

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

REGIONAL BENCH - COURT NO. 2

Central Excise Appeal No. 23675 of 2014

(Arising out of Order-in-Original No. MYS-EXCUS-000-COM-007-14-15 dated 03.09.2014 passed by the Commissioner of Central Excise, Mysore.)

M/s. Surya Rubbers & Chemicals

No. 82 – P1, K.I.A.D.B Industrial Area,
Nanjangud – 571 302,
Mysore District.

.....**Appellant**

VERSUS

**Commissioner of Central Excise,
Mysore Commissionerate**

S1 & S2, Vinaya Marga,
Siddartha Nagar,
Mysore – 570 011.

.....**Respondent**

APPEARANCE:

Mr. V. M. Doiphode, Advocate for the Appellant.
Mr. Money Jain, Joint Commissioner (AR) for the Respondent.

Coram:

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

Final Order No. 22134 /2025

Date of Hearing: 25.08.2025

Date of Decision: 05.12.2025

PER : P.A. AUGUSTIAN

This is an appeal filed against Denovo Order-in-Original No. MYS-EXCUS-000-COM-007-14-15 dated 03.09.2014 passed by the Commissioner of Central Excise, Mysore.

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

3. The facts in brief are M/s. Surya Rubbers & Chemicals, the appellant 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, investigations were conducted and searches resulted in recovery of documents and the same were recovered under Mahazar dated 11.04.2008. Thereafter on completion of the investigation, show cause notice was issued on 04.10.2010 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. The Adjudication Authority vide order dated 31.01.2012 adjudicated both the show cause notices (SCNs) wherein the duty along with interest and penalty as proposed were confirmed. Aggrieved by said order, 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 Road Transport Corporation (KSRTC) were supplied to the Appellant as requested and thereafter Adjudication authority vide Order-in-Original (Denovo) dated 03.09.2014 after extending opportunity of personal hearing issued the impugned order, confirming the demand along with interest and imposed penalty.

4. When the appeal came up for hearing, the Learned Counsel for the Appellant submits that the impugned order confirming the demand is prima facie unsustainable by invoking the extended period of limitation. 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 the M/s. KSRTC and the deductions made by the Appellant are within the permissible limits. Learned Counsel also draws our attention to the Letter of Intent dated 16.11.2005 and submits that as per the terms and conditions, Appellant

is liable to guarantee certain kilometers for the tyre performance when M/s. KSRTC uses the products manufactured by the appellant and if the product fails to meet the requirement, there is a clause for pro-rata recovery for the uncovered kilometers. Further as regards the payment, Learned Counsel draws our attention to the payment clause where 100% payment has to be made within 21(twenty one) days from the date of receipt of the acceptance of the material and eligible for 2% prompt payment discount for 100% payment within 5(five) days.

5. As regards the limitation, the Learned Counsel draws our attention to the finding where the Adjudication authority confirmed the demand by invoking the extended period of limitation in the absence of any allegation that the Appellant had cleared the goods without an invoice. Moreover, all sales were under a proper invoice, and all payments are made through an account payee cheque. When clearances are 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 issue on merit, the Learned Counsel draws our attention to the chart showing the year wise details of the transaction and the same is appended below:-

2005 - 06

Sl. No.	Description	Amount in Rupees
1	Total value as per SCN Date: 04.10.2010. (Cum cat and cum duty value)	2,44,01,808
		2,44,01,808
2	Less value Traded goods cleared under commercial Invoices as per tender	NIL
		2,44,01,808
3	Less VAT @ 12.5% on PCTR 2,44,077 kgs, BVC 27,027 litres and BG 17,550 kg 4% on B G	23,57,214

		2,20,44,594
4	Less Pro-rata recovery (Actual) - for failure of performance guarantee and deducted by M/s. KSRTC.	26,10,846
		1,94,33,748
5	Less Cash discount as per tender clause and deducted by M/s. KSRTC	03,63,097
		1,90,70,651
6	Less freight on clearances of PCTR, B G and B V C of 2,44,077 + 27,027 + 17,550 at Rs.2/- per kg on average basis quantity As reflected in SCN	5,77,309
		1,84,93,342
7	Less SSI exemption limit Notification No 08/2003 dt 1.3.2003	1,00,00,000
8	Value of 84,93,342 @16.32%	13,86,113
9	Less demand duty hit by limitation from 10.04/.2005 to 10/10/05 (SCN Received on 11/10/10) value being Rs 24,51,578@16.48%	4,00,007
10	CENVAT & PLA	NIL
11	Net DUTY Liability	9,86,015
12	If Normal period of one YEAR is considered demand is nil	NIL

2006 -07

Sl. No.	Description	Amount in Rupees
1	Total value as per SCN Date: 04.10.2010. (Cum cat and cum duty value)	1,39,16,807
2	Less value Traded goods cleared under commercial / Invoices as per tender	NIL
		1,39,16,807
3	Less VAT @ 12.5% on PCTR, BVC & 4% on B G	13,44,363
		1,25,72,444

4	Less Pro-rata recovery (Actual) - for failure of performance guarantee & Deducted by KSRTC	17,45,012
		1,08,27,432
5	Less Cash discount as per tender & deducted By KSRTC	2,27,518
		1,05,99,914
6	Less freight on clearances of PCTR, BG, BVC of 4,15,270 + 47,241 + 30,737 at Rs.2/- per kg on average basis quantity As reflected in SCN	2,76,352
		1,03,23,562
7	Less SSI exemption limit Notification No 08/2003 dt 01/04/2007	1,00,00,000
8	Value Rs 3,23,562 @ 16.32%	52,805
9	Less duty paid through cenvat credit balance	NIL
10	If normal period of one year is considered, then demand is nil	NIL
11	If the duty is nil Excess paid / refunded	NIL

2007 – 08

Sl. No.	Description	Amount in Rupees
1	Total value as per SCN Date: 04/10/10.	7,39,73,06
2	Less value TRADED goods cleared under commercial / Invoices as per tender	1,95,31,024
		5,44,42,045
3	Less VAT @ 12.5% on PCTR 5,93,100 KGS, BVC 41,760 litres and 86,801 kg 4% on B G	52,59,102
		4,92,82,943
4	Less Pro-rata recovery (Actual) - for failure of performance guarantee & Deducted by KSRTC.	89,26,573
		4,03,56,370

5	Less Cash discount as per tender and deducted By KSRTC	29,91,402
		3,73,64,968
6	Less equalized freight on clearances of PCTR, B G and B V C of 5,93,100 + 86,801 kg + 41,760 litres at Rs. 2/- per kg on average basis quantity As reflected in SCN	14,43,322
		3,59,21,646
7	Less SSI exemption Notification No 08/2003 dt 01.03.2003 as amended	1,50,00,000
8	Duty value.	2,09,21,646
9	Duty at 2,09,21,646 @ 16.48%	34,47,887
10	Less duty paid through PLA 47,491 CEN 24,29,957 + CESS 23,481 = Rs.25,00,542	25,00,542
11	Duty Value 07-08	9,47,345
12	Normal period is 1 year considered, Demand is nil	NIL
13	If the Duty is nil Excess Paid / Refunded	NIL

2008 - 09

Sl. No.	Description	Amount In Rupees
1	Total value as per SCN Date: 04.10.2010.	3,87,75,825
		3,87,75,825
3	Less value TRADED goods cleared under commercial Invoices as per tender	1,64,64,788
		2,23,11,037
4	Less VAT @ 12.5% on PCTR 2,60,955 kgs, BVC 30,73 litres and 28,880 kgs 4% on B G	21,55,246

		2,01,55,790
5	Less Pro-rata recovery (Actual) - for failure of performance guarantee & Deducted by KSRTC.	95,05,699
		1,06,50,092
6	Less Cash discount as per tender & deducted By KSRTC	5,38,121
		1,01,11,971
7	Less EQUALIZED freight on clearances of PCTR, BG, BVC of 2,60,955 kgs + 28,880 kgs + 30,73 litres at Rs. 2/- per kg on average basis quantity As reflected in SCN	6,18,408
		94,93,563
8	Less SSI exemption limit, Notification No 08/2003 Dated 01.03.2003 as amended	1,50,00,000
9	value 94,93,563 x 16.48% Well within the SSI limit	NIL
10	Duty liability 2008-09	NIL
11	Less duty paid through cenvat credit balance	NIL

2009 – 10

Sl. No.	Description	Amount In Rupees
1	Total value as per SCN Date: 04.10.2010.	3,35,37,049
		3,35,37,049
2	Less value TRADED goods cleared under Commercial Invoices as per tender	54,67,163
		2,80,69,886
3	Less VAT @ 12.5% on PCTR 2,56,365, BVC 20,360 litres and 4% 27,860 kgs on B G	27,11,550

		2,53,58,336
4	Less Pro-rata recovery (Actual) - for failure of performance guarantee & Deducted by KSRTC.	46,68,721
		2,06,89,615
5	Less Cash discount as per tender & deducted By KSRTC	NIL
		2,06,89,615
6	Less equalized freight on clearances of PCTR, BG, BVC of 2,56,365 + 27,860 kgs + 20,360 litres at Rs. 2/- per kg on equalize average basis quantity As reflected in SCN	06,09,170
		2,00,80,445
7	Less SSI exemption limit Notification No 08/2003 dated 01.03.2003 as amended	1,50,00,000
8	Duty on value of Rs. 50,80,445 @ 8.24%	4,18,628
9	Less duty paid through PLA 8,422, Cenvat Credit 4,21,157, 8,422 and CESS 4,210	4,33,789
11	Duty liability 09-10	NIL
12	If Normal period of one year is considered, then duty demand nil	NIL
13	If the DUTY demand is nil Excess Paid / Refunded	15,160

7. As regards cash discount, the Learned Counsel submits that the said cash discount was availed 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 was rejected. In this regard, Learned Counsel submits that the Adjudication Authority has totally ignored the letter of intent and purchase order 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 Order dated 10.09.2005 and as evident from clause 9 of said purchase order, terms of payment are 100% payment within 21 days from the date of receipt and acceptance of materials and 2% prompt payment discount for payment within five working days at the option of the firm. Learned Counsel drew our attention to the letter of intent issued by M/s. KSRTC dated 10.09.2005 showing the terms of discount as 3% Prompt Payment Discount (PPD) for payment within 5(five) working days, 2% PPD for payment withing 10(ten) working days, 1% PPD for payment within 15(fifteen) working days and no discount for payment thereafter and within 30 working days. The Appellants also drew 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 and the discount granted depending on payment received within 5 days, 10 days, 15 days, date of receipt of payment and cheque numbers. The grant of discount was supported by the actual payment received read with letter of intent terms or purchase order terms.

8. As regards pro rata recovery, the Appellant had claimed an amount of Rs. 72,51,299/- as deducted by M/s. KSTRC as pro-rata recovery for non-performance of the goods supplied by them to the guaranteed level. However, 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 in respect of invoices of the goods which failed to perform the guaranteed level. However, there is no allegation that there was no failure of processed tyres while using the material supplied by the Appellant. There is no

dispute in respect of the terms of purchase provided for such deductions. Therefore, Adjudication Authority grossly erred in considering the pro-rata recovery. However, it is also denied on the ground that unless the documents reveal the invoice number and date of the goods that have failed the test of guarantee, deduction of pro-rata recovery cannot be allowed.

9. As regards 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. 41,76,074/- were traded in 2009-10. Appellant have produced the copies of invoices of purchases of Pre Cured Tread Rubber (PCTR), Black Vulcanizing Cement (BVC) and Bonding Gum (BG). 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 were 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. But alleging that the appellant has only produced the purchase documents and not produced any evidence to show that such purchased goods were sold as such, it is held that the contention regarding trading of goods cannot be accepted and the request for considering the deduction of above value of purchases was rejected.

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 KSRTC as Rs. 2/kg of thread rubber supply and accordingly, they are entitled for deduction of Rs. 29,44,724/- from the assessable value @ 2/kg of thread rubber. The said claim was 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.

12. As regards the claim for freight, learned counsel for the appellant submits that it was supported by letters of intent and purchase orders which clearly showed that the delivery was at the depots of M/s. KSRTC and freight was to be borne by the Appellants. The Appellants had claimed deduction of Rs. 4,47,224/- @ Rs. 2 per kg of tread rubbers and other materials and also drew our attention to details furnished while submitting the reply dated 04.02.2014. It is evident that M/s. KSRTC has paid the invoice value after deduction of freight charges wherever M/s. KSRTC has arranged transportation of goods from the appellant's 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 place 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 average, 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.

13. 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 observed that the Appellant had claimed an amount of Rs. 1,88,39,799/- needs to be deducted from the value of Rs. 18,46,04,559/- towards VAT/sales tax as they have billed their customers for the value inclusive of taxes as per Section 4 of the Central Excise Act, 1944. However, Adjudication authority reconsidered the deductions and only allowed the partial deduction. Thus, the Adjudication authority held that the worksheet submitted by the Appellant shows that manufacture of removed goods valued at Rs. 17,97,19,351/- and received an amount of Rs. 16,57,57,630/- towards the same. As per the data, Appellant is due to receive an amount of Rs. 33,65,162/-. This amount has been arrived after considering the deductions claimed to have been made by M/s. KSTC towards shortages, cash discounts, pro rata recovery and freight, such finding is unsustainable. Learned counsel for the appellant submits that the revenue has seized VAT returns 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.

14. 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 / KSTC, it is concluded that some 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 Notice dated 14.07.2011. The said work sheet reveals that the appellant had manufactured and removed goods valued at Rs.17,97,19,351/- and had received an amount of Rs.16,57,57,630/- towards the same. As per the said data, the appellant is also due to receive an amount of Rs.33,65,162/-. 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, as per their own computation, they are liable to pay duty on the value of Rs.16,57,57,630/-received and Rs.33,65,162/-due to be received which totals to an amount of Rs. 16,91,22,792 /-. The records of the case reveal that the appellant had declared the total value of Rs. 8,67,34,427/- in their periodical returns filed with the department during the said period and this fact is not in dispute. Therefore, as per the appellants own admission, the goods valued at Rs.8,23,88,365/- (Rs.16,91,22,792 /- minus Rs.8,67,34,427/-) have been manufactured and removed without payment of Central Excise duty and they are liable to pay the same now. It is also relevant to note that the said figure of Rs.16,91,22,792 /-has been arrived at after considering all the deductions claimed to be made by M/s. KSRTC. As the appellant has admitted that they are liable to pay differential duty on the value of Rs.8,23,88,365/-, 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.

15. Heard both sides and perused the records.

16. We find that as regards invoking the extended period of limitation, 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 Government of Karnataka undertaking (M/s. KSRTC) 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.

17. 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 in respect of invoices of the goods which failed to perform to the guaranteed level. However, there is no dispute that the terms of purchase 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 not considering the pro rata recovery. 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 was not made available, the claim made by the Appellant cannot be denied.

18. As regards cash discount availed by 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 dated 10.03.2007 the terms of prompt payment discount (PPD) are 3% for payment within 5 working days, 2% for payment withing 10 working days, 1% for payment within 15 working days and no discount for payment thereafter and within 30 working days. The details submitted before the Adjudication Authority showing sales and payment received, clearly shows 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 it is established that for a given transaction, the discount is 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 documents obtained from M/s. KSRTC. As per the purchase orders there are specific clauses with regard to discounts for prompt payments.

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

20. In view of the above discussion, we find that the impugned order confirming the demand by invoking extended period of limitation and by alleging clandestine removal is unsustainable. Further we find that the appellant had paid excise duty as applicable on the transaction value on the actual consideration received by them from M/s. KSRTC after claiming eligible deductions including pro-rata recovery, cash discount, on account of trading activity, on account of freight and sales tax, therefore we find that the impugned order confirming the demand along with interest and imposition of penalty is unsustainable and liable to be set aside. Hence, the impugned order is set aside with consequential relief, if any, as per law.

21. 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)

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