CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, BANGALORE

REGIONAL BENCH COURT NO. 2

Excise Appeal No. 824 of 2012

(Arising out of Order-in-Original No. 01/2012-CE dated 19.01.2012 passed by the Commissioner of Central excise, Customs & Service Tax, Bangalore)

M/s. Treadsdirect Limited-9
(Formerly Known as M/s. Elgitread India Ltd)
Kariyankode P.O.
Kottayi, Palakkad, Kerala ....**Appellant**

VERSUS

Commissioner of Central Excise, Customs & Service Tax,
Central Revenue Building,
Mananchira, Calicut, Kerala – 673001. ....**Respondent**

Appearance:

Mr. Ravi Raghavan, Md. Ibrahim and Mr. Tushar Sharma, Advocates for the Appellant
Mr. Sanjay Venkat, Authorised Representative for the Respondent

Coram:

Hon'ble Mr. P.A. Augustian, Member (Judicial)

Hon'ble Mr. Pullela Nageswara Rao, Member (Technical)

Final Order No. 20859 /2025

Date of Hearing: 12.12.2024

Date of Decision: 11.06.2025

Per: P.A. Augustian

The issue in the present appeal is regarding valuation of goods manufactured by the appellant. Appellant is manufacturing raw material including compounded rubber and synthetic rubber etc. Compounded rubber manufactured by the appellant is captively consumed within the factory for manufacture of pre-cured tread rubber and bonding gum. The said compounded rubber is also transferred to Pondicherry and Coimbatore units of the appellant for further use as raw material by the said factories for manufacture of similar final products. Final products manufactured by the appellant are cleared on payment of the appropriate duty. Alleging that the cost of main raw material i.e. natural rubber was not actually reflected in the production, proceedings were initiated to re-determine the value and adjudication authority as per the impugned order confirmed the demand. Aggrieved by said order, present appeal is filed.

2. When the appeal came up for hearing, learned counsel for the appellant draws our attention to the communication made by them vide letter dated 07.12.2006 where they have informed that they used to get the CAS-4 certificate every year as soon as the accounts are finalized. Accordingly, they have increased the price of final products two times. There is an increase in the assessable value for the period 01.04.2006 to 31.08.2006. However, allegation is regarding short levy of duty amounting to Rs. 52,68,159/-. Learned Counsel also draws our attention to the Show Cause notice where it is alleged that "It is very pertinent to note that as per the provisions of Central Excise Act / Rules read with Central Excise (Valuation) Rules, 2000, and the clarifications issued by the CBEC, in this connection, M/s TREADSDIRECT Ltd., Kottayi, should have computed the Central Excise Duty on the compound rubber cleared from their factory to their sister Units as also that was captively consumed in their factory for further production of Precured Tread Rubber, during the period 4/06 to 8/06, by arriving at the correct assessable value by adopting the general principles of costing in terms of Cost Accounting Standards, i.e., by drawing the CAS-4 Certificate, developed by the Cost & Works Accountants of India (ICWAI). Learned counsel for the appellant submits that when cost of raw rubber increased during the relevant period, to neutralise the effect, appellant used alternative material. Learned counsel for the appellant also draws our attention to the detailed worksheet prepared by Cost Accountant for assessing short levy of duty and the consumption data of raw material for the relevant period as given below;

Periods	Assessable Value worked out during the Special Audit (in Rs.)	Duty Payable @16.32% (in Rs.)	Duty Paid (in Rs.)	Short Levy (in Rs.)
01.09.2004 to 31.03.2005	79758502	13016588	14573989	-
01.04.2005 to 31.03.2006	159465697	26024802	29073878	-
01.04.2006 to 31.08.2006	107298058	17511043	12242884	5268150

April 2006 to August 2006

Description of raw materials	**Opening Balance**	**Receipt**	**Total**	**Issues**	**Closing Balance**
Natural Rubber RSS I	0	500	500	150	350
Natural Rubber RSS IV	127530	481520	609050	487450	121600
Natural Rubber ISNR 10	408	0	408	65	343
Natural Rubber PLC-2	0	0	0	0	0
sub-total				487665	
Styrene Butadiene Rubber(SBR)1502	190750	615922	806672	606620	200052

Thus as per the above chart, there is a substantial increase in consumption of the imported material Styrene Butadiene Rubber SBR 1502 (widely used in the production of various industrial rubber products) in lieu of natural rubber and it is showing increase of 124% compared to 6% up to 65% for the previous period.

3. As regards demand by invoking the extended period. Learned Counsel submits that there is no allegation of suppression of fact or mis-declaration for evasion of duty to invoke the extended period of limitation. Learned Counsel also submits that without prejudice to the above submissions, it is submitted that for the period from April 2001 to December 2010, the Appellant calculated the duty as per Rule 8 of the

Central Excise Valuation Rules, 2000. Subsequently due to investigation by the department, the Appellant undertook the exercise to calculate the duty on the basis of CAS-4 and concluded that the amount of duty paid as per Rule 8 was in excess of the duty which would have been paid on the basis of CAS-4. Learned Counsel for the Appellant further submits that as per the detailed worksheet prepared by Cost Accountant clearly shows that the duty paid by the Appellant is actually higher than the duty which would have been paid if the calculation was taken as per CAS-4.

4. Learned Authorised Representative (AR) for the Revenue reiterated the findings in the impugned order and submits that the demand has been raised on account of the verification of records by the Audit wing of the Department where it was observed that the assessee was clearing goods on the basis of value determined in manner specified in Rule 8 of Central Excise Valuation Rules, 2000 by adopting the value in terms of CAS-4 drawn with effect from 20.09.2004. The main factor which influences determination of assessable value of compound rubber is the cost of natural rubber. The cost of production as per CAS-4 dated 20.09.2004 was Rs.73.74 per Kg and as on 01.09.2007 it was Rs.95.82 per Kg. Learned AR relied on the following decisions;

i. **Precot Mills Ltd Vs. Commr. Of C.Ex., Calicut – 2014 (313) ELT 789 (Tri.-Ban.)**

ii. **Karnataka Soaps & Detergents Ltd. Vs. Commr. Of C.Ex. Mysore – 2010 (258) ELT 62 (Kar.)**

iii. **M/s. Sharda Ispat Ltd Vs. Commr. Of Central Excise, Nagpur – 2012-TIOL-1183-CESTAT-MUM**

iv. **Commr. Of C. Ex., Surat-I Vs. Neminath Fabrics Pvt. Ltd. – 2010 (256) ELT 369 (Guj.)**

v. **Commr. Of C.Ex., Mumbai Vs. Mahindra & Mahindra Ltd. – 2005 (179) ELT 21 (SC)**

vi. **Coaltar Chemicals Manufacturing Co. Vs. Union of India – 2003 (158) ELT 402 (SC)**

vii. **Usha Rectifier Corprn. (I) Ltd Vs. Commr. Of C. Ex., New Delhi – 2011 (263) ELT 655 (SC)**

5. In Rejoinder, Learned Counsel submits that there is no revenue loss and it is a revenue neutral situation. Learned Counsel further submits that as per the decision relied by the Learned AR in appellant's own case, this Tribunal has categorically held that

> *"7. Before we part with the cases, we note that the duty paid on such processed yarn cleared by appellant is being taken as Cenvat credit, by their own sister concern. This fact is not disputed by the revenue. If that be so, then the question of revenue neutrality arises, as it is an admitted fact that the transaction is mostly between the sister units. If that be so, the demand of duty on the appellant would be of no consequence as it would be revenue neutral. We find that all the case laws cited by the learned counsel support this proposition"*

6. Learned Counsel further submits that without prejudice to the above submissions and without admitting, if it is believed that the alleged differential duty was payable on goods cleared for captive consumption by the Appellant to their sister units, the said sister units would have been entitled to avail CENVAT credit of the same thereby rendering the whole situation as revenue neutral. Further, learned counsel for the Appellant relies upon **Nirlon Ltd Vs. Commissioner of CE, Mumbai -2015 (320) E.L.T. 22 (SC),** wherein the Hon'ble Supreme Court has held that there cannot be any intention to evade duty since the entire demand is revenue neutral. Similarly in **M/s. Hindalco Industries Ltd. Vs. CCE, Bhubaneswar-II (supra),** the Hon'ble Tribunal held that when goods were cleared to sister concern and the sister concern was entitled to avail credit, the entire situation becomes revenue neutral and the Appellant therein could not have achieved anything by evading duty.

7. Heard both sides and perused the records.

8. It is an admitted fact that during the relevant period, appellant was filing returns and also it was subjected to Audit from time to time. Further, as per the statement produced by the Special Auditor it is stated that during the period from 01.09.2004 to 31.03.2005, actual duty payable was Rs. 1,30,16,588/- and appellant had paid

Rs. 1,45,73,989/- and for the period from 01.04.2005 and 31.03.2006, duty payable was Rs. 2,60,24,802/- and duty paid was Rs. 2,90,73,878/- as per the calculation of Cost Accountant. Thus during the said period appellant had paid excess duty than what was payable by the appellant. However, Audit report has limited the net demand by considering the period from 01.04.2006 to 31.08.2006 and demand of Rs. 52,68,159/- was confirmed. Further as per the evidence on record, appellant had adopted prices as per CAS-4 which was effective from 20.09.2004 for clearances made till 31.08.2006 and the next CAS-4 was drawn only with effect from 01.09.2006 as such it is alleged that significant increase in prices of raw material for the intervening period was not taken into account for clearances made. However, Appellant draws our attention to the imported raw material used when cost of natural rubber has increased. As per the chart relied by Appellant, they had increased the use of imported raw material up to 126%. Further considering, the revenue neutrality as upheld by this Tribunal in appellant’s own case for the previous period, the unsustainable allegation of suppression of facts for invoking the extended period of limitation, we find that there is no merit in the case to reject the value as declared by the Appellant, hence and impugned order is not sustainable.

9. Accordingly appeal is allowed with consequential relief if any, in accordance with law.

(Order pronounced in open court on 11.06.2025)

(P.A Augustian)
Member (Judicial)

(Pullela Nageswara Rao)
Member (Technical)

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