS 456: 2000; whereas for Ready-Mix Concrete is IS 4926:2003. The difference between Concrete Mix and Ready-Mix Concrete depending on the requirement has also been given due emphasis by the Board in its Circular dated 06.01.1998. Further, we find that this Tribunal, more or less in similar circumstances, in the case of **M/s. Ambit Concrete (P) Ltd. vs. CCT: Final Order No. 70257 - 70258 /2021 dated 30.11.2021** observed that in absence the machineries, process, etc., laid down as per Larsen and Tourbo Ltd. case (supra), the resultant produced cannot be called as Ready-Mix Concrete but it is Concrete Mix. Thus, the product manufactured by the appellant at the site which is 2 km away is Concrete Mix and not Ready-Mix Concrete.

10. On the issue of limitation, we find that as soon as the department raised queries, the appellant had responded by providing details of manufacturing process through their letter dated 22.01.2015 and also through their subsequent correspondence they have indicated about the details of clearance of concrete mix along with CAS-4 Certificate for

arriving at the value of the Concrete Mix; however, the department issued show-cause notice on 16.07.2018 demanding duty for the period 20014-2016 by alleging suppression of facts. When all the information are available with the department in the year 2015 itself, demanding differential duty after receiving the information for the subsequent period invoking suppression of facts, in our opinion, is unsustainable in law. Consequently, the appellant succeeds both on merits as well as on limitation.

11. In the result, the impugned order is set aside and the appeal is allowed with consequential relief, if any, as per law.

(Order pronounced in Open Court on 24.04.2026.)

(D.M. MISRA)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

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