

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNALSOUTH ZONAL BENCH
CHENNAI**

Appeal No.C/180/2005

[Arising out of Order-in-Appeal C.Cus.No.755/2004 dt. 27.10.2004 passed
by the Commissioner of Customs (Appeals), Chennai]

MRF Ltd.

Appellant

Versus

**Commissioner of Customs,
Chennai**

Respondent

Appearance:

**Shri Karthik Sundaram, 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 : 25.04.2017

Date of Pronouncement : 16.5.2017

FINAL ORDER No. 40730/2017

Per Sulekha Beevi C.S

The appellant is engaged in manufacture of Automotive Tyres /
Tubes and other rubber products. They procure indigenously grown
natural rubber and also import rubber for use in their manufacturing



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activities. On production of domestic rubber, cess of Rs.1.50 per kg is leviable under Section 12 of the Rubber Act, 1947 as duty of excise. The appellants imported rubber under Bills of Entry dated 06.12.2001 and 07.12.2001. On both imports they paid cess/CVD at Rs.1.50/kg amounting to Rs.4,50,000/- (B/E dated 06.12.2001) and Rs.3,00,000/- (B/E dated 07.12.2001). According to appellant, the cess at 1.50/kg is not leviable on imported rubber either as additional Customs duty (CVD) or as cess. Under section 12 of the Rubber Act, 1947, the cess is levied as a duty of excise on all rubber produced in India, and it is to be collected by Rubber Board. Whereas, the additional Customs duty is leviable under Section 3(1) of Customs Tariff Act, 1975. This section authorizes for collection of duty equal to the Excise duty leviable on a like article if produced or manufactured in India. The Cess is levied only under Rubber Act, 1947 and is to be collected only by Rubber Board. Appellants were of the view that they are not liable to pay cess on imported rubber and hence filed refund applications. The adjudicating authority rejected the refund applications and the same was upheld by the Commissioner (Appeals). Hence this appeal.

2. The issue that poses for consideration in this case, is whether appellants are liable to pay at the time of import additional duty of customs under Section 3 (1) of Customs Tariff Act, 1975 equal to such duty of excise levied as cess under Rubber Act.



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3. The said issue has a chequered history. The arguments put forward by both sides narrow down to the point whether the issue under consideration is covered by the judgement of Hon'ble Apex Court. On behalf of appellant, Ld. Counsel Sh. Karthick Sundaram has strongly argued that the issue is covered by the judgment rendered by the Hon'ble Apex Court in the case of *M/s.London Rubber Co. India Ltd. &Ors.* vide order dated 5.7.2004 in Civil Appeal No.9312-9341/2004.

4. Against this Ld.A.R. Sh. Veerabhadra Reddy (JC) contends that the issue that has travelled upto the Apex court in the case of *M/s.London Rubber Co India Ltd.* is different and that the said issue is only whether Cess under Section 12 of the Rubber Act can be levied on imported rubber.

5. For resolving this controversy what is required to be ascertained is the issue that was actually deliberated by the Hon'ble Apex Court in the case of *M/s. London Rubber Co. India Ltd. (supra)*, namely,

(a) Whether cess leviable on domestically produced rubber under Rubber Act, 1947 is also leviable on imported rubber.

OR

(b) Whether additional duty of customs under Section 3 (1) of Customs Tariff Act, 1975 equal to cess levied under Rubber Act, since being a duty of excise can be levied on imported rubber.

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The whole confusion has arisen because both issues though distinct has been sometimes interchanged and sometimes the difference overlooked, by assessee, as well as department and thereby by Tribunals/Courts.

6. Now, let us proceed to analyze various judgments produced before us by both sides.

6.1 MRF Ltd. Vs CC Madras - 1977 (96) ELT 198 (T)

The issue in this case was whether Cess under Section 12 of the Rubber Act, 1947 was leviable on imported rubber. The Tribunal relying upon Board's circular dt. 22.07.97 and 30.06.97 held that cess is not leviable on imported rubber. In the said Circular it was clarified that under Section 12 of Rubber Act, the Cess is leviable on rubber produced in India and not on imported rubber. It can be easily discerned that the issue was (a) in para 5 above and not (b).

6.2 M.M. Rubber Co. Ltd. Vs CC Chennai – Final Order No.2547/98 dt.08.12.98 in Appeal No.C/1187/98.

In this case, the Commissioner (Appeals) had held that after earlier circular, Circulars dt.02.09.1997 and 29.9.2007 were issued clarifying on levy of additional duty of customs on imported rubber. The said circulars explained that under Section 3 (1) of the Customs Tariff Act, 1975 when Cess is levied on indigenous goods as duty of excise, Additional duty of customs (CVD) equivalent to such cess is leviable on like goods imported. Later, as per Circular No.75/98 dated 08.10.1998 the Circular dated



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30.06.1997 and 22.07.1997 were withdrawn. In view of this subsequent clarification from the Ministry, the Commissioner (Appeals) held that earlier decision of the Tribunal in *MRF Ltd.* (supra) was not applicable to the case. However, in appeal the Tribunal, held that the issue that was posing for consideration in the case was whether cess can be levied on imported rubber and not levy of CVD and therefore set aside the demand by following the judgment in *MRF Ltd.*(supra). It can therefore be discerned that while the adjudication of the Commissioner was on the precise issue of Additional duty of Customs (CVD) under Section 3 (1) of CTA, 1975 equal to cess levied under Rubber Act, 1947 (as noted in para # 5 (b) above), in appeal however, the Tribunal analysed the issue ^{d as 2} ~~in 5 (a).~~ ^{(issue framed in para 5(a) above)}

6.3 At this juncture, for better appreciation the said Circulars are noticed as under:-

"F. No. 345/31/97-TRU
Government of India
Ministry of Finance
Department of Revenue

North Block, New Delhi
2nd September, 1997

To
All Commissioners of Customs,
Sir/Madam,

Subject : Levy of additional duty of Customs equivalent in the amount of cess leviable under various Acts - reg.

Section 3 of the Customs Tariff Act, 1975 provides for levy of additional duty of Customs equal to excise duty leviable on like goods produced or manufactured in India. Cess is leviable on number of goods manufactured or produced in India under various Acts. In number of cases such cess is



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collected as duty of excise. Since, cess is collected as duty of excise, additional duty of customs equivalent to such cess is also leviable on imported goods. *In other words, for imported goods, an amount equivalent of amount of cess leviable as duty of excise is to be collected as additional duty of customs.*

2. All Commissioners of Customs are, therefore, *requested to ensure collection of additional duty of customs on imported goods equal to cess wherever leviable as duty of excise.*

3. This is issued with the approval of Member (Customs), Central Board of Excise and Customs.

Yours faithfully,

Sd/-

DEPUTY COMMISSIONER OF CUSTOMS"

[Emphasis added]

"F. No. 345/31/97-TRU
Government of India
Ministry of Finance
Department of Revenue
North Block, N. Delhi
29th September, 1997

To
All Chief Commissioners of
Customs and Central Excise,
All Commissioner of Customs.

Sir,

Sub : Levy of additional duty of Customs equivalent to the amount of cess leviable under various Acts-regarding.

I am directed to state the following regarding levy of additional duty of customs equivalent to the amount of cess leviable on indigenously manufactured goods.

2. It has been clarified vide F. No. 572/6/97-L.C., dated 22-7-1997 that cess under Rubber Act, 1947 is not leviable on imported rubber since the said Act provides levy of cess only on rubber produced in India and not on imported rubber. This clarification pertains to levy of cess on imported rubber. The issue under consideration vide TRU's letter of even number



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dated 2-9-1997 is not levy of cess but levy of additional duty of Customs equivalent to the amount of cess wherever such cess is leviable as duty of excise. When cess is levied on goods as duty of excise, then as per Section 3 of the Customs Tariff Act, 1975 additional duty of Customs equivalent of such cess (collected as duty of excise) is leviable on similar imported goods.

3. In view of the above, *wherever under an Act, cess is leviable as duty of excise on goods produced/manufactured in India, then on similar imported goods an amount equivalent to the amount of cess leviable is levied as additional duty of Customs.* For this purpose, what is required to be considered is whether under the relevant Act enabling levy of cess, cess is levied as a duty of excise. *If the enabling legislation provides for levy and collection of cess as a duty of excise, then on imports corresponding amount of additional duty of customs becomes payable under Section 3 of the Customs Tariff Act, 1975. Accordingly, even though the Rubber Act, 1947 may not provide for collection of cess on imports, additional duty of Customs is payable on import of rubber by virtue of Section 3 ibid.*

4. This issues with the approval of Chairman, CBEC.

Yours faithfully,

Sd/-

Under Secretary to the Govt. of India.

[Emphasis added]

“Circular : 75/98-Cus., dated 8 Oct. 1998
Xxxx

Cess on imported Rubber

Circular No. 75/98-Cus., dated 8-10-98
Government of India

Ministry of Finance (Department of Revenue)
New Delhi

Subject : Cess on imported rubber.

I am directed to refer to Board's letter of even number dated 22-7-1997 circulating Ministry of Commerce's O.M.No. 14(3)97 Plant (B), dated 30-6-1997 on the above subject (copy enclosed) and to say that Board's above Circular letter dated 22-7-1997 stands withdrawn with immediate effect.”



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6.4 London Rubber Co. India Ltd. &Ors. Vs CC Chennai- Final Order No.880 to901/2003 dt. 28.10.2003,

The Tribunal by Common order disposed 30 appeals pertaining to the years 1996, 1998, &2000. Appellant herein (MRF Ltd) was one of the appellants in this bunch of appeals. The whole controversy in the arguments put forward before us, revolves around the question whether in these cases, the issue considered was (a) or (b) as noted in para 5 above. The Learned Counsel for appellant has produced the Order-in-Original dated 2/3.12.1998 in the appellants case which form part of these bunch appeals. On perusal of these adjudication orders, we find that though there was a discussion regarding the levy of additional duty of Customs (CVD) on imported rubber under Section 3(1) CTA, 1975, the Bills of Entry pertaining to the refund claim were all prior to 08.10.1998. (Circular which withdrew the earlier circulars dated 30.06.1997 and 29.07.1997). The contention of the appellant in the said case before adjudicating authority was that the Circulars were withdrawn only on 08.10.1998 and therefore the demand is unsustainable. On perusal of the Bills of Entry in both Order-in-Original they are ^{d all 2} dated from 05.07.1995 to 17.09.1998. The period of dispute is before the 08.10.1998. However, the adjudicating authority confirmed the demand holding that the circular dated 08.10.1998 had a retrospective effect and therefore the circulars dated 30.06.1997 and 29.07.1997 are not having effect. Thus he did not follow *M.M. Rubber* judgment which was based on these circulars of 1997. The same was



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confirmed by Commissioner (Appeals). In appeal, the Tribunal set aside the demand.

6.5 Meanwhile, the Bangalore Bench in *Vikrant Tyres* had taken similar view, which was challenged by Revenue before Supreme Court. The Apex Court dismissed the appeal as not pressed. There was also reference of the issue to Larger Bench of Tribunal, which was returned as unanswered.

6.6 The Tribunal in M/s. London Rubber Co. case, to set aside the demand ^{it has} followed judgments in the case of *M.M Rubber Co. Ltd.* and *Vikrant Tyres Ltd.* and *TTK-LIG Ltd.* which had been disposed of by different benches of the Tribunal as above. Relevant paragraph of Tribunal's order in *London Rubber Co. India Ltd* is quoted as under :

"7. We have carefully considered the submissions made by both sides and notice that this Bench in the case of TTK - LIG Ltd. has clearly held in the light of the earlier Tribunal order rendered in the case of M.M. Rubber Co. Ltd. by Final Order No.2547/98 dated 8.12.98 that CESS is not leviable under Section 12 of the Rubber Act in terms of M.F. (D.R.) circular dated 22.7.97 on the imported rubber. The said circular was withdrawn by another circular dated 8.10.98. A similar order was passed by the Bangalore Bench in the case of Vikrant Tyres Ltd. The matter had been referred to the Larger Bench and the Larger Bench headed by the Hon'ble President clearly held that the Apex Court had dismissed the revenue appeal filed against the order of the Vikrant Tyres and therefore the issue is concluded. The revenue again filed an application seeking modification/clarification of the Apex Court order. The Apex Court did not entertain I.A. No.31 - 45 in Civil Appeal Nos. 1460 - 1474 of 2003 in the case of Commissioner of Customs, Chennai Vs. M/s. Vikrant Tyres Ltd. and dismissed the I.A. and held that 'we see no reason to modify/clarify our order dated 17th February, 2003' and dismissed the revenue appeals. The effect is also that the issue is concluded and that levy of CESS on imported rubber is not leviable and the appellants are entitled for relief. The plea of the SDR that question of unjust enrichment is required to be examined is left open including the plea that the amount have been paid under protest and in such circumstance question of extending Section 11B for unjust enrichment is not attracted. This question of fact is required to be verified and the authorities after verification of unjust enrichment aspect shall grant the refunds after due hearing to the appellants.



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Counsel Shri Ignatius submits that this aspect had already been examined and the authorities have already considered the aspect of the appellants having paid the duty under protest. This aspect has to be looked into and if it so, their refund application are required to be processed accordingly. Shri Swaminathan, Consultant, makes a similar plea in his case. We give the same direction."

6.7 In the above judgment, it is observed that issue was also referred to Larger Bench of the Tribunal headed by the then Hon'ble President wherein the Larger Bench refused to answer the issue holding that issue is already concluded as per the order passed by the Apex Court in *Vikrant Tyres* and *M.M .Rubber*. The decision of Supreme Court in *Vikrant Tyres* as reported in 2003 (157) A134 (SC) and 2004 (165) ELT A212 (SC) are reproduced as under :

"2003(157) E.L.T. A.134 (SC)

Cess not leviable on imported rubber

The Supreme Court Bench comprising Hon'ble Mr.Justice S.N.Vairava and Hon'ble Mr.Justice B.N. Agrawal on 17-2-2003 dismissed as not pressed the Civil Appeal No.D19381 of 2002 filed by Commissioner of Customs, Chennai against the CEGAT Order No.1761/2001, dated 29-11-2001 (*Vikrant Tyres Vs. Commissioner*). While dismissing the appeal, the Supreme Court passed the following order:-

"Learned counsel for the appellant states that she has instructions not to press this appeal. It is dismissed as such".

The Appellate Tribunal in its impugned order following the ratio of its earlier decision in the case of *TTK Ltd. Vs. Collector* [1999 (111 E.L.T. 52] had held that cess under Section 12 of the Rubber Act read with Section 3 of the Customs Tariff Act, 1975 is not leviable on the imported rubber."

"2004(165) E.L.T. A212 (SC)

Cess not leviable on imported rubber

The Supreme Court Bench comprising Hon'ble Mr.Justice S.N. Variava and Hon'ble Mr.Justice H.K. Sema on 13-10-2003 dismissed the I.A. Nos.31-45 in Civil Appeal Nos. 1460-1474 of 2003 filed by



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Commissioner of Customs, Chennai against the CEGAT Order No.1761/2001-SRB, dated 29-11-2001(*Vikrant Tyres Ltd. vs. Commissioner*). While dismissing the I.As., the Supreme Court passed the following order:-

"We see no reason to modify/clarify our order dated 17th February, 2003 [2003 (157) E.L.T. A134 (S.C.)].
I.A. Nos.31-45 stands dismissed".

The Appellate Tribunal in its impugned order had held that cess under Section 12 of the Rubber Act read with Section 3 of Customs Tariff Act, 1975 is not leviable on the imported rubber as held by Tribunal earlier in the case of TTK Ltd. v. Collector [1999(111) E.L.T.52].

The Civil Appeal No.D19381 of 2002 was dismissed as not pressed on 17-2-2003 as reported in 2003 (157) E.L.T. A134 (S.C.)."

6.8 Thus it is seen that the Tribunal in the case of *London Rubber Co.India Ltd.* has in fact followed the judgment in the case of *M.M. Rubber Co. Ltd.* and *Vikrant Tyres*. Against the said order, the Revenue filed S.L.P (Civil) No.9312 to 9341/2004 before the Hon'ble Apex Court. The Id. Counsel has submitted that the appellant herein was also one of the respondents in the above S.L.P. The Hon'ble Apex Court in M/s. London Rubber Co. India Ltd. case vide its order dt. 05.07.2004 passed the following order :

"In view of the fact, that on the question of unjust enrichment the matter has been remanded back, we see no reason to interfere. We are sure that the judgment of this Court in the case of Commissioner of Central Excise, Mumbai-II vs. Allied Photographics India Ltd. reported in (2004) 4 SCC 34 will be kept in mind whilst deciding the question of unjust enrichment.

The Special Leave petitions stand dismissed."

(emphasis supplied)

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Thus, with regard to the demand raised, the Hon'ble Apex court affirmed the order passed by Tribunal in *M/s.London Rubber Co. India Ltd.* remanding the question of unjust enrichment to the Tribunal.

7. Both sides have put forward contrary arguments, in regard to the applicability of this judgment to the case on hand.

8. Ld. Counsel appearing for appellant, Shri Karthik Sundaram submits that issue involved in *London Rubber Co. India Ltd.* was not "whether cess under Section 12 of the Rubber Act, 1947 is leviable on imported rubber" but that the issue was "whether cess is leviable on imported rubber under Section 12 of Rubber Act, 1947 read with Section 3 (1) of Customs Tariff Act, 1975"; that therefore issue in the present appeal is covered by the judgment rendered by Apex Court in *London Rubber Co. India Ltd.*

9. To support his contention he has produced copy of the S.L.P filed by Revenue before Apex Court. The Counsel has taken assistance from the copy of the S.L.P for the reason that judgment of the Hon'ble Apex Court does not mention about the issue. In the S.L.P., the question of law framed by Revenue reads as under:

- (a) Whether Cess is leviable on imported rubber under Section 12 of the Rubber Act, 1947 read with Section 3 of the Customs Tariff Act, 1975?
- (b) Whether the claim of the Respondent for refund of duty is barred by the doctrine of unjust enrichment?



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10. Together with this, in para-C of the grounds of appeal, the Revenue has stated as under:

"C. That the Hon'ble Tribunal failed to appreciate the provisions of Section 3(1) of the Customs Tariff Act, 1975 which reads as, "Any article which is imported into India shall, in addition, be liable to a duty (hereafter in this section referred to as the additional duty) equal to the excise duty for the time being leviable on a like article if produced or manufactured in India and if such excise duty on a like article is leviable at any percentage of its value, the additional duty to which the imported article shall be so liable shall be calculated at that percentage of the value of the imported article." The Explanation to the said Section 3(1) further says that the expression "the excise duty for the time being leviable on a like article if produced or manufactured in India" means the excise duty for the time being in force which would be leviable on a like article if produced or manufactured in India. The Hon'ble Tribunal failed to appreciate that Cess leviable on rubber manufactured in India under Section 12 (1) of the Rubber Act, 1947 is a part of the Central Excise Duty. Consequently, an equal amount is liable to be collected as Additional duty of Customs under Section 3 (1) of the Customs Tariff Act, 1975, on the rubber imported into India."

11. Against this, the contention of Ld. A.R, Shri Veerabhadra Reddy (J.C), appearing for Revenue is that in the case of *London Rubber Co. India Ltd.*, the Tribunal had followed the judgements laid in the case of *M.M. Rubber* and *Vikrant Tyres*; that in these cases, the issue under consideration was whether cess can be levied on imported rubber; that the issue whether cess as duty of excise can be levied and collected as additional duty of customs on imported rubber was not considered at all. He added that this difference in the dispute was analyzed in detail by the Larger Bench in the case of *T.T.K-LIG Ltd.Vs CC Chennai/New Delhi - 2006 (193) ELT 169* (Tri.-LB).

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12. As already discussed above, though the discussion made in *London Rubber Co. India Ltd.* at the level of first adjudication was whether Cess as duty of excise can be levied and collected as additional duty of customs on imported rubber, the period of dispute being prior to Circular dated 08.10.1998, the said discussion does not have much relevance in these cases. After the Circular dated 08.10.1998 by which the earlier circulars of 1997 were withdrawn the scenario has entirely changed. We see that this aspect has been very well addressed in the judgment by the Larger Bench.

13. We have perused the judgement 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 analyzed. 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)

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15. Argument of Id. 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 judgements 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 08.10.1998.

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

17. Though Revenue filed appeal against the said order passed by Tribunal in above case of *Vikrant Tyres Ltd. Vs. CC Chennai - 2007 (218) ELT 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 judgement passed in the case of *Vikrant Tyres*



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which travelled upto 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 judgement passed in *M.M. Rubber* and *Vikrant Tyres* and followed the same overlooking the judgement 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.*



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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 judgement 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



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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) ELT A85 (SC). 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 judgement. 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.



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20. It is also noteworthy to mention the fact that a co-ordinate Bench of the Tribunal at Bangalore in *Ceat Ltd. Vs CC Cochin* - 2007 (208) ELT 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 dt. 23.12.2011. The said view was upheld by the Division Bench of Hon'ble High Court vide judgment dt. 10.08.2012. 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 and Tariff Act, 1975 is a valid piece of legislation and the State has the authority to levy additional duty.

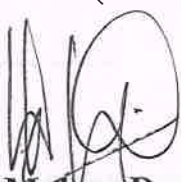


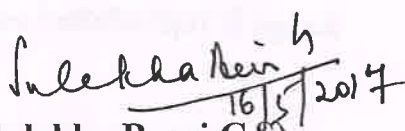
Indira Devi

22. We have to stress that the Board's circular dt. 22.07.1997 and 30.06.1997 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 dt. 08.10.98. In fact, immediately after issue of the said circular dt. 22.07.97 Board had issued circular dt. 2.2.97 and 29.9.97 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.

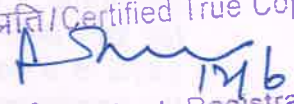
23. From the above discussions, we have therefore to hold that additional duty of customs is very much leviable under Section 3 (1) of the CETA in respect of imported rubber equal to the duty of excise levied as cess under Section 12 of the Rubber Act, 1947. The impugned order rejecting the refund claims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

(Pronounced in open court on 16.5.2017)


(Madhu Mohan Damodhar)
Member (Technical)


(Sulekha Beevi C.S.)
Member (Judicial)

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