CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Central Excise Appeal No.27151 of 2013

(Arising out of Order-in-Original No.01/2013/CEX/MYS/Commr. (Denovo)/3501 dated 30.03.2013 passed by the Commissioner of Central Excise, Customs & Service Tax, Mysore.)

M/s. JK Tyre & Industries Ltd.,
Vikrant Tyre Plant 1, KRS Road,
Metagalli,
Mysore -570 016.

Appellant(s)

VERSUS

Commissioner of Central Excise, Mysore,
S1-S2, Vinaya Marga,
Siddhartha Nagar,
Mysore-570 011.

Respondent(s)

APPEARANCE:
Mr. Ravi Raghavan, Mr. Md. Ibrahim and Mr. Tushar Sharma Advocates for the Appellant.
Mr. Maneesh Akhoury, Assistant Commissioner (AR) for the Respondent.

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

Final Order No. 21891 /2025

DATE OF HEARING: 16.07.2025
DATE OF DECISION: 18.11.2025

DR. D.M. MISRA

The present appeal is filed against Order-in-Original No.01/2013 /CEX/Mys/COMMR(DENOVO)/3501 dated 30.03.2013 passed by the Commissioner of Central Excise, Customs and Service Tax, Mysore. This is the second round of litigation before this Tribunal. In the earlier round, this Tribunal vide Final Order Nos.142 to 150/2011 dated 01.02.2011 while deciding the issue of classification and excisability of Dipped Tyre

Cord Fabrics (DTCF), remanded the matter along with other appeals observing as follows:-

> 9. we find that all the above appeals are one way or other linked to the issue of excisability of DTCF decided in the Order-in-Appeal No.183/2004 dated 05.04.2004. As the dispute is remanded for adjudication by the jurisdictional Commissioner, the orders impugned in these appeals are also set aside for fresh decision after following principles of natural justice. All the appeals are, therefore, allowed by way of remand.

Consequent to the remand order, the learned Commissioner took up the *de novo* adjudication and passed the present impugned order, which is under challenge in the present appeal.

2.1. At the outset, the learned advocate for the appellant has submitted that the appellant are engaged in the manufacture of tyres for which 'Tyre cords' are one of the major input. Such tyre cords are placed parallel to each other and are kept in place by putting threads at regular distance. This arrangement of tyre cords is known in the market as 'Tyre Cord Warp Sheet' (TCWS, for short) or 'Tyre Cord Fabric' (TCF, for short). The appellant procured TCWS which are made of Rayon till 1984 and afterwards, the same were made of Nylon. These tyre cords were processed by dipping them in a latex solution and thereafter calendaring was done. This process makes the TCWS fit for further process of manufacturing tyres. The classification of TCWS was advised by CBEC through Tariff Advice No.30/78 dated 12.06.1978 classifying the same under Tariff Item 68. The said Tariff Advice was rescinded and Tariff Advice No.52/80 dated 01.09.1980 was issued clarifying that TCWS will be classifiable as fabric under Tariff Item 19 or 22 based on the content of fibre or yarn or both used in its manufacture. During the period from October 1979 to 22.10.1980, they procured TCF as classified under Tariff Item 68 by the supplier and used in the manufacture of tyres and claimed exemption under Notification No.201/1979-CE dated 04.06.1979.

2.2. Advancing argument in relation to the duties confirmed against show-cause notice dated 16.02.1981, 20.07.1981 and 03.03.1981 involving common issues, the learned advocate has submitted that these show-cause notices were issued under Notification No.201/79-CE dated 04.06.1979 to recover duty alleged short-paid by the appellant by setting off the same with credit availed on inputs i.e. TCWS. The said Notification provides for reduction in outward duty on goods manufactured by using inputs falling under TI 68 by an amount equivalent to duty paid on inputs falling under TI 68. He has submitted that the TCWS was initially classified by CBEC under Tariff Advice No.30/78 dated 12.06.1978 under TI 68. Thus, the duty paid on such inputs by the suppliers classifying under TI 68, used in the manufacture of finished goods is admissible to the appellant as set off by reducing the outward duty on finished goods by an amount equivalent to duty paid on TCWS. He has submitted that later, CBEC issued Tariff Advice No.52/80 dated 01.09.1980 rescinding the earlier Tariff Advice No.30/78 dated 12.06.1978 and classified the TCWS under TI 19 or 22 depending upon the content of fibre / yarn or both used in its manufacture. On the basis of subsequent classification of the TCWS under TI 19 or 22, show-cause notices were issued to the appellant even for the period prior to 01.09.1980.

2.3. Learned advocate has submitted that subsequent amendment/change in the classification of a commodity cannot render the classification of that commodity for earlier period as incorrect. Since the classification has been amended by a subsequent Tariff Advice without giving any retrospective effect to it, the Department cannot demand differential duty by applying the classification, retrospectively. In support, he referred to the judgment of Hon'ble Supreme Court in the case of H.M. Bags Manufacturer Vs. CCE [1997(94) ELT 3 (SC)] and of Hon'ble High Court of Madras in the case of S&S Power Switch Gear Ltd. Vs. CCE, Chennai-II [2013(294) ELT 18 (Mad.)].

Further, he has submitted that classification of any goods declared by the supplier cannot be disputed / changed at the recipient's end in availing set off of duty paid on such inputs inasmuch as the Department ought to have disputed the same at the supplier's end. In support, they referred to the following judgments:

i. Steel Authority of India Ltd. Vs. CCE&C, Bhubaneswar [2022(382) ELT 10 (SC)]
ii. Sarvesh Refractories Pvt. Ltd. Vs. CCE [2007(218) ELT 488 (SC)]
iii. CCE, Kolkata-III Vs. Kitchen Appliances India Ltd. [2013(288) ELT 567 (Tri. Kolkata)]

2.4. Applying the aforesaid principle, it is also argued that the demand of Rs.2,94,928/- confirmed in the *de novo* proceedings pertaining to show-cause notice dated 10.12.1982 on the ground that benefit availed by M/s. Bayer India Ltd., input supplier is incorrect; therefore, the credit availed by the appellant on the basis of the Gate Passes issued by M/s. Bayer India Ltd. is inadmissible as appropriate duty was not paid by the said input supplier also not sustainable.

2.5. On the issue of confirmation of demand of Rs.76,912/- pertaining to the same show-cause notice dated 10.12.1982, the learned advocate has submitted that the principle laid down in the case of MRF Ltd. Vs. UOI is not applicable as the issue in that case is levy of duty on tyre cord warp sheets which is subjected to rubberizing process, whereas in the present case the issue is relating to levy of processing duty on dipped fabrics; hence, they do not dispute the recovery of Rs.76,912/- with interest.

2.6. Learned advocate has further submitted that the show-cause notices have been issued under Notification No.201/79-CE dated 04.06.1979 to recover the duties short-paid beyond the time limit prescribed under Section 11A of the Central Excise Act, 1944(CEA, 1944 for short); even though no time limit has

been prescribed under the said notification, but the limitation permissible under Section 11A of the Central Excise Act, 1944 has to be followed. In support, he has referred to the judgments in the cases of Premier Tyres Ltd. Vs. CCE, Cochin [1986(26) ELT 42 (Tri.) and CCE, Mumbai-II Vs. CEAT Ltd. [2011(273) ELT 241 (Tri. Mumbai)]. Therefore, show-cause notices issued beyond the period of limitation prescribed under Section 11A are bad in law.

2.7. On the demand confirmed against two show-cause notices both dated 16.01.1981 in the impugned order relating to demand of duty on 'Dipped Tyre Cord Fabrics' (DTCF, for short) which were captively consumed during the period from 11.06.1980 to 31.12.1980, he has submitted that the adjudicating authority has wrongly confirmed the demand of duty for the period from 11.06.1980 to 21.05.1983 which is beyond the period mentioned in both the show-cause notices. The learned adjudicating authority had wrongly interpreted that in view of the interim stay order of the Hon'ble Delhi High Court, the Department could not have issued any show-cause notice and as such, the demands were confirmed without issuance of the notice for the said period. He has submitted that the said finding of the learned Commissioner is incorrect as the Department had not been precluded from issuance of show-cause notice during the said period without adjudicating the same. In support, he has referred to the judgment of Hon'ble Supreme Court in the cases of Metal Forgings Vs. UOI [2002(146) ELT 241 (SC)] and Gokak Patel Volkart Limited Vs. CCE [1987(28) ELT 53 (SC)]. Therefore, the demands for the period 01.01.1981 to 21.05.1983 could not have been confirmed.

2.8. On the issue of classification of DTCF, he has submitted that the issue is settled against the appellant in their own case by the CESTAT reported in 2017(357) ELT 254 (Tri. Del.),

wherein it is held that DTCF is classified under Tariff item 5906 and not under 5902.

2.9. On the demand of duty / proforma credit confirmed as proposed in the show-cause notice dated 10.12.1982 on the ground that the duty paid by the supplier by adjustment in RG-23 and not by cash through PLA, it is submitted that adjustment in RG-23 is as good as discharge of duty by cash in PLA; hence, the proforma credit is rightly available to the appellant.

2.10. On the issue of appropriation of the outstanding demands against various rebate sanctioning orders, it is submitted that the sanctioning authority held that the appellant is eligible for rebate in cash; however, rebate was not given, by adjusting the rebate amount against the demands confirmed in the impugned orders which is subject matter of the present appeals. Referring to Circular No.788/21/2004-CX dated 25.05.2004, he has submitted that no coercive action can be taken within 60 or 90 days of the date of the communication of the order confirming the amount of duty. Since the confirmed demands are now to be reconsidered in the present appeals, it may be remanded to the adjudicating authority for reconsideration of the claims.

2.11. On the issue of demand of interest, it is submitted that the appellant has sufficiently established their *bona fide* on the issue that the TCWS was classifiable under Tariff Item 68 during the impugned period inasmuch as the set off claimed by the appellant as per Notification No.201/79-CE was correct and accordingly the demand could not be sustained. Also, they have submitted that no penalty could have been imposed.

3. Learned AR for the Revenue has reiterated the findings of the learned Commissioner.

4. Heard both sides and perused the records.

5. The issues involved for consideration in the present appeal are:

i. whether the appellant are entitled to benefit of set off of duty under Notification No.201/1979-CE dated 04.06.1979;

ii. whether the classification of Dipped Tyre Cord Fabrics (DTCF) to be done under Tariff Item 5906 or 5902; and

iii. Whether the quantification of demand beyond the period of show-cause notice i.e. 11.06.1980 to 21.05.1983 is sustainable.

6. On the first issue about admissibility of set off under Notification No.201/79-CE dated. 04.06.1979, it is the contention of the appellant that the said notification allows set off of duty paid on goods falling under erstwhile Tariff Item 68 which has been used in the manufacture of finished goods. To appreciate the said notification, the relevant portion is reproduced below:-

Notification No.201/79-CE dated 04.06.1979 as amended by Notifications No.264/79-CE dated 29.09.1979 and No.126/80-CE dated 02.08.1980

In exercise of the powers conferred by sub-rule (1) of rule 8 of the Central Excise Rules, 1944 and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue) No.178/77-Central Excise, dated the 18th June, 1977, the Central Government hereby exempts all excisable goods (hereinafter referred as "the said goods"), on which the duty of excise is leviable and in the manufacture of which any goods falling under Item No.68 of the First Schedule to the Central Excises & Salt Act, 1944 (1 of 1944) (hereinafter referred as "the inputs") have been used, from so much of the duty of excise leviable thereon as is equivalent to the duty of excise already paid on the inputs:

7. A plain reading of the said notification, it is clear that in the manufacture of any goods where the inputs used are falling under TI 68, then the amount of excise duty paid on the said inputs falling under TI 68 be set off against the duty payable on the manufactured finished goods using such inputs. In the present case, the appellant procured TCWS, which are declared to be classifiable under TI 68 and appropriate duty was paid by the manufacturer of the said TCWS. These TCWS are used by the appellant in the manufacture of the tyres in their factory. Consequently, they claimed the benefit of the set off of duty paid on TCWS under Notification No.201/79. The Department's contention on the other hand is that since the correct classification of the TCWS is under TI 19 or 22 and not under 68; therefore benefit of set off Notification No.201/79 cannot be availed by the appellant. It is not in dispute that by issuing the Tariff Advice No.52/80 dated 01.09.1980, the Board has rescinded the earlier Tariff Advice and restated in the classification of TCWS as TI 19 or 22; the said Tariff Advice had been revised w.e.f. 01.09.1980. The learned advocate for the appellant has vehemently argued that the classification of the TCWS rests with the manufacturers who supplied the said item to the appellant classifying the same under TI 68 and discharged appropriate duty and no dispute was raised by the Department for revising the classification at suppliers' end. Therefore, wrong classification of the said inputs in the hands of the appellant while considering the benefit under Notification No.201/79-CE cannot be alleged by the Department since no dispute was raised about the classification at the end of the manufacturer / supplier of TCWS. They have referred to the judgment of the Hon'ble Supreme Court in the case of Sarvesh Refractories Pvt. Ltd. (supra).

8. We find that Hon'ble Supreme Court in the case of Sarvesh Refractories Pvt. Ltd. (supra) observed that the classification

declared by the manufacturer / supplier cannot be altered in the hands of the receivers of the inputs while considering the admissibility of credit. The said judgment has been followed by the Tribunal subsequently in many cases. Similarly, in the present case, the manufacturers / suppliers of TCWS declared its classification under TI 68 and on receiving the said goods, the appellant had claimed set off of duty on the amount of duty paid by the said manufacturers / suppliers as reflected in the respective invoices. Therefore, the demands on this count relating to show-cause notice dated 16.02.1981, 20.07.1981 and 03.03.1981 for the amount confirmed i.e. Rs.21,31,665.89; Rs.2,38,103/- and Rs.7,90,340/- cannot be sustained. Also the demand of Rs.2,94,928/- cannot be sustained since it is relating to credit availed on the Gate Passes issued by M/s. Bayer India Ltd.

9. On the issue of classification of the product, learned advocate for the appellant has fairly submitted that it has been decided against the appellant in their own case by the Delhi Bench of the CESTAT (supra) and accordingly the classification of DTCF in the present appeal is not pursued by them. However, the demand confirmed for the period 01.01.1981 to 21.05.1983 i.e. beyond the period covered under the show-cause notices No.108/81 and 109/81 in the impugned order by the learned Commissioner has been assailed as no recovery notice was issued for that period. It is pleaded that the adjudicating authority has wrongly observed that the Department did not issue notice due to interim stay order granted by the Hon'ble High Court in the appellant's own case. The learned advocate has submitted that there was no stay against issuance of show-cause notice by the Revenue, hence, the Revenue was free to issue protective notices as held. He has submitted that in absence of the show-cause notice, demand cannot be sustained and in support, he has referred to the judgment of the Metal Forgings (supra). We find merit in the contention of the learned

advocate for the appellant. The learned Commissioner has not reproduced the text of the Hon'ble Delhi High Court's order which would have indicated whether the Department has been restrained from issuance of any show-cause notice or the stay was against the recovery of the duty by adopting the said clarification. Following the ratio laid down in the case of Gokak Patel Volkart (supra), the stay for collection of duty cannot be considered as stay for issuance of show-cause notice. Consequently, the period from 11.06.1980 to 21.05.1983 ought to be excluded while determining the duty liability on the said issue. To compute the demand for the period 11.06.1980 to 31.12.1980 relating to classification of DTCF and demand of Rs.76,912/- with interest, the matter is remanded to the adjudicating authority.

10. Regarding demand of Rs.2,94,928/- and Rs.76,912/- relating to show-cause notice dated 10.12.1982, the learned advocate has not contested the amount of Rs.76,912/-; however, demand of Rs.2,94,928/- was contested. In the impugned order, the learned Commissioner has observed that M/s. Bayer India Ltd., Thane cleared their final products to the appellant by availing certain duty exemption and indicated adjustments made by them in their Gate Passes and the amount reflected in the Gate Passes were availed as credit by the appellant. The exemption Notification No.95/79-CE dated 01.03.1979 availed by M/s. Bayer India Ltd. which granted exemption on tyres falling under TI 68 to the extent of duty paid on excisable goods falling under TI 16AA, 64 and 65 subject to the obligation that the duty was paid on the raw materials as mentioned in the said notification. However, in the instant case, though duty was not paid by the suppliers by availing certain exemption benefit, the appellant availed the benefit from payment of duty under the above notification and the credit availed by the appellant was denied. Applying the same principles as laid down by the Hon'ble Supreme Court in the case

of Sarvesh Refractories Pvt. Ltd. (supra), the duty paid at the suppliers' end cannot be questioned at the receivers end and the denial of credit cannot be sustained.

11. In the impugned order, the learned Commissioner has justified appropriation of the rebate amounts against pending confirmed demands as a part of recovery of arrears. We do not find merit in the said observation of the learned Commissioner inasmuch as the confirmed demands were under challenge before the higher appellate forum and since now the confirmed demands were considered and decision has been delivered, it need to be re-examined and accordingly fresh orders be passed on such appropriation after giving an opportunity to the appellant.

12. In the result, the impugned order is modified and remanded to the adjudicating authority (i) to re-quantify the demand relating to show-cause notices No. 109/81 and No.109/81, both dated 16.01.1981 restricting it for the period 11.06.1980 to 31.12.1980 and (ii) to re-examine the appropriation of duty demands confirmed, if any, against the rebate amount sanctioned. The confirmation of demand of Rs.76,962/- with interest is upheld and be recovered.

13. Appeal is disposed off on the above terms.

(Order was pronounced in open court on 18.11.2025)

(D.M.MISRA)
MEMBER (JUDICIAL)

(PULLELA NAGESWARA RAO)
MEMBER (TECHNICAL)

Raja...