CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH
CHENNAI

S.No.	Appeal No.	Appellant	Respondent
1.	C/40777/2015	Tinna Rubber and Infrastructure Ltd.	CC Chennai
Arising out of Order-in-Appeal C.Cus.II No.49/2014 dt. 31.10.2014 passed by CC (Appeals-II) Chennai			
2-5	C/41384-41387/2015	Tinna Rubber and Infrastructure Ltd.	CC Chennai
Arising out of Order-in-Appeal C.Cus.II No.383-386/2015 dt. 31.03.2015 passed by CC (Appeals-II), Chennai			
6-12	C/40095-40101/2016	Tinna Rubber and Infrastructure Ltd.	CC Chennai
Arising out of Order-in-Appeal C.Cus.II No.910 to 916/2015 dt. 30.09.2015 passed by CC (Appeals-II), Chennai			
13-24	C/40234-40245/2016	Tinna Rubber and Infrastructure Ltd.	CC Chennai
Arising out of Order-in-Appeal C.Cus.II No.1002 to 1013 dt. 17.11.2015 passed by CC (Appeals-II), Chennai			
25-42	C/41415-41432/2016	Tinna Rubber and Infrastructure Ltd.	CC Chennai
Arising out of Order-in-Appeal C.Cus.II No.342 to 360/2016 dt.06.04.2016 passed by CC (Appeals-II), Chennai			
43-52	C/41771-41780/2016	Tinna Rubber and Infrastructure Ltd.	CC Chennai
Arising out of Order-in-Appeal C.Cus.II No.686 to 695/2016 dt.18.07.2016 passed by CC (Appeals-II), Chennai			
53-58	C/42167-42172/2016	Tinna Rubber and Infrastructure Ltd.	CC Chennai
59-61	C/42174-42176/2016	Tinna Rubber and Infrastructure Ltd.	CC Chennai
Arising out of Order-in-Appeal C.Cus.II No.215 to 223/2016 dt. 01.03.2016 passed by CC (Appeals-II), Chennai			
62-63	C/42426-42427/2016	Tinna Rubber and Infrastructure Ltd	CC Chennai
Arising out of Order-in-Appeal C.Cus.II No.854 & 855/2016 dt. 14.09.2016 passed by CC (Appeals-II), Chennai			
64	C/40777/2017	Tinna Rubber and Infrastructure Ltd	CC Chennai
Arising out of Order-in-Appeal C.Cus.II No.06 to 27/2017 dt. 10.01.2017 passed by CC (Appeals-II), Chennai			
65	C/41686/2017	Tinna Rubber and Infrastructure Ltd	CC Chennai
Arising out of Order-in-Appeal C.Cus.II No.337/2017 dt. 13.04.2017 passed by CC (Appeals-II), Chennai			

Appearance :

Ms. M. Swarupa, Advocate
For the Appellant

Shri K. Veerabhadra Reddy, JC (AR)
For the Respondent

CORAM :

Hon'ble Ms. Sulekha Beevi C.S. Member (Judicial)
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of hearing / decision : 21.05.2018

FINAL ORDER No. 41559-41623 / 2018

Per Bench

All these appeals since involving identical dispute, they are taken up for common disposal.

2. The common facts in these appeals are that appellants had, from time to time, imported tyre scrap cut into two or three pieces. These goods were intended to be used in the manufacture of Crumb Rubber Powder or Crumb Rubber Modified Bitumen used in road laying. At the point of import, appellant represented that additional duty of Customs equal to excise duty, namely, CVD, is not required to be paid on these imported consignments. Appellants were unable to process Bills of Entry in the EDI system with Nil CVD rate, hence they

paid the CVD under protest and filed appeals against the assessments. However, the lower appellate authorities concerned in all these cases took the view that assessment of the imported goods were under self-assessment and that duty was not paid under protest; that as contended by the appellants, it cannot be presumed that charging of additional duty was on account of the fault of the EDI system, hence upheld the assessment orders and dismissed the appeals of the appellants. The appellants had identical disputes at various other ports of import. In respect of their imports at Delhi they approached the Hon'ble High Court of Delhi, who vide order dt. 02.12.2014, had issued directions to CBEC to consider the representation of the appellant bearing in mind the decisions of the Hon'ble Apex Court in the case of *Hyderabad Industries Ltd. Vs UOI* - 1999 (108) ELT 321 (SC) and *CCE & Customs Bhubaneshwar Vs Tata Iron and Steel Co.Ltd*. – 2003 (154) ELT 343 (SC). Subsequently, Tax Research Unit (TRU), CBEC vide their letter dt. 2.1.2015 clarified that tyre scrap cut into two or three pieces are chargeable to CVD, thereby rejecting the representation of appellant. Appellants preferred a writ petitions against said clarification and the matter was referred to Larger Bench of High Court, Delhi. In the final order of the High Court of Delhi passed on 3.5.2017 (reported in 2017 (353) ELT 161(Del.), the three Member Bench set aside the said clarification letter dt. 2.1.2015 of the TRU and declared that imposition of 12% CVD under Section 3 (1) of the Customs Tariff Act cut pieces of used tyres and used tubes is unlawful and *ultra vires* of the CETA. In respect of appeals mentioned at Sl.Nos.1 & 2 to 5 of the preamble, the Commissioner (Appeals) concerned held that CVD is chargeable under the respective tariff entry. As far as the remaining appeals at Sl.Nos.6 to 65 of the preamble, the lower appellatives have rejected the appeals relying upon TRU's circular dt. 2.1.2015.

3. Today when the matter came up for hearing , Ld. Counsel Ms. Swarupa submits that the dispute on the imposability of CVD has been set to rest by the decision of Hon'ble High Court in their order dt. 3.5.2017. She also submits that in all these cases, they have paid CVD under protest. Hence not only will the law as laid down by the Hon'ble High Court of Delhi prevail in respect of non-imposability of CVD but also refund claims cannot be rejected on the grounds of limitation.

4. On the other hand, Ld. A.R Shri K. Veerabhadra Reddy supports the impugned order.

5. Heard both sides and have gone through the facts. The issue has now been laid to rest by the Hon'ble High Court in their own order dt. 3.5.2017 reported in the case of *Tinna Rubber & Infrastructure Ltd. Vs Union of India* - 2017 (353) ELT 161 (Del.). The relevant part of that judgement is reproduced as under :

> "**27.** In view of the clear legal position, the stand of the TRU of the Department of Revenue in its clarification dated 2nd January, 2015 that there was no exemption from payment of excise duty in respect of tyre scrap cut into two to three pieces produced from used and old tyres and that, therefore, the said goods are chargeable to additional customs duty or CVD under Section 3(1) of the CTA, is unsustainable in law. The said decision/clarification is hereby set aside. It is declared that the imposition of 12% CVD under Section 3(1) of the CTA on cut pieces of used tyres and used tubes is unlawful and *ultra vires* the CTA.
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> **28.** The writ petition is accordingly allowed but, in the facts and circumstances of the case, with no orders as to costs. The application is disposed of."

It is also noted that, in all these cases, the claim amounts have verily been paid up the appellants under protest. Viewed in this light and in particular following the ratio laid down by the High Court of Delhi in their own case (supra), we find in favour of the appellant. Impugned orders cannot then be sustained and will have to be set aside in toto which hereby do. Appeals are therefore allowed with consequential relief, if any, as per law.

(dictated and pronounced in court)

(Madhu Mohan Damodhar)
Member (Technical)

(Sulekha Beevi C.S)
Member (Judicial)

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