

Continental Foundation Joint Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-22-2002

Reported in : (2002)(80)ECC518

Judge : P Chacko, B T K.K.

Appellant : Continental Foundation Joint

Respondent : Cce

Judgement :

1. The appellants M/s. Nathpa Jhakri Power Corporation (NJPC) are a joint venture between the Government of India and Govt. of Himachal Pradesh, set up for the purpose of construction of a power project between the towns of Nathpa-Jhakri in Himachal Pradesh known as Nathpa Jhakri Power Corporation funded by the World Bank. The civil work relating to the project was allotted to three construction companies viz., M/s. Continental Foundation Joint Venture (CFJV), M/s. Nathpa Jhakri Joint Venture (NJJV) and M/s. Jai Prakash Hyundai Consortium (JPHC). The agreement was entered into by M/s. NJPC and the construction companies to provide inter alia 'mix concrete' for execution of various items of work under the contract.

2. The Commissioner of Central Excise, Chandigarh issued a show cause notice dated 20.1.99 to all the above parties alleging that the construction companies employed by M/s. NJPC were manufacturing 'Ready Mix Concrete (RMC)' on which no Central Excise duty is being discharged. It is averred that the said RMC

falls under Chapter Heading No. 3824.20 of the Schedule to the Central Excise Tariff Act and is subject to Central Excise duty. It is stated that all the three parties are adopting the same method of manufacture of RMC for which the rock is blasted from the designated quarry of M/s. NJPC. It is transported to the crusher and crushed to the specified sizes and specific quantity at the project site. Some aggregate, cement and sand are also produced from the crushing plant set up at the site. Some natural sand is also used. The aggregate and sand are transported and stored in bins adjacent to the automatic batching plant. The cement purchased from the market is stored in the cement silos at the site. The batching plant is an automatic plant which regulates and delivers the specified sizes and quantities of aggregate, sand and cement into the mixing drums through the built-in conveyor. The admixture for water reduction or air entraining are incorporated in the concrete as per the approved mix design given by the NJPC. The whole process is fully automatic and is electronically controlled. It is averred that the concrete of approved mix design and the specified quantity is manufactured in the batching plant strictly in accordance with IS: 456-1978 as stipulated in the contract with M/s. NJPC. The concrete so produced is transported by transit mixers up to the location of placement and is placed at the specified location by concrete pumps or placers before the setting time of concrete, which varies depending upon the type of cement used. It is alleged that noticee companies are manufacturing RMC but with some motive, they are naming it as mixed concrete to evade the Central Excise duty. It is stated that there is a difference between the process and method of manufacture of RMC provided in the BIS literature under IS: 4926/1976 and the Board's letter No. 368/1/98-CX dated 6.1.98. In this Circular of the Board, the process of manufacture of RMC is spelt out and it is clarified that RMC is a dutiable product. It is further averred that the matter was referred to the Bureau of Indian Standards who vide their letter dated 23.10.98 reported that the query raised by the department vide their letter dated 9.7.98 was considered by the Concrete Subcommittee and its views are as follows: "It is agreed that insofar as the process of manufacturing the concrete is involved, the process described in the letter of Central Excise is similar to the process given in IS: 4926 specification for 'Ready Mix Concrete'".

3. It is stated that the noticee parties were asked to provide quantities and the value of the said RMC manufactured and delivered by them; that whereas the companies have given the particulars of the RMC supplied by them to the project but they have not shown the value of the concrete. Therefore, it is averred that the department has no option but to take the value of the comparable goods viz., RMC being manufactured in a similar project at Ranjit Sagar Dam situated in the State of Punjab in terms of Rule 6(b)(i) of the Central Excise (Valuation) Rules, 1975. By adopting such rates, the duty amount of Rs. 3,90,29,275 is worked out to be recovered from the noticee parties. It is alleged that the construction companies have deliberately concealed the fact of manufacture of RMC and termed it as mixed concrete. It is alleged that they suppressed the material facts from the department to evade the Central Excise duty. Therefore, the noticee companies have been called upon to show cause as to why the Central Excise duty as per the particulars below should not be recovered from them under Rule 9(2) of the Central Excise Rules, 1944 read with proviso to Section 11A(1) of the Central Excise Act, 1944: The above-said companies have further been called upon to show cause as to why the penalty should not be imposed on each one of them under Rule 173Q read with Section 11AC.4. On consideration of the replies of the noticee parties, the Commissioner of Central Excise, Chandigarh-I vide his order dated 30.12.99/12.5.2000 confirmed the amounts of duty on them as indicated above. He also imposed penalties of equivalent amounts on the parties and ordered for the recovery of the interest @ 20% on the confirmed amounts of duty. M/s. NJPC is subject to a penalty of Rs. 30 lakhs under Rule 209A by the Commissioner.

5. The present appeals are against the impugned order of the Commissioner. The appellant parties are represented by the Ld. Counsels as follows: (a) M/s. CFJV: Shri Joseph Vellapalli, Sr. Advocate and Shri K. Gulathi, Advocate.

(d) M/s. NJPC: Shri M. Chandrasekharan, Sr. Advocate and Shri M. Pushkarna, Advocate.

S/Shri P.K. Jain and Shri MP. Singh, SDRs are representing the revenue/respondents. Shri J. Vellapalli, Ld. Sr. Advocate leading the discussion for

the appellants submitted that the demand in this case relates to the period from 1993-94 to 1998-99 and the same is made by classifying the product under Ch. Heading 3824.20 answering to the description as RMC. It is however contended that the entry under this heading itself is introduced in the Central Excise Tariff only with effect from 1.3.97 and therefore no duty could be charged under this sub-heading for the period anterior to this date. It is contended that prior to this date, the product could only be classified under sub-heading 6807.00 as held in the Tribunal decision in the case of Associated Cement Co. Ltd. v. C.C.E. Mumbai 2001 (96) ECR 176 (T). In this decision, the Tribunal has not approved the advice of the CBEC in their Circular No. 237/71/96-CX dated 12.8.96 for placing the classification of RMC under Heading 3823 and has also held that the demand in that case was time barred. It is submitted by the Ld. Sr.

Counsel that the appeal of the Revenue against the above decision before the Hon'ble Supreme Court is dismissed as reported in 2001(132) ELTA106.

6. With regard to the demand of duty for the period after 1.3.97, when a specific entry under the description--Ready Mix Concrete is made in the Tariff for sub-heading 3824.20--it is contended that the product made by them does not fall within the scope of this entry since it is not RMC. It is submitted that the product made by them is concrete mix and not the RMC. It is stated that to be a Ready Mix Concrete, the product has to be made in a ready mix plant away from the work site and supplied to the work site in vehicles whereas in their case, the product is made at the work site itself. Besides--it is argued--the two products viz., concrete mix and RMC are also distinguished by different BIS specifications. 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. It is contended that both of these distinguishing features of the concrete are recognised even in the CBEC Circular No.368/1/98-CX dated 6.1.98. In this Circular it is observed that a clear distinction needs to be made between (a) concrete mix at site, and (b) RMC. It is stated that the shelf life of RMC is increased by addition of chemicals. This mix is loaded on a transit mixer mounted on a truck chassis which is transported to the site of the customers and the same is discharged at the site for use in further construction of building etc. It is contended before us that the appellants are not

adding any chemicals to increase the shelf life of the mixer nor it is transported by loading it in a transit mixer mounted on a truck chassis. It is stated that in their case, the concrete mix is made at the site itself and used there only. It is argued that the Board's Circular further distinguishes the types of concrete by the BIS standards referred to above. It is submitted that their product is made as per the BIS standards IS: 456/1978 which is evident even from the contract entered into by them with their principals, M/s. NJJV. In their contract it is clearly stipulated that the concrete material is to conform to IS: 456/1978. The Ld. Sr. Counsel for the appellants further refers to a specific clause in the contract which reads," the concrete shall be deposited in the final position as early as practicable but always within a period of sixty minutes after mixing. This limit may be modified by the Engineer-in-charge to suit working or weather conditions. Plant--such as buckets, cans, conveyors and pumping equipment etc. which may be used for conveying concrete shall be of such size, design and condition as to ensure an even and adequate supply of concrete at the specified placement area." It is further submitted that the Commissioner has not given any finding as to the BIS classification of the concrete mix under consideration and has simply dismissed this contention by observing that sub-heading 3824.20 speaks only of RMC and it does not speak of RMC specification IS: 4926/1976 and that the contention that RMC only of this specification is excisable, is not tenable. These findings of the Commissioner, it is argued, are against the instructions of the Board and hence untenable.

It is also contended that the concrete mix made at the site of the construction is exempted from payment of duty under Sl.51 of the exemption Notfn. No. 4/97 dated 1.3.1997. The submissions are also made on time bar of demand and on the mode of valuation adopted by the Commissioner. It is contended that in view of the instructions of the Board directing that the concrete mix made at the site of construction is exempted from payment of duty under Notfn. No. 4/97 and since they had undertaken the manufacture of concrete only at the construction site, they were under a bon afide belief that they were not liable to pay any duty and the demand of duty made on them is time barred. In this regard, reliance is placed on the judgment of the Hon'ble Supreme Court in the case of Tamilnadu Housing Board v. C.C.E. Madras 1994 (74) ELT4 (SC). It is contended that the

Commissioner in his order has not recorded any finding as to the time bar of the demands raised before him. It is stated that for the purpose of arriving at the assessable value for levy of duty, the Commissioner has adopted the value for the RMC in a similar project in Ranjit Sagar Dam under the provisions of Rule 6(b)(i) of Central Excise (Valuation) Rules, 1975, but it is stated that the order of the Commissioner in that case itself is set aside by the Tribunal and the matter is remanded for de novo consideration vide CEGAT Final Order No. 366/ 2000/C, dated 2.3.2000 and the matter is resting at this stage.

7. The argument is also advanced that the concrete made by them itself is not liable to pay any duty of Central Excise since it is neither marketed nor it is marketable. However, this argument is stated to be rejected since it is the appellants' own case that the concrete is made strictly as per the BIS specifications IS: 456/1978. It is well known that the BIS standards are provided to ensure the manufacture of the goods as per the specifications provided therein to ensure the manufacture of quality products and once the goods are made conforming to these standards, they have necessarily to be capable of being sold in the market. Besides the manufacturing companies are charging the price of the concrete from M/s. NJPC as per the quantity mentioned in their running bills. They have also furnished to the department, the figures of total quantity of concrete supplied to the buyers in cubic metres. Therefore, the argument relating to the non-marketability of the RMC under consideration is not tenable and the same is accordingly rejected.

8. Shri M. Chandrasekharan, Ld. Sr. Counsel for the appellants arguing the case for M/s. NJPC submitted that a penalty of Rs. 30 lakhs under Rule 209A is imposed on his clients. It is argued that the knowledge on the part of the person of any excisable goods being liable for confiscation is a condition precedent for his being subject to any penal action under this rule but the Commissioner in this case has not arrived at any findings that the concrete subject matter of dispute--is liable to confiscation. Therefore, the imposition of penalty under this rule is not tenable. The arguments are also advanced that the appellants are entitled to the modvat credit on cement used as an input which itself would run into huge amount and given this advantage under the statute, there could be no intention to evade

payment of duty on concrete. In any case it is further argued that the levy of duty and other taxes are to be reimbursed to the appellants by the Power Corporation as per their contracts and this is another point operating against the findings relating to the intention to evade payment of duty.

9. Shri P.K. Jain, SDR appearing for the respondents while reiterating the findings arrived at by the Commissioner in his order stated that the concrete mix in case of each of the appellants is made in the same plant and it is according to the manufacturing process described in the Board's Circular dated 6.1.98 referred to above. He contended that the appeal of the department against the decision of the Tribunal in the case of A.C.C. (supra) is dismissed by the Hon'ble Supreme Court in limine and it is not dismissed on going into the merits of the case. He relied on the decision in C.C.E., Mumbai-I v. Metal Pack in which it is held that the dismissal of an appeal by the Hon'ble Supreme Court in limine and not on merits against a particular order does not amount to affirmation of the ratio of that order. The Ld. SDR further placed reliance on Poddar Tyres (Pvt.) Ltd. v. C.C.E. Chandigarh 2000 (126) ELT 737 (T) in which a view is held that a product to be excisable under certain classification need not essentially conform to the ISI specifications as the ISI specifications decide the quality of a product and not its character or nature.

10. We have considered the submissions made before us. The demand in dispute before us can be split into two periods--the one from April 1994 to 1.3.97 and the other from 1.3.97 to May 1997. The demand for the period up to 1.3.97 is covered in favour of the appellants on merits as well as time-bar by the decision of the Tribunal in the case of A.C.C. (supra) which on appeal is upheld by the Apex Court. This position is admitted even in the latest Circular No. 601/38/01-CX dated 20.11.2001 of the Ministry of Finance which is published at 2001 (47) RLT M/58-59. This Circular is reproduced below: 1. It is directed to refer to Board's Circular No. 237/71/96-CX dated 12.8.96 and 315/31/97-CX dated 23.5.97 issued from F.No. 126/1/96-CX.3 wherein it has been held that Ready Mix Concrete (RMC) falls under heading 38.23.

2. The matter has been re-examined on dismissal of department's appeal in the case of CCE, Mumbai-IV v. Associated Cement Co.

wherein CEGAT in Order No. C-II/3333-34 dated 17.11.2000 has held that proviso to Section 11A cannot be invoked and the goods RMC are more appropriately classifiable under heading 68.07.

3. In view of the CEGAT decision holding the classification of Ready Mix Concrete under Chapter 68 and it being upheld by the Apex Court, the Ready Mix Concrete are correctly classifiable under heading 68.07 for the period prior to 1.3.97. Board has accepted the decision affirmed by the Apex Court. The above said Circulars, therefore, stand modified accordingly.

4. It may be noted that the Apex Court decision covers the period prior to 1.3.97 only. With effect from 1.3.97, a specific sub-heading 3824.20 has been inserted to cover Ready Mix Concrete.

11. The position after this date would however be different. After this date, a specific entry under sub-heading 3824.20 viz., Ready Mix Concrete, is made in the Central Excise Tariff. Even then the appellants are contending that the product manufactured by them does not fall under the description 'RMC and it could not be classified under this heading and charged to duty. One of their contention that their product is not marketable is rejected in para 7 above of this order. The second contention is that the concrete is made by them at the site that it is made as per the BIS standard IS: 456/1978 and not as per the standard IS: 4926/1976 and the latter type would not qualify to be classified under sub-heading 3824.20; that the other type of concrete mix is not RMC and in any case it is exempted from payment of duty under Notfn. No. 4/97-CE dated 1.3.93 in terms of the Board's Circular No. 368/1/98-CE dated 6.1.98. Since a great emphasis is placed on this Circular, the same is reproduced below: 1. Attention is invited to Board's Circular No. 315/31/97-CX dated 23.5.1997 regarding classification of Ready Mix Concrete. It has been brought to the notice of the Board that in some cases concrete mix manufactured at the site of construction is being denied exemption under S.No. 51 of Notification No. 4/97, dated 1.3.1997.

2. The Board has examined the issue of "RMC" afresh and finds a clear distinction needs to be made between the two types--(a) concrete mix at site, and (b) Ready Mix Concrete. The Ready Mix Concrete 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 weighed, batched by electrical controls and limit switches. Cement from silo is carried to the batching plant by a screw conveyor 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.

3. The qualities of Ready Mix Concrete, are some what different to site mixed concrete. The final product Ready Mix Concrete is a material in plastic, wet process state and not a finished product like blocks or precast tiles or beams.

4. Ready Mix Concrete is thus an excisable product which has a separate tariff entry under sub-heading 3824.20 of the Central Excise Tariff Act, 1985. It is also known under the Indian Standard IS: 4926-1976, which for the purpose of that standard defines Ready Mix Concrete as concrete delivered at site or into the purchaser's vehicle in a plastic condition and requiring no further treatment before being placed in the position in which it is to stay and harden. Ready Mix Concrete attracts duty at the rate of 13% prior to 21.10.1997. Subsequent to 21.10.1997 vide Notification No. 65/97-CE dated 21.10.1997 the duty on Ready Mix Concrete classified under sub-heading 3824.20 has been reduced to 8%.

5. A doubt has been raised as to whether concrete mix manufactured at site using large mechanical devices is a form of ready mix concrete.

6. The matter has been examined and concrete mix implies the conventional method of concrete production conforming to the BIS Standard IS: 456-1978, which is produced and used at the site of construction. It is this concrete mixture, manufactured at the site of construction which is fully exempt vide Notification No.

4/97-C.E. dated 1.3.1997 (S. No. 51). It is thus clarified that ready mix concrete or pre-mixed concrete, by its very nature, cannot be manufactured at the site of construction and is brought from the factory of manufacturer for use in construction.

7. 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" in construction at such site, is fully exempt vide Notfn. No. 4/97-CE dated 1.3.1997 (S.No. 51) 8. All pending disputes/assessments on the issue may be settled in the light of these guidelines.

12. We have already seen above that as per the specification provided to the manufacturing companies by M/s. NJJP, the concrete material, production methods, testing and admixtures are to conform to IS: 456/1978 and IS: 457-1957. There is further stipulation in this contract that the concrete shall be deposited in the final position as early as practicable but always within a period of sixty minutes after mixing. This limit may be modified by the Engineer-in-Charge to suit the working or weather conditions. There is also a stipulation in the contract for conveying the concrete to any part of the structure, wherein the concrete is loaded into chutes, belt, conveyors and other similar equipment but carrying the concrete in a bin continuously exposed flow is not permitted except for a very limited or isolated section of the work. In view of these clauses in the contract, it is contended that the concrete made by them is not RMC and is not subject to any duty. But, however, as against the preceding conditions in the contract, what we find on the ground is that the concrete is being manufactured by adopting a very advanced and sophisticated process which, as per their own version, is adopted for dams and massive structures. The process of manufacture is described by S/Shri B. Roy Chaudhury and N.K. Sharma, representatives of M/s. NJJV in their statements dated 5.3.98. This is that rock is blasted from the quarry, transported to crusher and crushed to the specified sizes and specified quantity as per the contract at the project site. The aggregate as well as some quantity of sand is produced at the site from this crushing plant. Some natural sand is also used. The aggregates from crushing plant and the sand are transported and stored in the

bins adjacent to automatic batching plant. The cement purchased from the market is stored in the cement silos at the site. The water line is connected to the batching plant. The batching plant is an automatic plant which regulates and delivers the specific sizes and quantity of aggregates, sand, cement and also calibrated quantity of water into the mixing drums through the built-in conveyor. The admixture for water reduction/or air entraining are incorporated in the concrete as per the approved mix design as given by M/s. NJPC. The whole process is fully automatic and controlled electronically. The concrete so produced is transported by a transit mixer up to the location of placement and is placed at the specified location by concrete pumps or placers before the setting time of the concrete which varies depending upon the type of cement used. When we look at this manufacturing process undertaken in a sophisticated automatic manufacturing plant used by the appellants, we find that it fully conforms to the method of production described for RMC in the aforesaid Board's Circular. Since such concrete is immediately used, there is no need to add any chemicals to increase its shelf life. In our view, there is undue emphasis being placed by the appellants on the fact of the concrete being manufactured at the project site. In our view, the manufacture at the project site in itself would not be the determining factor whether the product is concrete mix or ready mix concrete. It is the method of manufacture which would determine its category. If the RMC plant itself is put up at the construction site that would not make the product made in the plant any different from the one made in a similar plant at a distance from the site of construction and transported in truck chassis to the site. This view is also affirmed by the Bureau of Indian Standards which laid down the standards for the two types of concrete. The department referred the matter to Bureau of Indian Standards for their opinion and the Addl. Director (Civil) Engineering of the Bureau vide his letter dated 23.10.98 reported that the query of the department was considered by the Concrete Sub committee CED 2:2 and it has agreed that, insofar as the process of manufacturing concrete is involved, the process described in the letter of Central Excise is similar to the process given in IS: 4926 specification for Ready Mix Concrete.

13. Thus, on carefully taking into consideration the manufacturing process adopted by the appellants, the Board's instructions and the expert opinion of the BIS on the

subject, we are of the view that the product manufactured by the appellant 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 SI. No. 51 of the Table attached to Notfn. No. 4/97-CE as this notification exempts concrete mix manufactured and used at the site of construction and not the RMC.14. Now we take up the valuation aspect of the product under consideration. The Commissioner has recorded that the appellant companies on specific query failed to provide the value of the RMC manufactured by them. Therefore, he adopted the per cubic metre values of the comparable goods manufactured from time to time in a similar project of Ranjit Sagar Dam. For this, the Commissioner has relied on the provisions of Rule 6(b)(i) of the Central Excise (Valuation) Rules, 1975 and arrived at the duty amount of Rs. 3,90,29,275 liable to be recovered from all the appellant companies. The appellants have pleaded that the order of the Commissioner in the case of Ranjit Sagar Dam itself is set aside by the Tribunal and remanded for reconsideration.

In our view this aspect would call for re-examination. Since, we have held that the product manufactured by the appellants is RMC and it is liable to duty after 1.3.97, we direct the appellants to furnish to the Commissioner within six weeks from the date of receipt of this order, all the relevant data with supporting evidence to enable him to determine the value of the product for the purpose of assessment under the valuation rules. If the appellants fail to comply with this direction, the Commissioner will be free to proceed to arrive at such value as per the evidence on record under the law.

15. Another argument is about the time bar of demands. It is contended that, in view of the Board Circular dated 6.1.98, since they were making the concrete at site and as per the standards prescribed in IS: 456-1978, they were under a bona fide belief that what they were manufacturing was mix concrete and not the RMC. The contention of bona fide belief is also advanced on their eligibility to the exemption under Notfn. No. 4/97-CE dated 1.3.97. We find little force in this submission. A specific entry was made in the Central Excise Tariff for RMC under sub-heading 3824.20 with effect from 1.3.97. The exemption under the notification was provided to mix concrete made at site and not to the RMC. None of the

appellants sought any clarification from their jurisdictional Central Excise authorities or obtained any legal opinion as to the exigibility of their product or its eligibility to the exemption under this notification. The Board Circular dt. 6.1.98 was issued much after the RMC was brought under the excise net. In the face of these facts, the plea of bona fide belief by the appellants is not supported by the evidence on record. Another contention raised is that the appellants could not have had any intention to evade payment to duty, since the contract between the applicants and the Power Corporation specifically provided that any additional cost that was incurred as a result of any change in Legislature or States statutes, regulations or by-laws would be paid by the Power Corporation. It is contended that, where the excise duty is reimbursed by the buyers, there could not be any intention to evade payment of duty. It is observed that no such plea is raised before the adjudicating authority.

The Power Corporation is also an appellant in this case and there is no plea of any such commitment on their behalf in their appeal. There is no evidence that the stated clause in the contract would bind the Power Corporation to reimburse the appellants even for the duty liability fastened on to the appellants on the grounds of suppression and mis-representation etc and not on account of any change in legislation, regulation or by-laws. The plea of bona fide belief is therefore, rejected. The appellants are also claiming the benefit of modvat credit on the input material but this plea is also not raised before the original authority. However, in the interest of justice, they could be given an opportunity to establish their case before the original authority for eligibility to the modvat credit in respect of the duty paid on the input material used in the manufacture of RMC with the documentary proof.

16. In view of the above discussion, we set aside the impugned order and hold that:-- (a) the product manufactured by M/s. CFJV, JPHC and NJJV, is Ready Mix Concrete appropriately falling under Tariff sub-heading 3824.20 and these parties are liable to pay duty on this product for the period from 1.3.97 by application of the extended period for demand under Rule 9(2) of the Central Excise Rules, 1944 read with the proviso under Section 11A(1) of the Central Excise Act, 1944.

(b) they are not liable to pay any duty for the period prior to the aforesaid date.

(c) the appellants shall furnish the requisite particulars to the Commissioner for the purpose of arriving at the value of the RMC as per the direction given in para 15 above.

(d) the appellants shall further furnish to the Commissioner the particulars supported by the documentary proof about the input materials used in the manufacture of RMC within a period of six weeks from the date of receipt of this order.

(e) the Commissioner thereafter, on taking into consideration the aforesaid particulars, will determine the duty liability in respect of each of the appellant party and pass a cogent speaking order.

(f) the appellants shall be entitled to the modvat credit in respect of the duty paid on the inputs gone into the manufacture of RMC, as per law.

(g) the imposition of penalty and the amounts thereof, in respect of each of the appellant parties--including M/s. NJPC--shall be reconsidered and the findings recorded on de novo consideration.

17. The appellants shall be afforded a reasonable opportunity of hearing before taking a final view in the matter.

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