CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Customs Appeal No. 23108 of 2014

(Arising out of Order-in-Appeal No. COC-CUSTM-000-APP-121-14-15 dated 11.06.2014 passed by the Commissioner of Customs (Appeals), Cochin.)

M/s. MRF Limited,
124, Greams Road,
Chennai – 600 006.

Appellant(s)

VERSUS

Commissioner of Customs,
Customs House,
Cochin – 682 009.

Respondent(s)

With

Customs Appeal No. 23109 of 2014

(Arising out of Order-in-Appeal No. COC-CUSTM-000-APP-120-14-15 dated 11.06.2014 passed by the Commissioner of Customs (Appeals), Cochin.)

M/s. MRF Limited,
124, Greams Road,
Chennai – 600 006.

Appellant(s)

VERSUS

Commissioner of Customs,
Customs House,
Cochin – 682 009.

Respondent(s)

And

Customs Appeal No. 23110 of 2014

(Arising out of Order-in-Appeal No. COC-CUSTM-000-APP-119-14-15 dated 11.06.2014 passed by the Commissioner of Customs (Appeals), Cochin.)

M/s. MRF Limited,
124, Greams Road,
Chennai – 600 006.

Appellant(s)

VERSUS

Commissioner of Customs,
Customs House,
Cochin – 682 009.

Respondent(s)

APPEARANCE:

Mr. Syed Peeran, Advocate for the Appellant

Mr. K.A. Jathin, Deputy Commissioner (AR) for the Respondent

CORAM: HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MR PULLELA NAGESWARA RAO, MEMBER (TECHNICAL)

Final Order No. 21573 - 21575 /2025

DATE OF HEARING: 09.04.2025
DATE OF DECISION: 07.10.2025

DR. D.M. MISRA

These three appeals are filed against respective Orders-in-Appeal passed by the Commissioner of Customs (Appeals), Cochin, since involved common issues are taken up for hearing and disposal.

2. Briefly stated the facts of the case are that the appellant had imported natural rubber during the relevant period as mentioned in the respective appeals by classifying the same under Customs Tariff Heading 40012100; the relevant Bills of Entry were assessed to Additional Duty of Customs under Section 3(1) of the Customs Tariff Act, 1975 (CVD) equal to Rubber Cess under Section 12 of the Rubber Act, 1947. The appellant paid the rubber cess under protest and filed refund claims which were rejected. Aggrieved by the rejection of the refund claims, they filed appeals before the learned Commissioner(Appeals) who in turn, upheld the rejection of refund claims. Hence, the present appeals.

3.1. The learned advocate for the appellant has submitted that the appellant had, inter alia, engaged in the manufacture, distribution and sale of rubber related products such as tyres, tubes, flaps, tread rubber and conveyor belts and imports natural rubber for the same. Cess on rubber was introduced vide Section 12 of the Rubber Act, 1947 wherein it is mentioned that a duty of excise would be levied on all rubber products in India which is to be paid to the Rubber Board by the manufacturer or the land owner on whose land rubber is produced; therefore, no rubber cess is applicable in the present case as the rubber is not produced in India rather purchased from outside India. He has submitted that Section 12 of the Rubber Act, 1947 can be invoked only for rubber produced in India and not in case of the imported rubber in view of the clarification issued by the Ministry vide Instructions F.No.572/6/97-C dated 22.07.1997. He has referred various judgment of the Tribunal wherein it is held that rubber cess is not payable on imported rubber, which are as follows:-

a) MRF Ltd. v. Commissioner of Customs, Madras - 1997 (96) ELT 198 (Tri-Chennai)

b) TTK LIG Ltd. v. Commissioner of Customs, Chennai - 1999 (111) ELT 52 (Tri-Chennai)

c) Vikrant Tyres v. Commissioner of Customs, Madras - 1999 (8) TMI 979 (Tri-Chennai) [Affirmed by Hon'ble Supreme Court vide Order dated 13.10.2003]

d) London Rubber Co. India Pvt Ltd and Others v. Commissioner of Customs, Chennai [Affirmed by Hon'ble Supreme Court vide Order dated 05.04.2004 in SLP (Civil) No. 9312-9341/2004]

3.2. Further, he has submitted that despite the withdrawal of the Instructions dated 22.07.1997 vide Circular No.75/98-Cus. dated 08.10.1998, the Tribunal continued to hold that cess is not leviable on imported rubber and any levy on imported natural rubber could be made by the competent authority under the Rubber Act, 1947. In support, they have referred to the following judgments:-

a) Vikrant Tyres v. Commissioner of Customs, Chennai - 2007 (218) ELT 219 (Tri-Chennai)

b) MM Rubber Co. v. Commissioner of Customs, Chennai - 2007 (212) ELT 502 (Tri-Chennai)

c) ***TTK LIG Ltd. v. Commissioner of Customs, Chennai - 2008 (231) ELT 452 (Tri-Chennai) – Appeal dismissed on Monetary Limits by Hon'ble Supreme Court at 2012 (277) ELT A85 (SC))***
d) ***CC, Tughlakabad v. M/s Malhotra Rubber Ltd. - 2016 (12) TMI 515 (Tri-Delhi)***

3.3. The payment of rubber cess was made by the appellants under pressure without which the goods were not allowed to be cleared. Further, he has submitted that the appellant is eligible to the refund of the rubber cess paid along with interest.

4. Learned AR for the Revenue has reiterated the findings of the learned Commissioner(Appeals). He has submitted that the issue is no more *res integra* and considered by the Tribunal in the appellant's own case reported as MRF Ltd. Vs. CC, Madras [2017(358) ELT 566 (Tri. Chennai)], whereunder the Tribunal has analysed all the precedents on the issue and rejected the appeal filed by the assessee.

5. Heard both sides and perused the records.

6. The short issue involved in the present appeal is whether the appellants are entitled to refund of rubber cess paid on the imported natural rubber under Section 3(1) of the Customs Tariff Act, 1975 (CVD) during the relevant period.

7. The said issue is no more *res integra*. This Tribunal in the appellant's own case referring to the earlier judgments and Larger Bench judgment in the case of TTK – LIG Ltd. Vs. Commissioner [2006(193) ELT 169 (Tri. LB)] on the said issue, held as follows:-

> **13.** We have perused the judgment in the above Larger Bench decision. As rightly pointed out by ld. AR, in this judgment authored by then Hon'ble President, Shri Justice Abichandani, the difference in the issue in the cases decided by the Tribunal in *M.M. Rubber/Vikrant Tyres* as well as in the cases referred for decision of Larger Bench has been well discussed and analysed. The Larger Bench held that additional duty of customs is

leviable under Section 3 of Customs Tariff Act, 1975 on imported rubber equal to the duty of excise levied as cess under Section 12 of Rubber Act, 1947, holding the issue in favour of Revenue.

14. Thus we find that the issue posing for consideration in the case before us stands covered by the judgment of the Larger Bench in *T.T.K. - LIG Ltd.* (supra)

15. Argument of ld. Counsel for the appellant that the very same issue was considered in the case of *M.M. Rubber* and *Vikrant Tyres* is not correct. It may be true that Larger Bench has not referred to the judgments of *London Rubber Co. India Ltd.* But at the cost of repetition, it has to be stated that the order impugned in the S.L.P in respect of *M/s. London Rubber Co. Ltd.* was rendered by Tribunal following the decision in the case of *M.M. Rubber Ltd.* and *Vikrant Tyres*, and the period being prior to 8-10-1998.

16. The confusion arose thereafter when the Tribunal, Chennai in a subsequent appeal filed by *Vikrant Tyres Ltd.* v. *CC, Chennai* - 2007 (218) E.L.T. 219 (Tri.-Chennai) did not follow the above judgment passed by the Larger Bench. Instead, the then Bench followed judgment passed in *M.M. Rubber* and *Vikrant Tyres*. The same Bench took a similar view in another appeal filed by *TTK-LIG Ltd.* v. *CC, Chennai* - 2008 (231) E.L.T. 452 (Tri.-Chennai).

17. Though Revenue filed appeal against the said order passed by Tribunal in above case of *Vikrant Tyres Ltd.* v. *CC, Chennai* - 2007 (218) E.L.T. 219 (Tri.-Chennai), the same was dismissed by the Hon'ble Apex Court on the ground of delay.

18. The earlier Bench of the Tribunal in para-2, 3 of the above stated orders in which they have refused to follow judgment of the Larger Bench seem to have relied upon a judgment passed in the case of *Vikrant Tyres* which travelled up to the Hon'ble Apex Court. The said appeal in the case of *Vikrant Tyres* filed by Revenue was dismissed by Hon'ble Supreme Court being not pressed as already discussed. The earlier Bench of the Tribunal for this reason has relied upon the judgment passed in *M.M. Rubber* and *Vikrant Tyres* and followed the same overlooking the judgment passed by the Larger Bench. The operative portion of the Tribunal decision in the case of *Vikrant Tyres* - 2007 (218) E.L.T. 219 (Tri.-Chennai) is reproduced as under :

> "2. After examining the records and hearing learned SDR, we find that the question arising for consideration in this case is the same as the one dealt with by the Larger Bench. The Larger Bench decision is in favour of the Revenue. However, we must take judicial notice of the Supreme Court's order in Civil Appeal No. D19381 of 2002 [2003 (157) E.L.T. A134 (S.C.)] filed by the Commissioner of Customs, Chennai against the Final Order No. 1761/2001, dated 29-11-2001 passed by this Bench in the case of *Vikrant Tyres Ltd.* v. *Commissioner.*

This Bench in the said case had held that cess under Section 12 of the Rubber Act read with Section 3 of the Customs Tariff Act was not leviable on imported rubber. The above civil appeal filed against the said order was not pressed by the Commissioner of Customs, Chennai before the Apex Court and, accordingly, that appeal was dismissed. This would mean that the department has accepted the position that no cess under Section 12 of the Rubber Act is leviable as Additional Duty of Customs under Section 3 of the Customs Tariff Act in respect of rubber imported into India. We also take judicial notice of the Apex Court's order in Civil Appeal Nos. 1970-1981/2005 in the case of *M.M. Rubber Co.* v. *Commissioner of Customs (Exports), Chennai* [2005 (186) E.L.T. A161 (S.C.)]. The said appeals were filed against an order of this Bench holding that cess leviable under Section 12 of the Rubber Act was not leviable by the department as Additional Duty of Customs under Section 3 of the Customs Tariff Act in respect of imported rubber. Our order, however, had not considered a pending refund claim of the party claiming refund of the amount already collected from them by the department in respect of imported rubber under Section 3 of the Customs Tariff Act. Hence, the Hon'ble Supreme Court remanded the matter to us for considering the question whether the refund claim of M/s. M.M. Rubber Company is hit by the bar of unjust enrichment. The Hon'ble Supreme Court's order did not discuss the substantive issue in so many words. But, by remanding the case to the Tribunal for considering the refund claim of the assessee, their lordships were approving the view taken by this Bench on the said issue in the case of *M.M. Rubber Co.*

3. The Apex Court's orders in the cases of *Vikrant Tyres Ltd. and M.M. Rubber Co.* were, apparently, not cited before the Tribunal's Larger Bench. We have got to follow the view taken by the Apex Court in preference to that taken by the Tribunal's Larger Bench. In the impugned order, learned Commissioner (Appeals) rejected the appellants' claim for refund of an amount of cess paid on imported rubber towards a demand raised under Section 3 of the Customs Tariff Act, by holding the view that the party was liable to pay such duty. Hence there was no occasion for the appellate authority to enter into any enquiry on the aspects of time-bar and unjust enrichment. Now that we

> have held that the appellants had no liability to pay any duty of the above kind in respect of the rubber imported by them, their refund claim requires to be examined in further detail. For this purpose, we set aside the orders of the lower authorities and remand the case to the original authority which shall examine the question whether the claim was filed in time as also whether it was hit by the bar of unjust enrichment. The party shall be given a reasonable opportunity of being heard also."

18.1 The Revenue filed appeal against this order before the Hon'ble Apex Court which was dismissed on the ground of delay. The judgment of Hon'ble Apex Court dismissing the appeal on the ground of time bar is produced as under :

> **Cess on imported rubber - Appeal to S.C. dismissed as time-bar**
>
> The Supreme Court Bench comprising Hon'ble Mr. Justice Ashok Bhan and Hon'ble Mr. Justice V.S. Sirpurkar on 14-7-2008 dismissed on the ground of delay the Civil Appeal No. D11014 of 2008 filed by Commissioner of Central Excise, Chennai against CESTAT Final Order No. 38/2007, dated 11-1-2007 as reported in 2007 (218) E.L.T. 219 (Tri.-Chennai) *(Vikrant Tyres Ltd.* v. *Commissioner)*. While dismissing the appeal, the Supreme Court passed the following order :
>
> "There is an inordinate delay of 357 days in filing the appeal for which no sufficient cause has been shown. The application for condonation of delay is rejected. Consequently, the civil appeal is dismissed on the ground of delay."
>
> The Appellate Tribunal vide its impugned order had held that the Apex Court in the cases of *Vikrant Tyres Ltd.* [2003 (157) E.L.T. A134 (S.C.)] and *M.M. Rubber Co.* [2005 (186) E.L.T. A161 (S.C.)] had held that cess under Section 12 of Rubber Act, 1947 read with Section 3 of Customs Tariff Act, 1975 was not leviable on imported rubber, therefore the assessee had no liability to pay any duty of the above kind in respect of rubber imported by them however, their refund claim was required to be examined in further details. The Tribunal, therefore, remanded the matter to the original authority to determine whether the claim of the assessee was hit by the bar of unjust enrichment.
>
> [*Commissioner* v. *Vikrant Tyres Ltd.* - 2010 (254) E.L.T. A69 (S.C.)].

19. The judgment passed by earlier Bench of Chennai in *TTK-LIG Ltd.* - 2008 (231) E.L.T. 45 (Chennai) was also appealed before the Hon'ble Apex Court. The said appeal was dismissed on the ground of monetary limit leaving the issues open as reported in 2012 (277) E.L.T. A85 (S.C.). The said para is reproduced as under :

> Cess - Rubber Cess - Whether cess leviable on imported natural rubber latex
>
> The Supreme Court Bench comprising Hon'ble Mr. Justice S.H. Kapadia and Hon'ble Mr. Justice Aftab Alam on 14-5-2009 dismissed the Civil Appeal No. 4000 of 2009 filed by Commissioner of Customs, Chennai against CESTAT Final Order No. 716/2008, dated 17-7-2008 as reported in 2008 (231) E.L.T. 452 (Tri.- Chennai) (*TTK-LIG Ltd.* v. *Commissioner)*. While dismissing the appeal, the Supreme Court passed the following order :
>
> "Delay condoned. Since the amount involved is only Rs. 80,000/-, keeping the question of law open, Civil Appeal is dismissed."
>
> The Appellate Tribunal in its impugned order had held that demand on imported rubber under Section 3 of Customs Tariff Act, 1975 is not sustainable.
>
> *[Commissioner* v. *TTK-LIG Ltd.* - 2012 (277) E.L.T. A85 (S.C.)]"
>
> (emphasis supplied)

We therefore are able to see that merely because the appeals filed by Revenue were dismissed by Hon'ble Supreme Court, the Tribunal has preferred not to follow the Larger Bench judgment. It can be clearly seen that appeals filed by Revenue were dismissed by the Hon'ble Supreme Court without going into the merits of the case.

20. It is also noteworthy to mention the fact that a co-ordinate Bench of the Tribunal at Bangalore in *Ceat Ltd.* v. *CC, Cochin* - 2007 (208) E.L.T. 443 (Tri.-Bang.) had applied the judgment of the Larger Bench and held the issue in favour of Revenue.

21. From the above narration, it can be seen that contention of the ld. Counsel for appellants that issue posing for consideration in the present appeal has already been decided in the case of *London Rubber Co. India Ltd.* is misconceived. The appellant had filed Writ Petition Nos. 25922 to 25924/2011 before the jurisdictional High Court praying to issue a writ of *mandamus* from forbearing the respondent from imposing/levying any duty in the nature of additional duty of customs under Section 3(1) of CETA, 1975 on future imports of rubber. The Hon'ble single Judge passed a detailed order discussing the entire judgments, the controversies and dismissed the writ petition vide judgment dated 23-12-2011. The said view was upheld by the Division Bench of Hon'ble High Court vide judgment dated 10-8-2012. The relevant para 50 of the judgment of the Hon'ble Single Judge is reproduced as under :-

> 50. Given the factual finding that what was originally levied was cess only under the Rubber Act, 1947 and that the petitioner had not raised any

> grievance even to have the order rectified on this factual aspect at any point of time to contend that what was levied was additional duty only. I have no hesitation in rejecting the line of reasoning projected by the learned Senior counsel appearing for the petitioner. It is not denied by the learned senior counsel appearing for the petitioner that Section 3(1) of the Customs Tariff Act, 1975 is a valid piece of legislation and the State has the authority to levy additional duty.

22. We have to stress that the Board's circular dated 22-7-1997 and 30-6-1997 which was referred to in the earlier Tribunal decision of *MRF Ltd.* and *M.M Rubber* (supra) was withdrawn subsequently by the Board vide a Circular No. 75/98, dated 8-10-1998. In fact, immediately after issue of the said circular dated 22-7-1997 Board had issued circular dated 2-9-1997 and 29-9-1997 clarifying that for imported goods equivalent amount of cess leviable as duty of excise has to be collected as additional duty of customs and that even though Rubber Act, 1947 would provide for collection of cess on imports, additional duty of customs is payable on imported rubber by virtue of Section 3 of CTA, 1975.

23. From the above discussions, we have therefore to hold that additional duty of customs is very much leviable under Section 3(1) of the CETA in respect of imported rubber equal to the duty of excise levied as cess under Section 12 of the Rubber Act, 1947. The impugned order rejecting the refund claims is sustained. Appeal is dismissed.

8. We do not find any reason not to follow the said precedent in the appellant's own case by the Chennai Bench of this Tribunal. Consequently, following the same, the appeals are rejected being devoid of merit.

(Order pronounced in Open Court on 07.10.2025)

(D.M. MISRA)
MEMBER (JUDICIAL)

(PULLELA NAGESWARA RAO)
MEMBER (TECHNICAL)

Raja…