

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE**

REGIONAL BENCH - COURT NO. 2

Excise Appeal No. 23673 of 2014

(Arising out of Order-in-Original No. MYS-ECUS-000-COM-006-14-15 dated 26.08.2014
passed by the Commissioner of Central Excise, Mysore)

Rachana Rubbers Pvt Ltd

No.82, P1, Kiadb Industrial Area,
Nanjangud, Mysore, Karnataka - 571302

.....Appellant

VERSUS

Commissioner of Central Excise, Mysore

S1-S2, Vinaya Marga, Siddhartha Nagar,
Mysore, Karnataka - 570011

.....Respondent

Appearance:

Mr. V M Doiphode, Advocate for the Appellant
Mr. Rajasehkar. B. N. N, Authorised Representative (AR) for the Revenue

Coram:

Hon'ble Mr. P.A. Augustian, Member (Judicial)
Hon'ble Mr. Pullela Nageswara Rao, Member (Technical)

Final Order Nos. 22105 /2025

Date of Hearing: 06.08.2025
Date of Decision: 05.12.2025

Per: P. A. Augustian

This appeal is filed against Order-in-Original No. MYS-ECUS-000-COM-006-14-15 dated 26.08.2014 passed by the Commissioner Central Excise, Mysore.

2. The issue in the present appeal is regarding demand on short payment of excise duty.

3. The facts in brief are the appellant M/s. Rachana Rubber Pvt., Ltd., is the manufacturer of Pre Cured Tread Rubber (PCTR), Black Vulcanizing Cement (BVC) and Bonding Gum (BG). Alleging evasion of central excise duty by the appellant, department initiated investigation and conducted searches which resulted in recovery of documents and the same were detained under Mahazar dated 11.04.2008. Thereafter on completion of the investigation, show cause notice was issued on 15.07.2010 for the period from April 2005 to December 2009 and show cause notice dated 14.03.2011 was issued for the period from January 2010 to March 2010. Thereafter, one more show cause notice dated 09.05.2011 was issued for the period from April 2010 to September 2010. The first show cause notice was adjudicated by the Adjudication Authority vide order dated 31.01.2012. Aggrieved by said orders, appeal was filed before this Tribunal, and this Tribunal vide Final Order No. 25184-25189/2013 remanded the matter for Denovo Adjudication observing that there was negation of natural justice in the original adjudication proceedings. In the Denovo Adjudication, the documents procured by the investigation officer from M/s. Karnataka State Transport Corporation (KSRTC) were supplied to the Appellant as requested and thereafter Adjudication authority after extending opportunity for personal hearing issued the impugned order confirming the demand along with interest and penalty all the 3(three) show cause notices. Aggrieved by the said order, present appeal is filed.

4. When the appeal came up for hearing, the Learned Counsel for the Appellant submits that the impugned order confirming the demand by invoking the extended period of limitation is prima facie unsustainable. As regards the issue on merit, the Learned Counsel for the Appellant submits that the Appellant had paid excise duty as applicable against the total amount received from M/s. KSRTC and the deductions made by the Appellant are within the permissible limits. Learned Counsel also draws our attention to the Purchase Order (PO)

dated 19.02.2005 and submits that as per the terms and conditions in the payment clause, where 100% payment has to be made within 21 days from the date of receipt of the acceptance of the material, M/s KSRTC is eligible for 2% prompt payment discount (PPD) for payment within 5 working days. Learned Counsel also draws our attention to the Letter of Intent (LOI) dated 10.03.2007 and submits that as per the terms and conditions in payment clause where 100% payment has to be made within 30 days from the date of supply and acceptance of the materials and they are also eligible for 3% prompt payment discount for 100% payment within 5 days and 2% PPD for payment within 10 working days and 1% PPD for payment within 15 working days. Learned Counsel further submits that for the goods supplied by the appellant, Appellant is liable to give guarantee kilometers of the tyre and if the product fails to meet the requirement, there is a clause for deduction of the pro-rata recovery for uncovered kilometers. During the relevant period appellant had claimed on amount of Rs. 1,11,36,088/- which was deducted by M/s. KSRTC as pro-rata recovery for non-performance of the goods supplied by the appellant and such claims are made on the basis of admissible evidences.

5. As regards the limitation, the Learned Counsel also draws our attention to the finding where the Adjudication authority confirmed the demand by invoking the extended period of limitation and submits that in the absence of any allegation that the Appellant had cleared the goods without an invoice. Moreover, all sales are under a proper invoice, and all payments are made through an account payee cheque. Therefore, when clearance is recorded, accounted and all payments are received through account payee cheque, just based on few arithmetical errors in ER-3 returns, invoking extended period of limitation is unsustainable.

6. As regards the issue on merit, the Learned Counsel draws our attention to the charts showing the year wise details of the transactions and the same is appended below: -

2005 - 06

Sl. No.	Description	Amount in Rupees
1	Total value as per SCN Dated 15.07.2010 (Cum cat and cum duty value)	4,65,27,854
2	Less VAT @12.5% ON PCTR 4, 66841Kgs & Black vulcanizing Cement (BVC) 33,354 Lts, VAT 4% ON 5,489.0 Kgs Bonding Gum	53,16,016
		4,12,11,838
3	Less Pro-rata recovery (Actual) - Deducted by KSRTC. For failure of performance guarantee.	34,11,009.00
		3,78,00,829.00
4	Less cash discount (Actual) as per the tender clause & deducted by KSRTC	3,07,188.00
		3,74,93,641.00
5	Less Equalize freight on clearances of PCTR, BG, BVC of 4,66,841 KGS +5,489 Kgs +33,354 liters @Rs.2/- per Kg on equalized freight basis as per quantity reflected by SCN	11,10,152.00
		3,63,83,489.00
6	Less exemption limit Notification No.08/2003 dt as amended in 2005	1,00,00,000.00
7	Value	2,63,83,489.00
8	Duty liability for A.V. of Rs.2,63,83,489/-@16.32%	Rs.43,05,785.00
9	Demand hit by limitation from 01/04/05 to 15.07.05 SCN received on 16.07.2010 amt Rs.3,63,38,665 @ 16.32%	Rs.59,30,470.00
10	Duty liability 2005-06	Rs.0.00
11	Less Duty Paid through CENVAT & PLA	Rs. 19,08,557.00
12	Balance amount refundable	Rs. 19,08,557.00

2006 -07

Sl. No.	Description	Amt. in. Rupees
1	Total value as per SCN Date: 15/07/10. (Cum cat and cum duty value)	55,275,262.00
		0.00
		55,275,262.00
2	Less value Traded goods cleared under commercial Invoices/Trading Invoices as per tender	0.00
		55,275,262.00
3	Less VAT @ 12.5% on PCTR, BVC & 4% on B G	6,390,833.00
		48,884,429.00
4	Less Pro-rata recovery (Actual) - for failure of performance guarantee & Deducted by KSRTC	6,882,216.00
		42,002,213.00
5	Less Cash discount as per tender & deducted By KSRTC	1,070,517.00
		40,931,696.00
6	Less equalized freight on clearances of PCTR, BG, BVC of 4,15,270.00+47,241.00+30,737.00 @2%perKg.on average Basis quantity as reflected in SCN	₹986,496.00
		39,945,200.00
7	Less SSI exemption Notification No.08/2003dt. 01.07.2007, as amended	10,000,000.00
8	Value	29,945,200.00
8	Duty@16.32%	4,887,057.00
9	Duty liability 2006-07	4,887,057.00
	Less Duty paid through PLA & Cenvat as per SCN	1,695,850.00
10	E.D. Paid excess 05-06 through PLA & CENVAT	1,908,557.00
11	Excess Duty Paid during the Year 2008-09whichis refundable	1,282,650.00

2007 – 08

Sl. No.	Description	AMOUNT IN RUPEES
1	Total value as per SCN Date: 15/07/10. (Cum cat and cum duty value)	6,06,00,013
2	Repair & Re-sole of Hubli Depo, NWKSRTC as per tender No. 08 dt 26.12.2007	83,34,733
		5,22,65,280
3	Less cleared TRADED GOODS under Commercial Invoices as per the tender by KSRTC	1,86,77,154
		3,35,88,126
4	Less VAT @ 12.5% ON PCTR & Amp: BVC 4% ONBG assessable value of Rs.3,35,88,126.00	Rs.32,44,612.00
		Rs.3,03,43,514.00
5	Less pro-rata recovery (Actual) for failure of performance guarantee & deducted by KSRTC	Rs.32,87,751.00
		Rs.2,70,86,932.00
6	Less Cash discount, as per tender clause and deducted by KSRTC	Rs.12,68,831.00
		3,59,21,646/-
7	Less freight on clearances of PCTR, BG, BVC of 5,36,737 Kgs + 45,830 Kgs +31,680. Litres @ Rs.2 per Kg on average basis quantity as reflected in SCN	Rs. 12,28,554.00
		Rs.2,45,58,378.00
8	Less SSI exemption limit under Notification No.08/2003	Rs.1,50,00,000.00
9	Value	Rs.95,58,378.00
10	Duty liability 2007-08 of A.V.95,60,378.00 @16.32%	Rs.15,59,927.00
11	Less Duty Paid through CENVAT CREDIT BALANCE.	Rs.9,15,209.00
12	Normal period is 1 year considered, Demand is nil	NIL
13	Balance amount Payable	Rs.6,44,718.00

2008 – 09

Sl. No.	Description	AMOUNT IN RUPEES
1	Total value as per SCN Date: 15/07/10. (Cum cat and cum duty value)	Rs.8,49,74,009.00
2.	Repair and resale of tyres to Hubli NWKSRTC vide Tender No. T08 DT.26.12.2007.	Rs.45,66,889.00
		Rs.8,04,07,120.00
3	Less value Traded goods cleared under commercial Invoices/Trading Invoices as per tender	Rs.3,53,94,794.00
		Rs.4,50,12,326.00
4	Less VAT @ 12.5% on PCTR, BVC & 4% on B G	Rs.43,48,190.00
		Rs.4,06,64,136.00
5	Less Pro-rata recovery (Actual) - for failure of performance guarantee & Deducted by KSRTC	Rs.77,73,325.00
		Rs.3,28,90,811.00
6	Less Cash discount as per tender & deducted by KSRTC	Rs. 16,80,222.00
		Rs.3,12,10,589.00
7	Less equalized freight on clearances of PCTR, BG, BVC of 4,15,270.00+47,241.00+30,737.00 @2%perKg.on average Basis quantity as reflected in SCN	Rs. 14,10,262.00
		Rs.2,98,00,000.00
8	Less exemption limits Notification No.08/2003 dt. 01.04.20047	1,50,00,000/-
9	Value	Rs. 1,48,00,000.00
10	Duty @ 14.42% till 06th Dec 2008 AV 5,39,31,466/- (N.T.2/2008 dt. 1ST. Mar 2008 Duty @10.3% from 07th Dec 08 to 23rd Feb 2009 AV 2,08,04,850/- (N.T. 58/2008 dt.07th Dec 2008) Duty @ 8.24% from 24th Feb09 to 31st Mar 2009 AV 61,02,37,693/- (N.T.4/2009-C.Ex. dt. 24.02.09	Rs. 13,54,506.00 Rs.3,73,229.00 Rs.1,46,9247.00
11	Duty Liability 2008-09	18,74,662.00
12	Less Duty Paid through CENVAT Credit Balance	24,43,683.00
13	Excess Duty paid during the Year 2008-09 which is refundable	5,69,021.00

2009 – 10

Sl. No.	Description	AMOUNT IN RUPEES
1	Total Values per SCN Date: 15/07/10. (Cum Cat and cum Duty Value) up to Dec-2010	Rs.81,67,065.00
2	Less VAT @12.5% ON PCTR 4, 62,093.00Kgs, Bonding Gum 6,470.00 Kgs & BVC Gum 4,910.00 liters 33,354 liters B.V.C VAT 4% ON 5,489.0 Kgs Bonding Gum	Rs.9,07,770.00
		Rs.72,59,295.00
3	Less Pro-rata recovery (Actual) - Deducted by KSRTC. For failure of performance guarantee.	Rs.8,10,362.00
		Rs.64,48,933.00
4	Less cash discount (Actual) as per the tender clause & deducted by KSRTC.	Rs.2,23,110.00
		Rs.62,25,832.00
5	Less Equalize freight on clearances of PCTR, BG, BVC of 62,093.00 KGS +6,470.00 Kgs +4,910litrs @Rs.2/- per Kg on equalized freight basis as per quantity reflected in SCN	Rs. 1,46,946.00
6	Less exemption limit Notification No.08/2003 dated 01.04.2007	1,50,00,000/-
7	Cum duty value 1.03.2003 as amended	With in SSI Limit
8	Duty liability	With in SSI Limit
9	Cenvat Credit balance and Refund.	Rs.6,15,098.00

7. As regards cash discount, the Learned Counsel submits that the said cash discount is availed by the M/s. KSRTC and Appellant had furnished the entire details regarding such deduction. However, the Adjudication authority denied the same, on the ground that as per Section 4 of the Central Excise Act, 1994, discount extended to customers is a permissible deduction, if it is established that for a given transaction, the discounts are actually being passed on to the buyer of the goods. In the present case, Appellant could produce evidence only for amount of Rs. 1,15,245/- in respect of the invoices as stated in the impugned order and for remaining amount of Rs. 24,66,772/- claimed as deduction towards discount got rejected. In this regard, Learned Counsel submits that the Adjudication Authority has totally ignored the

letter of intent and purchase order and terms and conditions between the Appellants and Karnataka State Road Transport Corporation (KSRTC). In support of the above submission, Learned Counsel drew our attention to the purchase orders referred in para ibid. The Appellant had also drawn our attention to the detailed working of all these years which was submitted before the Adjudication Authority showing sales and payment received details clearly showing invoice amount, discount granted depending on payment received within 5 days, 10 days, 15 days, date of receipt of payment and cheque numbers. Thus, the grant of discount was supported by the actual payment received read with letter of intent terms or purchase order terms and therefore the Learned Commissioner has erred in disallowing these discounts.

8. As regards pro rata recovery, the learned counsel submits that it was rejected by the Adjudication authority on the ground that documents produced by the M/s. KSRTC shows that the pro rata recovery was made on lump sum basis in the bills that were due for payment and the same is not made on respect of invoices of the goods which failed to perform the guaranteed levels. But there is no allegation that there was no failure of processed tyres while using the material supplied by the Appellant. There is no dispute that the terms of purchase provided for such deductions. Therefore, Adjudication Authority grossly erred in not considering the pro rata recovery.

9. As regarding quantum of goods, the learned counsel draws our attention to the chart produced by them and submits that they have accepted the quantum as mentioned in the show cause notice and there is no dispute regarding quantum at this stage.

10. As regards deduction on account of trading activity, Learned Counsel submits that due to various reasons like non availability of sufficient manpower, rent on machinery, etc., they used to procure the goods from market and after checking the damage of such goods, they have undergone a simple process of heating and then emboss their brand name on the same. The appellant has claimed that they were involved in trading activity and as per the reply dated 14.07.2011, goods valued at Rs.44,15,297/- were traded in 2007-08 and

Rs. 29,56,444/- for the period 2008-09 and such claims are supported by copies of invoice for purchase of goods including PCTR. However, the Adjudication authority has denied the turnover on trading on the ground that the Appellant has only produced the purchase documents and not produced any evidence to show that such purchased goods was sold as such. Unless Appellant is able to link the purchase of goods with a sale invoices to show that the same have been sold as such, the contention that they have carried out trading of such goods cannot be accepted. Learned Counsel submits that once the invoices relied by the appellant are showing no excise duty it is to be understood that it is related to trading activity.

11. As regards deduction on account of freight, Learned Counsel submits that as per the estimate and costing, the Appellant equalize the rate of freight of goods to M/s. KSRTC as Rs. 2/kg of thread rubber supply and accordingly, they are entitled for deduction of Rs. 29,61,942/- from the assessable value. This claim is also rejected on the ground that the Appellant has not shown the cost of transportation in their invoices and not produced any evidence to show that the deduction on the actual transportation incurred by them. It is evident that M/s. KSRTC has paid the invoice value after deduction of freight charges, wherever KSRTC has arranged transportation of goods from the factory to their premises. Learned counsel for the appellant further submits that Rule 5 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 clearly provides that if the excisable goods are sold for delivery at a price other than place of removal, then the value of such goods shall be deemed to be the transaction value excluding the cost of transportation from the place of removal up to the place of delivery and in case where the freight is averaged, the cost of transportation calculated in accordance with generally accepted principles of costing. However, Adjudication Authority relying on CBIC Circular No 354/8/01/2000/TRU dated 30.06.2000 rejected the same. However, said Circular was in respect of Rule 5 prior to the substitution from 01.03.2003. Hence, such finding is unsustainable.

12. As regards deduction on account of sales tax, Learned Counsel submits that Appellant has claimed deduction on account of VAT paid or payable on the value of the invoices for the period covered in the notice. The Adjudication authority only partially allowed the claim. In this regard Learned Counsel for the appellant submits that the amount has been arrived after considering the deductions claimed to have been made by M/s. KSRTC towards shortages, cash discounts, pro-rata recovery and freight, such finding is unsustainable. Learned counsel for the appellant drew our attention to the details of VAT payment made by the Appellant and submits that the Revenue has seized the VAT records filed on 31.12.2009 and if the Adjudication authority have reason to believe that the claim made by the Appellant regarding VAT payment is not proper, ought to have directed the appellant to provide the details rather than rejecting the same based on such unsustainable evidence.

13. The Learned Authorized Representative (AR) for the Revenue reiterated the finding in the impugned order. Further submits that based on the data furnished by appellant / M/s. KSRTC, it is concluded that the goods were manufactured and removed clandestinely to evade payment of duty. As regards value to be re-determined, appellant had submitted exhaustive invoice-wise details of the goods manufactured and removed by them to M/s. KSRTC during the period from 2005-06 to 2009-10 in the form of a work sheet enclosed as Annexure-II to their reply to the Show Cause Notices. The amount received and the amount due to be received has been arrived at after considering the deductions claimed to have been made by M/s. KSRTC towards shortages, cash discount, pro-rata recovery and freight. Thus, the finding that goods were manufactured and removed clandestinely to evade payment of duty stands established and Adjudication Authority rightly confirmed the demand and penalty.

14. Heard both sides and perused the records.

15. As regards invoking extended period of limitation, we find that all sales are affected under a proper invoice, and all payments are made through an account payee cheque. Further, we find that the entire sales were made by the Appellant to the M/s. KSRTC, a Government of

Karnataka undertaking and against invoices and in the absence of any allegation, evidence on record or in the absence of any allegation that the Appellant had cleared the goods without an invoice, no suppression or mis-statement for evasion of duty can be alleged and due to that reason, demand confirmed by Adjudication Authority invoking the extended period of limitation is unsustainable.

16. As regards deduction on pro rata recovery, it is true that pro rata recovery was made on lump sum basis in the bills that were due for payment and the same is not made on respect of invoices of the goods which failed to perform the guaranteed levels. However, there is no dispute that the terms of purchase as per the purchase order provided for such deductions. There is no allegation that there was no failure of processed tyres while using the material supplied by the Appellant. Therefore, Adjudication Authority erred in considering the pro-rata recovery as ineligible, merely on the ground that specific details of the invoices of goods that failed the test of guarantee and pro rata recovery made for such failure invoice wise are not made available, and we find that the claim made by the Appellant cannot be denied.

17. As regards cash discount given by the appellant to M/s. KSRTC, we find that Appellant had furnished the entire details regarding such deduction. We find that as per letter of intent issued by M/s. KSRTC, the terms of prompt payment discount (PPD) were extended depending upon the number of days taken for such payment. The details submitted before the Adjudication Authority showing sales and payment received, details clearly showing invoice amount discount granted depending on payment received within 5 days, 10 days, 15 days, date of receipt of payment and cheque numbers. However, Adjudication Authority has not considered the evidence even after remanding the matter for Denovo Adjudication and denied the same, on the ground that as per Section 4 of the Central Excise Act, 1994, discount extended to customers is a permissible deduction if only it is established that for a given transaction, the discount are actually being passed on to the buyer of the goods. We find that when the issue was considered by this Tribunal in the first round of litigation, specific finding was given

regarding the document obtained from M/s. KSRTC. Thus, there is a failure on the part of adjudication authority to appreciate the evidence available on record and when the prompt payment discount (PPD) is given to M/s. KSRTC as per the terms of the Purchase Orders, hence we find that the demand confirmed on this account is unsustainable.

18. As regards deduction on account of trading activity and on account on freight, we find that the appellant had furnished sufficient evidence before the Adjudication Authority as stated in para ibid and before this Tribunal to substantiate the claim of such deductions on account of trading activity and on account on freight. Considering the same, we find that the appellant is eligible for such deductions.

19. Accordingly, we find that the impugned order confirming the demand is unsustainable by invoking extended period of limitation and by alleging clandestine removal. We find that the appellant had paid excise duty as applicable on the transaction value on the actual consideration received by them after claiming eligible deductions on pro-rata recovery, on cash discount, on account of trading activity, on account of freight and sales tax, hence the impugned order which confirmed the demand along with interest and has imposed penalty is unsustainable and liable to be set aside. Accordingly, the impugned order is set aside, and the appeal is allowed with consequential relief, if any, as per law.

20. In the result, the appeal is disposed in the above terms.

(Order pronounced in Open Court on 05.12.2025)

(P.A Augustian)
Member (Judicial)

(Pullela Nageswara Rao)
Member (Technical)

Sasi