

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL**  
**NEW DELHI**

PRINCIPAL BENCH – COURT NO. I

**EXCISE APPEAL NO. 50815 OF 2021**

(Arising out of Order-in-Appeal No. 73(SM)/CE/JPR/2021 dated 30.03.2021 passed by the Commissioner (Appeals), Central Excise & CGST, Jaipur)

**Ultratech Cement Ltd.**

Kotputli Cement Works,  
Village Mohanpura, Tehsil Kotputli,  
Jaipur – 303 108

**.....Appellant**

**VERSUS**

**Commissioner, CGST &  
Central Excise, Jaipur**

New Central Revenue Building,  
Statue Circle, 'C' Scheme,  
Jaipur- 302 005

**.....Respondent**

**APPEARANCE:**

Shri B.L. Narasimhan and Shri Dhruv Tiwari, Advocates for the Appellant

Shri S.K. Ray, Authorized Representative for the Department

**CORAM:**     **HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT**  
                  **HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)**

**DATE OF HEARING: 24.11.2025**  
**DATE OF DECISION: 01.12.2025**

**FINAL ORDER NO. 51810/2025**

**JUSTICE DILIP GUPTA:**

Ultratech Cement Ltd.<sup>1</sup> seeks the quashing of the order dated 30.03.2021 passed by the Commissioner (Appeals), Central Excise & CGST, Jaipur<sup>2</sup> by which the appeal that was filed by the appellant to assail the order dated 30.10.2019 passed by the Deputy Commissioner confirming the demand of central excise duty under section 11A(1)(a) of the Central Excise Act, 1944<sup>3</sup> and ordering it to be recovered with interest and penalty, has been dismissed.

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1.     **the appellant**
  2.     **the Commissioner (Appeals)**
  3.     **the Central Excise Act**

2. The appellant manufactures and clears cement upon payment of central excise duty in the following manner:

- (a) Cement in packed form (in 50kg bags) to general buyers;
- (b) Cement in packed form (in 50kg bags) to industrial/institutional consumer; and
- (c) Cement in packed form (in 50kg bags) for captive consumption.

3. In respect of category (a) above, since the packages fall under the category of 'retail package' in terms of the erstwhile Standards of Weights and Measures (Packaged Commodities) Rules, 1977<sup>4</sup> and as replaced by the Legal Metrology (Packaged Commodities) Rules, 2011<sup>5</sup>, the appellant affixes RSP thereon and clears them upon payment of duty on RSP basis under section 4A of the Central Excise Act.

4. The appellant claims that in respect of categories (b) and (c) above, since such packages are not intended for retail sale, there is no requirement to affix RSP on such packages. Accordingly, the appellant neither affixed RSP on such packages nor assesses such clearances under section 4A of the Central Excise Act. The appellant assesses them under the provisions of section 4 of the Central Excise Act. In respect of clearances made to industrial/institutional consumer under category (b) above, the appellant discharged duty liability on transaction value basis section 4(1)(a) of the Central Excise Act. In respect of cement cleared for captive consumption under category (c) above the appellant assessed them on the basis of 110% of cost of production as contemplated under section 4(1)(b) of the Central

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4. the 1977 Rules  
5. the 2011 Rules

Excise Act read with rule 8 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000<sup>6</sup>.

5. During the period of dispute from May, 2016 to June, 2017, pertaining to clearances made under category (c), the appellant cleared cement in packed form of 50 kg for captive consumption to its contractors for the purpose of undertaking the construction and maintenance work of plant and residential colony, within the factory premises. Such clearances were made under the cover of invoice with the remark "Self Consumption".

### **Previous Proceedings**

6. However, two show cause notices dated 02.11.2015 and 04.08.2016<sup>7</sup> were issued to the appellant, proposing demand of central excise duty for the period October, 2010 to June, 2015, and July, 2015 to April 2016, respectively, along with interest and penalty. The extended period of limitation was invoked in the first notice. These show cause notices alleged inter alia that since the packaged cement was cleared for captive consumption to contractors for construction work, such clearances would not fall within the ambit of rule 8 of the 2000 Valuation Rules. In such a case, the said contractors became industrial/institutional consumer and, therefore, RSP was required to be affixed on such packages and duty liability was to be discharged under section 4A of the Central Excise Act, as clauses (a) and (b) of rule 2A of the 1977 Rules or rule 3 of the 2011 Rules have to be read conjunctively.

7. The appellant submitted detailed replies to the two show cause notices. The Joint Commissioner, Jaipur, by a common order dated 02.02.2017 confirmed the duty demand with interest and penalty. Upon

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**6. the 2000 Valuation Rules**  
**7. previous show cause notices**

appeal, the Commissioner (Appeals), Jaipur, by a common order dated 27.02.2018, allowed the appeal and set aside the said order holding that since the clearances did not involve 'sale', the provisions of the 2011 Rules would not be applicable and differential duty demand on the basis of RSP would not be sustainable.

8. The department assailed the said order before the Tribunal in Excise Appeal No. 51506 of 2018 and by an order dated 02.01.2019 in **C.C.E. & S.T., Jaipur-I vs. Ultratech Cement Ltd. (Unit Kotputli Cement)**<sup>8</sup>, the appeal of the department was dismissed.

### **Present Proceedings**

9. For the subsequent period from May, 2016 to June, 2017 involved in the present appeal, a show cause notice dated 28.05.2018 was issued to the appellant proposing to demand central excise duty along with interest and penalty, on the same allegations as made in the previous two show cause notices dated 02.11.2015 and 04.08.2016.

10. The appellant submitted a detailed reply rebutting the allegations made therein.

11. However, the Deputy Commissioner, by order dated 30.10.2019, confirmed the entire duty demand as proposed in the show cause notice with interest and imposed penalty under section 11AC of the Central Excise Act read with rule 25 of the Central Excise Rules, 2002<sup>9</sup>.

12. This order was assailed by the appellant before the Commissioner (Appeals) and by an order dated 30.03.2021 the Commissioner (Appeals) dismissed and the appeal and upheld the impugned order by holding inter alia that clearance of cement for self consumption does not involve sale and

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**8. Excise Appeal No. 51506 of 2018 decided on 02.01.2019 (Tri.-Del.)**  
**9. the 2002 Central Excise Rules**

so no RSP is required to be affixed on the same; that cement given to contractors is to be treated as clearance made to institutional/industrial consumers and cannot be treated as captive consumption; that rule 8 of the 2000 Valuation Rules is not applicable; and duty is payable on the value arrived at in respect of clearances made to institutional/industrial consumers.

13. This appeal has been filed to assail this order of the Commissioner (Appeals).

14. Shri B.L. Narasimhan, learned counsel for the appellant assisted by Shri Dhruv Tiwari made the following submissions:

- (i)** The appellant had correctly paid duty on cement cleared for captive consumption in 50kg bags under section 4(1)(b) of the Central Excise Act read with rule 8 of the 2000 Valuation Rules. Valuation under section 4A of the Central Excise Act cannot be done since the 2011 Rules are not applicable on cement cleared in 50kg bags and there is no statutory requirement of affixing MRP on such packages under rule 6. Thus, the present case would be covered by rule 3(a) of the 2011 Rules. To support this contention, learned counsel placed reliance upon the decision rendered by the Tribunal on 02.01.2019 in Excise Appeal No. 51506 of 2018 that had been filed by the department to assail the order dated 20.07.2018 passed by the Commissioner (Appeals) in the Previous Proceedings;
- (ii)** This ground was taken in the appeal filed by the appellant before the Commissioner (Appeals) but even after noticing the submission made in the appeal, the Commissioner (Appeals) did not consider the said decision; and
- (iii)** Rule 2A of the 1977 Rules and rule 3 of the 2011 Rules are separated by "semi-colon" and, therefore, the word "and" used

in between the two clauses has to be read disjunctively. To support this contention, learned counsel placed reliance on the decision of this Tribunal in **M/s. Viwa Drymix Pvt. Ltd. vs. Principal Commissioner, CGST, Central Excise & Customs, Jabalpur**<sup>10</sup>.

15. Shri S.K. Ray, learned authorized representative appearing for the department has, however, supported the impugned order passed by the Commissioner (Appeals) and submitted that it does not call for any interference.

16. The submissions advanced by the learned counsel for the appellant and the learned authorized representative appearing for the department have been considered.

17. The issue that arises for consideration is whether valuation of cement cleared for captive consumption in 50kg bags would be covered by section 4A of the Central Excise Act as contented by the department or under section 4(1)(b) of the Central Excise Act read with rule 8 of the 2000 Valuation Rules as contented by the appellant.

18. This issue was decided in the Previous Proceedings by the Commissioner (Appeals) in the order dated 20.07.2018 in favour of the appellant. The Commissioner (Appeals) relied upon the decision of the Tribunal in **Grasim Industries Ltd. (Unit-I) vs. Commissioner of C. Ex., Trichy**<sup>11</sup>. The relevant observations made by the Commissioner (Appeals) in the order are as follows:

"7. \*\*\*\*\*

\*\*\*\*\* Further, regarding issue of affixing RSP on the packages cleared for self consumption, I find that such self consumption of cement does not involve sale.

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10. Excise Appeal No. 52652 of 2019 decided on 09.12.2020 (Tri.-Del.)  
11. 2009 (238) E.L.T. 655 (Tri.-Chennai)

Chapter II of PC Rules, prescribing affixation of RSP, applies only to packages "intended for" retail sale. Appellant has indicated cement packages with special declarations like "Not for retail sale, For industrial consumer or institutional consumer" and therefore PC Rules are not applicable. No valuation of goods under section 4A of the Central Excise Act is applicable in the present case. \*\*\*\*\*"

19. Against the said order of the Commissioner (Appeals) dated 20.07.2018, the department filed an appeal before this Tribunal which appeal was dismissed by order dated 02.01.2019. The Tribunal relied upon the earlier decision of the Tribunal in **Grasim Industries** and in the own case of the appellant in **Ultratech Cement Pvt. Ltd. vs. Commr. of C. Ex., Nagpur**<sup>12</sup>. The contention of the department that the order passed by the Tribunal in **Grasim Industries** was under challenge in the Supreme Court was repelled by the Tribunal holding that this issue has also been decided by the Tribunal in **Hiedelber Cement India Ltd. vs. Commr. of C. Ex., Nagpur & Raigarh**<sup>13</sup>.

20. In view of the decision of the Tribunal in the own case of the appellant for the Previous Proceedings relating to the period October, 2010 to June, 2015 and July, 2015 to April, 2016, holding that section 4(1)(b) of the Central Excise Act would be applicable, it has to be held that the Commissioner (Appeals) in the present proceedings relating to the period May, 2016 to June, 2017, committed an error in dismissing the appeal filed by the appellant. In fact, the appellant had pointed out before the Commissioner (Appeals) the earlier order dated 27.02.2018 passed by the Commissioner (Appeals) but this has not been considered by the Commissioner (Appeals). Thus, the valuation of cement cleared for captive

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12. 2017-TIOL-4415-CESTAT-MUM

13. 2015 (315) E.L.T. 53 (Tri.-Mumbai)

consumption in 50kg bags would be covered by section 4(1)(b) of the Central Excise Act.

21. Learned counsel for the appellant has pointed out that the Supreme Court now dismissed the appeal filed by the department against the order of the Tribunal in **Grasim Industries** on 27.11.2019 holding that the appeal devoid of any merit and was liable to be dismissed.

22. The impugned order dated 30.03.2021 passed by the Commissioner (Appeals) is, accordingly, set aside and the appeal is allowed.

(Order Pronounced on **01.12.2025**)

**(JUSTICE DILIP GUPTA)**  
**PRESIDENT**

**(HEMAMBIKA R. PRIYA)**  
**MEMBER (TECHNICAL)**

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**CORAM:**

**HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)  
HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)**

**DATE OF HEARING: 24.11.2025  
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**ORDER**

Order Pronounced.

**(BINU TAMTA)  
MEMBER (JUDICIAL)**

**(HEMAMBIKA R. PRIYA)  
MEMBER (TECHNICAL)**