

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI**

REGIONAL BENCH – COURT No. I

Customs Appeal No. 40841 of 2017

(Arising out of Order-in-Appeal No. 05/2017-TTN(CUS) dated 11.01.2017 passed by the Commissioner of Central Excise, (Appeals-II), No.1, Williams Road, Cantonment, Tiruchirappalli – 620 001)

M/s. Greatway Impex
69-A, Thoovipuram 10th Street,
Tuticorin – 628 003.

...Appellant

Versus

Commissioner of Customs
Tuticorin Commissionerate,
Custom House,
New Harbour Estate,
Tuticorin – 628 004.

...Respondent

APPEARANCE:

For the Appellant : Mr. S. Shriram, Advocate
For the Respondent : Mr. Vineet Goyal, Authorised Representative

CORAM:

HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)
HON'BLE MR. AJAYAN T.V., MEMBER (JUDICIAL)

FINAL ORDER No. 40676 / 2026

DATE OF HEARING : 16.04.2026
DATE OF DECISION : 02.06.2026

Per Mr. VASA SESHAGIRI RAO

The present appeal has been filed by M/s. Greatway Impex, Tuticorin (hereinafter referred to as "the appellant"), assailing the Order-in-Appeal No. 05/2017-TTN(CUS) dated 11.01.2017 passed by the Commissioner (Appeals-II), Tiruchirappalli (hereinafter referred to as "the impugned order"), whereby the appellate authority upheld Order-in-Original No.24/2016 dated 16.02.2016.

2. Briefly stated, the appellant imported Ordinary Portland Cement through Tuticorin Port during June–July 2010 under four Bills of Entry and claimed concessional CVD under Clause 1C of Notification No.04/2006-CE dated 01.03.2006. The department alleged that the cement imported in 50 kg bags with printed RSP was not eligible for the exemption and, by adopting contemporaneous RSP based on another importer, proposed reassessment under Clause 1A(ii), resulting in differential duty demand of Rs.1,72,769/- under Section 28(4) of the Customs Act, 1962 along with interest and penalty under Section 114A. The adjudicating authority confirmed the demand, interest and equivalent penalty vide Order-in-Original dated 16.02.2016, which came to be upheld by the Commissioner (Appeals) *vide* the impugned order, leading to the present appeal.

3. The Ld. Advocate Shri S. Shriram appearing for the appellant, submitted that the impugned order proceeds on erroneous interpretation of Notification No. 04/2006-CE and the packaged commodity provisions. It was contended that the imported cement was never intended for retail sale but was supplied only to industrial and institutional consumers engaged in construction activities and manufacture of hollow bricks and therefore qualified for exemption under Clause 1C. The learned counsel emphasized

that the explanation appended to the notification itself excludes packaged commodities not intended for retail sale and that the department had failed to establish even a single instance of retail sale. It was further submitted that the imports had been assessed after scrutiny by the department and, prior to introduction of self-assessment under Section 17 with effect from 08.04.2011, the extended period under Section 28(4) could not have been invoked on allegations of suppression. Reliance was also placed upon Final Order Nos.40323-40332/2019 dated 19.02.2019 in Anthony Metals and 10 others and the subsequent decision of this Tribunal in *M/s. Ramky Infrastructure Ltd. v. Commissioner of Customs, Tuticorin* reported in 2026 (1) TMI 438 (CESTAT Chennai), wherein identical disputes involving imports of Pakistani cement through Tuticorin Port were decided in favour of the Appellants.

4. The Ld. Authorized Representative Shri Vineet Goyal reiterated the reasoning contained in the show cause notice, Order-in-Original and the impugned order.

5. We have carefully considered the rival submissions, perused the records of the case, the show cause notice, Order-in-Original and Appeal, the grounds of appeal and the judicial precedents cited by both sides. The issue arising for determination in the present appeal lies in a

narrow compass, namely, whether the appellant was entitled to concessional CVD under Clause 1C of Notification No.04/2006-CE notwithstanding import of cement in 50 kg bags with printed RSP, and whether the consequential reassessment based on rejection of declared RSP, differential duty demand, interest and penalty by invoking Section 28(4) of the Customs Act, 1962 are sustainable in law.

6. Notification No.04/2006-CE dated 01.03.2006 prescribes different effective rates of duty for cement depending upon packaging and Retail Sale Price (RSP). During the relevant period, Clause 1A(i) applied to cement cleared in packaged form where the RSP did not exceed Rs.190/- per 50 Kg bag, while Clause 1A(ii) applied where the RSP exceeded Rs.190/- per bag. Clause 1C, under which the appellant claimed assessment, applied to cement other than those cleared in packaged form and prescribed concessional duty at 8% or Rs.230/- per tonne whichever was higher. The explanation appended to the notification clarified that where the Standards of Weights and Measures (Packaged Commodities) Rules were not applicable, the goods, even if packed, would still be treated as goods other than those cleared in packaged form. Thus, the issue is not mere packing or existence of printed RSP, but whether the goods were intended for retail sale.

7. We find considerable force in the appellant's contention that the imported cement was never intended for retail sale. The records consistently disclose that the appellant had imported the cement for supply to industrial and institutional consumers engaged in construction activities and manufacture of hollow Blocks. The Grounds of Appeal specifically assert that the entire quantity imported under the disputed Bills of Entry was sold only in wholesale to industrial/institutional consumers and not through retail channels. Significantly, the department has not brought on record even a single instance of retail sale effected by the appellant.

8. We further find that the adjudicating authority proceeded substantially on the premise that since the goods were imported in 50 kg bags carrying RSP declaration, the benefit under Clause 1C automatically became unavailable. In our considered view, such reasoning overlooks the explanation appended to the notification itself and the settled legal position governing industrial and institutional consumers. Merely because goods are packed in bags or carry printed RSP does not ipso facto lead to the conclusion that they are intended for retail sale. The relevant test is the nature of sale and intended consumer category. The appellant has consistently maintained that the goods were sold only to industrial and institutional buyers, and this

factual assertion has not been effectively rebutted by the department through any contrary evidence.

9. We also find merit in the appellant's submission that the department incorrectly imported post-import conditions into the notification. Notification No.04/2006-CE is essentially a Central Excise exemption notification adopted for levy of CVD under Section 3 of the Customs Tariff Act, 1975. Neither the notification nor the Customs Act imposed any requirement that the imported cement should be purchased directly from the manufacturer for availing benefit under Clause 1C. The reasoning adopted by the lower authorities that imports effected on high seas sales basis would automatically disentitle the appellant from claiming benefit under Clause 1C is therefore unsupported by the language of the notification itself.

10. We further find that the adjudicating authority and the Commissioner (Appeals) proceeded not merely on denial of exemption under Clause 1C, but also on rejection of the RSP declared by the appellant in the Bills of Entry by invoking Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. In our considered view, such reasoning is legally misconceived. The transaction value and assessable value declared by the appellant were never rejected under Section 14 of the Customs Act, 1962

and the dispute throughout remained confined to applicability of the exemption notification and not the intrinsic value of the imported goods. Neither the Show Cause Notice nor the Order-in-Original undertook any proper valuation determination in accordance with Section 14 read with the Valuation Rules. The entire exercise undertaken by the department was essentially a notional substitution of declared RSP for the purpose of enhancing CVD liability, which is not contemplated either under Notification No.04/2006-CE or under the valuation provisions.

11. We also find that the elaborate discussion regarding Rule 12 of the Valuation Rules, retail market enquiry and reassessment based on contemporaneous RSP appears substantially for the first time only in Para 9 of the impugned Order-in-Appeal. However, neither the Show Cause Notice nor the Order-in-Original contains any detailed analysis regarding methodology for rejection of declared RSP or determination of substituted contemporaneous RSP. No evidence has been produced to establish comparability of imports, parity in quantity, trade level or evidentiary basis for adoption of another importer's RSP. The department has also not placed on record any retail market enquiry report supporting such reassessment. In the absence of any legally sustainable valuation exercise or cogent evidence supporting rejection of declared RSP, adoption of alleged

contemporaneous RSP from another importer becomes legally unsustainable. The appellate authority could not have substantially expanded the valuation basis beyond the foundation laid in the Show Cause Notice.

12. The Ld. Counsel for the appellant has also correctly pointed out that the imports in the present case pertain substantially to the period prior to introduction of self-assessment under Section 17 of the Customs Act with effect from 08.04.2011. At the relevant point of time, the Bills of Entry were assessed by the proper officers after scrutiny of the declarations and accompanying documents. The department was therefore fully aware of the nature of the imports and had consciously extended concessional assessment under Clause 1C. In such circumstances, the allegation of suppression or wilful misstatement lacks factual foundation.

13. We further find that the controversy involved in the present appeal is no longer *res integra* and stands squarely covered by the decision of the co-ordinate Bench of this Tribunal in *M/s. Antony Metals & Ors. v. Commissioner of Customs, Tuticorin* reported in 2019 (2) TMI 1258 (CESTAT Chennai), involving identical imports of Pakistani cement through Tuticorin Port under Notification No.04/2006-CE. The Tribunal held that the benefit under

Clause 1C could not be denied merely because the cement was imported in 50 kg bags with printed MRP, in the absence of cogent evidence establishing retail sale or misuse of the exemption. It was further held that sale of cement directly to industrial or institutional consumers would not amount to “retail sale” and further held that the benefit could not subsequently be denied without positive evidence of misuse. Consequently, invocation of the extended period under Section 28(4) was also held to be unsustainable.

14. We also find that the aforesaid ratio has been reaffirmed by this Tribunal in *M/s. Ramky Infrastructure Ltd. v. Commissioner of Customs, Tuticorin* reported in 2026 (1) TMI 438 (CESTAT Chennai), involving identical imports of Pakistani cement through Tuticorin Port under Notification No.04/2006-CE. Following *Antony Metals*, the Tribunal held that where the imported cement was intended for institutional/construction use and not retail sale, the packaged commodity provisions could not be invoked to deny the benefit under Clause 1C. The Tribunal further held that in the absence of cogent evidence of suppression or actual retail sale, the extended period and consequential demand of duty, interest and penalty were unsustainable. Respectfully following the aforesaid binding precedents arising from identical facts and allegations, we hold that the appellant is equally entitled to the benefit of Clause 1C of

Notification No.04/2006-CE. The department has not demonstrated any distinguishing feature warranting a different view.

15. We also note that the disputed imports were effected during June–July 2010, whereas the Show Cause Notice came to be issued only on 29.05.2015 by invoking the extended period under Section 28(4) of the Customs Act, 1962 on allegations of suppression and misdeclaration. The imports were made openly under Bills of Entry finally assessed by the proper officers after scrutiny of the declarations, invoices and connected import documents and the department was fully aware that the cement had been imported in 50 kg bags with printed RSP. In such circumstances, and in the absence of any cogent evidence establishing wilful suppression, misstatement or deliberate concealment, invocation of the extended period is clearly unsustainable. Once invocation of the extended period under Section 28(4) fails, the consequential demand of differential duty, interest and penalty cannot survive on limitation as well.

16. In view of the foregoing findings, we hold that the appellant was entitled to concessional assessment under Clause 1C of Notification No.04/2006-CE and the denial of such benefit by reassessment under Clause 1A(ii) is

unsustainable on merits, valuation as well as limitation. The impugned order proceeded substantially on assumptions arising from packaging and RSP markings without any evidence of retail sales or misuse of exemption. Consequently, the differential duty demand, interest liability and penalty imposed under Section 114A of the Customs Act are liable to be set aside.

17. Consequently, the impugned Order-in-Appeal No.05/2017-TTN(CUS) dated 11.01.2017 is set aside and the appeal is allowed with consequential reliefs, if any, in accordance with law.

(Order pronounced in open court on 02.06.2026)

Sd/-
(AJAYAN T.V.)
MEMBER (JUDICIAL)

MK

Sd/-
(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)