

**SUPREME COURT OF INDIA**

Larsen & Toubro Ltd.

Vs.

C.C.E, Hyderabad

C.A.No.6930-6931 of 2005

(A.K.Sikri and Rohinton Fali Nariman,JJ.,)

06.10.2015

**JUDGMENT**

**A.K.Sikri,J.,**

1. In the first two appeals, i.e. Civil Appeal Nos. 6930-6931 of 2004, the assessee is M/s. Larsen & Toubro Limited (hereinafter referred to as 'L&T'). Two appeals are filed by L&T assailing the orders dated April 28, 2005 and October 24, 2005 passed by the Bangalore Bench of the Customs, Excise & Service Tax Appellate Tribunal (for short, 'CESTAT') whereby it held that L&T was not entitled to exemption on the goods known as 'Ready Mix Concrete' (for short, 'RMC') under Notification No. 4/1997-CE dated March 01, 1997 as the said Notification exempted 'Concrete Mix' (for short, 'CM') and not RMC. In the other appeal, wherein the assessee/ respondent is M/s. Chief Engineer, Ranjit Sagar Dam (hereinafter referred as 'Ranjit Sagar Dam'), the judgment impugned is that of the Punjab & Haryana High Court taking a contrary view. Here, the High Court has held that RMC manufactured at the assessee's plant would be entitled to exemption inasmuch as the Notification exempts all kinds of CM from payment of duty, which would include RMC as well. It is clear from the above that the issue which arises for consideration is identical in all these appeals. For this reason, they were heard analogously and are being disposed of by the present judgment. We shall, in the first instance, take up the appeals of L&T.

2. CIVIL APPEAL NOS. 6930-6931/2005 AND CIVIL APPEAL NO. 2121/2006 L&T was constructing its own cement plant at Bhogasamundram, Anantpur. For the purpose of the construction of civil structure of the said cement plant, L&T required CM, it used to prepare said CM at site with the help of machinery installed there and the said CM was captively consumed in the construction of the said cement plant by L&T. L&T did not pay any central excise duty on this product taking shelter under Notification No. 4/1997-CE dated March 01, 1997, which exempted CM from payment of excise duty.

3. The Central Excise Officers visited the site and found that the L&T are manufacturing ready mix concrete and not concrete mix. A show-cause notice dated July 22, 1998 was issued by the Commissioner of Customs and Central Excise, Hyderabad-II Commissionerate,

proposing excise duty demand of ₹1,97,47,626 along with interest, penalty and fine. L&T refuted the aforesaid demand by filing its reply dated September 09, 1998 and submitting that since concrete was prepared at the site and was consumed captively at site, it had to be treated as CM and, therefore, was eligible for exemption under the said Notification which exempted CM from payment of any excise duty. This defence did not find favour with the Commissioner, who passed Order-in-Original dated January 29, 2002 raising the demand in the sum of ₹81,39,326 with interest, penalty and fine.

4. In the Order-in-original, the Commissioner has stated that ready mix concrete refers to a concrete specially made with precision and of high standard and as per particular needs of a customer and delivered to the customer at his site. According to him, the conventional site mixed concrete lacks consistency in quality. He also noted that there are advantages of having ready mix concrete over conventional site mixed concrete, the way it is produced and delivered. On this reasoning, he concluded that ready mix concrete as a product is different from concrete mix. After taking into account the way L&T produced concrete mix by using machinery at the site, he concluded that the product is ready mix concrete and not concrete mix. He reasoned that what distinguishes ready mix concrete from concrete mix is the manner in which it is manufactured, the high degree of precision and stringent quality control over the mix of ingredients.

5. Feeling aggrieved by this order, L&T preferred appeal before the CESTAT with the plea that aforesaid reasoning of the Commissioner was faulty. It was sought to be explained that having regard to the high quality of the cement plant that was required, CM was prepared at site with the application of sophisticated technique in order to achieve high standards of quality. It was submitted that use of additives to increase the time period over which the concrete can be used is not a decisive factor. Since the L&T needed large quantities of ready mix concrete, they had put up a plant for producing ready mix concrete at the site and therefore, there was no need for use of retarders. It was also pleaded that the Commissioner ignored the contention of L&T that the subject product was CM conforming to the requirements of IS 456:1978. Rather, he relied on IS 4726:1976 for the ready mix concrete and held that the product manufactured by L&T at the site of construction is RMC.

6. L&T also referred to earlier proceedings by pointing out that the CBEC had issued a Circular No.315/31/97-CX dated May 23, 1997, in which it was clarified that RMC, even though it is manufactured at the site of construction, is chargeable to excise duty under sub-heading No.3824.20 of the Central Excise Tariff Act, 1985. The exemption for CM manufactured at the site of construction for use in construction work at such site available under Notification No.4/97-CE dated March 01, 1997 is not applicable to RMC manufactured at the site of construction. L&T had challenged this interpretation in the circular by filing a writ petition in the High Court of Madras. Before the High Court, the Additional Central Government standing counsel specifically took a stand that excise duty is not leviable on RMC if it is manufactured at the site of construction. It was, thus, argued that the Revenue was bound by the aforesaid concession given in the Court.

7. The CESTAT, however, was not amused by these contentions of L&T. While dismissing the appeal, the CESTAT distinguished between RMC and CM explaining that the same were understood differently in trade and commerce. It accepted the finding of the Commissioner that the manner in which the product was manufactured by L&T, it was clearly RMC. It was pointed out that the facility put up by L&T involved various machines coupled with sophisticated process which was indicative of the fact that it was for the manufacture of RMC and the only reason for manufacture thereof at site was that the larger quantities of RMC which was required by L&T.

8. According to CESTAT, it is the high degree of precision and stringent quality control observed in the selection and processing of ingredients, namely, aggregates, cement, sand, additives and water, which made the product as RMC in contra-distinction with CM. However, at the same time, penalty under Section 11 A(c) of the Excise Act is reduced to ₹10 lakhs and insofar as penalty under Rule 209A of the Excise Rules imposed on the Construction Manager is concerned, the same is altogether set aside. Likewise, fine in lieu of confiscation of the plant and machinery is also reduced to ₹10 lakhs. Levy of excise duty, however, is maintained.

9. Before we advert to the submissions made by Mr. Sahu attacking the aforesaid approach of the Tribunal, we deem it proper to refer to the legal provisions:

10. Prior to March 01, 1997 'Concrete Mix' was classified under Chapter 68 ---sub-heading 68.07 of the Central Excise Tariff Act as applicable for the year 1996-1997. In terms of Notification No.8/96-CE dated July 23, 1996, following goods specified in sub-heading 68.07 was excisable to 'Nil' rate of duty as follows:-

“(iii) Goods manufactured at the site of construction for use in construction work at such site.

In terms of above no excise duty was payable for 'concrete mix' manufactured at the site of construction for use in construction work at such site.

Prior to the above notification, under the previous applicable notification also i.e. Notification No.36/94-C.E. dated March 01, 1994 'Concrete Mix' manufactured at the site for use in construction work was exempted from excise duty, i.e. all along the excise duty for 'concrete mix' manufactured at the site remained 'NIL' Prior to March 01, 1997 there was some doubt expressed as to the excisability and classification of the product 'Ready Mix Concrete'. The Trade was claiming classification of the product under heading 68.07 with benefit of exemption from central excise whereas the department stand was that 'Ready Mix Concrete' was classifiable under sub-heading 38.23[1] of the schedule of Central Excise Tariff Act as it stood prior to March 01, 1997.

It is clearly discernible from the above that the Legislature has treated RMC and CM as two different products. Whereas CM has generally been covered by the exemption notification, such an exemption is not extended to RMC. Even when doubts were raised from time to time about the two products, Government has always been clarifying and emphasizing that the two products are different and RMC attracts excise duty and is not covered by the exemption notification. The classification entries have also been enacted accordingly. We may also mention at this stage itself that the duty which was demanded from L&T by issuing show-cause notices cover the period from May 02, 1996 to February 28, 1997 and from March 01, 1997 to March 19, 1998.”

11. Notification No.4/97-CE dated March 01, 1997 was issued under Section 5A(1) of the Act exempting certain goods from payment of excise duty at Sl. No.51 Chapter 38 is covered and the description of goods mentioned therein reads as follows:

“Concrete Mix manufactured at the site of construction for use in construction work at such site.” Another factual aspect which needs to be highlighted is the description of RMC. In Circular dated August 12, 1996 issued by the Board, it is explained that 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 site is carried to the batching plant by a screw conveyer 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 mixture so obtained 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. The qualities accruing to the Ready Mix Concrete so obtained far out weigh to those of the 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.

12. This Circular further clarifies that RMC falls within the ambit of the meaning of the word 'manufacture' as envisaged under Section 2(f) of the Central Excise and Salt Act, 1944 as the product RMC is marketable, though within the time frame of its short shelf life and it also satisfies the test of being 'goods'.

13. We now proceed to take note of the arguments that were addressed at the Bar. Mr. Sahu submitted that in the instant case demand of excise duty from L&T on the footing that it has manufactured RMC at the site of construction is not sustainable for various reasons. In support of this plea, he paraphrased his submissions in the following manner:

“(i) Product-wise, there is no difference between ready mix concrete and concrete mix. This is clear from IS 456, industry standard for all types of concrete mix and IS

4926 industry standard for ready mix concrete. IS 4926 refers to IS 456 for specifications on product ingredients and manufacturing process. IS 4926 defines ready mix concrete as a concrete mixed in a batching plant and delivered at the site of the purchaser for use. This standard deals with management aspects of maintaining plant, delivery process, interaction with customer, sampling and testing for quality control, order processing and records. Thus, IS 4926 is concerned with commercial aspects of industry practices of ready mix concrete, which by definition is concrete mix manufactured at one place and delivered at another place for use.

(ii) Since L&T was manufacturing concrete mix at the site for self-use in construction of cement plant, it was not manufacturing ready mix concrete. For this reason, CBEC in Circular dated January 06, 1998, has explained that by its very nature, ready mix concrete cannot be manufactured at site. This must be the logic on the basis of which, the Government counsel made a concession before the Hon'ble Madras High Court (*Larsen & Toubro Ltd. v. Union of India*[2]) that ready mix concrete manufactured at site is not taxable.

(iii) Traditionally, articles manufactured at the site of construction have been exempted from excise duty with respect to goods manufactured at the site of construction. A list of notifications showing such uninterrupted exemption for articles of cement falling under CH 68, articles of iron and steel falling CH 73 and concrete mix falling under CH 38 is enclosed. For this reason, and also the fact that the product-wise there is no difference between ready mix concrete and concrete mix, this Court in *CCE, Belapur v. Simplex Infrastructure Ltd.*<sup>3</sup> has held that ready mix concrete produced at the site of construction is entitled to exemption.

(iv) Prior to March 01, 1996, this Court has upheld the position that ready mix concrete was classifiable under CH 68.07. (*Associated Cement Co. Ltd. v. CCE, Mumbai*<sup>4</sup>) upheld by this Court in *CCE, Mumbai v. Associated Cement Co. Ltd.*<sup>5</sup> All goods manufactured under this heading at the site for use in the construction at such site was all along exempt from duty. From March 01, 1997, ready mix concrete has been inserted in CH 38.2420. If ready mix concrete and concrete mix are two different things only ready mix concrete was not taken to CH 38. Therefore, concrete mix (manufactured at the site of construction) remained in CH 68.07 and was exempt under Notification No.4/97-CE (Serial No. 68.2). Even otherwise, serial no. 51 of this notification exempts concrete mix falling under CH 38, if manufactured at the site of construction.

(v) The distinction between ready mix concrete and concrete mix is similar to that between garment and ready made garment. Another analogy is home- made food and food ordered from restaurant for delivery at home. Concrete mix manufactured at site is like home-made food, and food order from restaurant for delivery at home is like ready mix concrete. Both are foods ready for consumption, but the former get beneficial tax treatment.

(vi) Before the Commissioner, L&T had taken the following arguments, which were not considered.

(a) CBEC in circular dated January 06, 1998 has classified that ready mix concrete could not be manufactured at the site.

(b) Ready mix concrete is a type of concrete mix, which is manufactured at one place and transported for delivery at the site of construction. This is not the case with L&T.

(c) No sample has been drawn by the Department to find whether the goods produced were ready mix concrete or concrete mix.

(d) The concrete mix produced at the site was used without delay, and had no shelf-life. Hence, it was not excisable.

(e) The goods are classifiable under CH 68.07 in view of the ruling in Associated Cement Co. Ltd. (supra). Hence, exempt under notification No. 4/97 (serial No.68.2). Alternatively, if classification is sought to be made under CH 38, site mixed concrete was also exempt under this notification.”

14. From the aforesaid submissions of Mr. Sahu, it becomes apparent that basic thrust of his argument is that CM and RMC are one and the same thing. According to him, when Mixed Concrete is prepared at one place from where it is packed and transported to some other place where the same is to be used, that is known as RMC. On the other hand, if CM is prepared at the site and is used there only, it remains CM. His argument was that it is only when RMC is used at a place other than where it is prepared, the same becomes exigible to excise duty and not when it is used at the site. For this purpose, he referred to the following observations in the judgment rendered by this Court in *Commissioner of Central Excise, Belapur v. Simplex Infrastructures Ltd.*<sup>6</sup>, which reads as under:

“3. As stated above, if RMC is produced at site, then alone the assessee is entitled to exemption under the requisite Notification. We may state that the word 'site' has not been defined in the Notification though it so defined in the later Circular. We may also state that with the advancement of technology, there could exist batching plants which are mobile. Ultimately, the question which would arise for determination would depend upon the facts of each case. In the present case, the Commissioner, as an adjudicating authority, has held that cement concrete obtained at Pen and Padghe sites conforms to the definition of RMC. However, according to the Commissioner, the respondent-assessee has manufactured RMC during the above period in the said places, namely, Pen and Padghe and, thereafter, they have cleared the same to the construction sites of the customers/clients of the assessee herein without payment of central excise duty and without observing the central excise formalities.” Mr. Yashank Adhyaru, learned senior counsel appearing for the Revenue while rebutting the aforesaid arguments submitted that CM and RMC were two different products

which was clear from the Chapter Note entries itself. He further submitted that it is the process by which concrete is mixed that determines as to whether it is CM or RMC and consumption of the material at site was irrelevant. According to him, the process of CM was somewhat crude in contra-distinction to the sophisticated process by which RMC of a comparatively very high quality is produced. Referring to the order of the Tribunal, he pointed out that since in the instant case, high quality RMC was required for the construction of the highly advanced quality cement plant, that too in large quantity, in the process not only heavy machines in the form of Stone Crushers, Conveyors, Vibrator Screens to segregate different sizes of stone aggregates were used, there was addition of sand mill to produce sand from stones and other sophisticated equipments were also used for manufacture of RMC which are taken note of by the CESTAT and these are:

- (i) Stone Crushers, Conveyors, Vibrator Screens to segregate different sizes of stone aggregates.
- (ii) Sand mill to produce sand from stones.
- (iii) Two batching plants in which all aggregates were weighed and batched by electrical controls and limit switches.
- (iv) Cement silo where cement is stored and carried to the batching plant by a screw conveyor operated with automatic weighing gauges.
- (v) Flow-meters to feed water after subjecting into chemical analysis.
- (vi) Mixer to mix stone aggregates sand, cement and water.
- (vii) Transit mixer mounted on a truck chassis for transporting the concrete to the actual site of construction.”

15. He, thus, argued that whether it was done at site or not was irrelevant. He also submitted that the assessee itself accepts that what is produced is RMC, which is different from CM, and the only reason for claiming exemption from excise duty is that it is produced at site.

16. We have considered the aforesaid submissions of the learned counsel for the parties.

17. We may point out at the outset that the case which is now sought to be set up by the assessee, namely, CM and RMC are one and the same product, was never the case of the assessee. On the contrary, in reply dated June 12, 1998 to the letter dated May 18, 1998 issued by the Assistant Commissioner of Central Excise, Anantpur, the explanation given by the assessee was that the product produced at the site is only concrete mix, which is different from RMC; and that RMC cannot be manufactured at the site of construction; that chemicals/retarders are not used in site mix concrete. Further, we also find from Order-in-

original as well as order passed by the Tribunal that the assessee always accepted that what was being produced was RMC and claimed exemption only on the ground that it was manufactured at the site of construction and captively used.

18. Even in the writ petition filed by the assessee in the High Court of Madras, the assessee itself proceeded on the basis that what was manufactured was RMC inasmuch as in para 3 of this writ, it was mentioned: 'the writ petitioner had set up a Unit for manufacture of Ready Mix Concrete at Manapakkam.' Paras 3 and 4 reads as under: "3. The writ petitioner had set up an Unit for manufacture of Ready Mix Concrete at Manapakkam and has registered itself with the Central Excise. According to the respondents, the Ready Mix Concrete manufactured by the petitioner is not meant to be used at the site itself and they have to be cleared and sold to various other construction companies. The product is transported through the vehicle fitted with mixing drum specifically designed to carry Ready Mix Concrete from the petitioner's unit to various concrete sites. The product is marketable, transportable and eventually available for sale.

19. The product concrete mix was not specified anywhere in Chapter 28 of the Central Excise Tariff Act, 1995. It was classified under Chapter sub- heading 38.23. However, as both the concrete mix and Ready Mix Concrete were closely related products, confusion arose in respect of classification and levy of duty." 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 freezing 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.” 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.” 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 01, 1997 exempts only 'Concrete Mix' and not 'Ready Made Mixed Concrete' and we have already held that RMC is not the same as CM.

In Simplex Infrastructures Limited case, this Court had not delved into the issue at hand at all except stating that, “if RMC is produced at site then alone the assessee is

entitled to exemption under the requisite notification.” There is no discussion on this behalf as well. Though, para 3 starts with the words: 'As stated above', a reading of earlier paras reveals that in the preceding paras also there is no discussion on this aspect. It appears that the parties proceeded on the basis that if RMC is produced at site, it will be entitled to exemption. Otherwise there is no discussion that RMC is different from CM and the notification mentioned only approves CM and not RMC. Moreover, para 5 of the said judgment would disclose that after setting aside the order of the Tribunal and in an appeal filed by the Revenue, matter was remitted back to the Tribunal without expressing any opinion on the merits of the case. Para 5 reads as under:

“5. In the above circumstances, we set aside the impugned order of the Tribunal and we remit the matter to the Tribunal to decide, in accordance with law, the dichotomy which arises in the present case between the existence of the batching plant, its location, its mobility and the area of the site. We make it clear that we express no opinion on the merits of the case. We remit this matter only on the basis of the statement made in the impugned order of the Tribunal that the above position was not disputed. Keeping the arguments on both sides open and further giving liberty to both sides to file additional documents, we set aside the impugned order and we remit the matter to the Tribunal for fresh consideration in accordance with law.”

20. Therefore, the aforesaid judgment would have no application.

21. On these facts, as far as appeal of the L&T is concerned that warrants to be dismissed when we find that the assessee was producing RMC and the exemption notification exempts only CM and the two products are different. Even if there is a doubt, which was even accepted by the assessee, since we are dealing with the exemption notification it has to be strict interpretation and in case of doubt, benefit has to be given to the Revenue. Appeals of L&T, therefore, fails and are dismissed.

22. CIVIL APPEAL NO. 6138 OF 2008 In the instant case, the CESTAT has held that as the RMC was manufactured at site and was used in construction work at site, the same was covered vide Notification No.4/97-CE. This view of the Tribunal has been upheld by the High Court thereby dismissing the appeal of the Revenue. Having regard to our discussion in the case of L&T, this view has to be rejected. At the same time, we find that the process of preparing the Concrete Mix at site has not been discussed at all. It is only that process which would determine as to whether the produce could be termed as CM or it would be treated as RMC. Therefore, while allowing the appeal of the Revenue and setting aside the order of the Tribunal as well as the High Court, we remit the case back to the adjudicating authority to look into the matter afresh from this angle, keeping in view our observations in this judgment.

23. Since it is an old matter, the Tribunal shall endeavour to decide the case within one year. Parties shall be free to produce material/evidence to show how the Concrete was mixed.

<sup>1</sup> Chapter 38 ---heading 38.23 of the Central Excise Tariff for the year 1996-1997 provided as under:

*“38.23 ---Prepared binders for foundry moulds or cores; chemical products and preparations of the chemicals or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included; residual products of the chemical or allied industries, not elsewhere specified or included” Goods falling under heading 38.23 were excisable to 20% excise duty.*

<sup>2</sup>(2006) (198) ELT 177 (Mad.)

<sup>3</sup>(2008) (225) ELT 338 (SC)

<sup>4</sup>(2001) (138) ELT 911

<sup>5</sup>(2001) 132 ELT A106 (SC)

<sup>6</sup>(2008 (225) ELT 338 (SC)