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

E/416 & 417/2006

(Arising out of Order-in-Appeal No.18/2006 (M-I) and 3/2006 (M-I) (D) dated 15.2.2006 passed by the Commissioner of Central Excise (Appeals), Chennai)

Commissioner of Central Excise, Chennai – I Appellant

Vs.

M/s. MRF Ltd. Respondent

Appearance

Shri S. Govindarajan, AC (AR) for the Appellant
Shri S. Karthik, Advocate for the Respondent

CORAM

Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)
Hon'ble Shri V. Padmanabhan, Member (Technical)

Date of Hearing / Decision: **19.06.2017**

Final Order Nos. 41022 - 41023/2017

Per Bench

The respondents are manufacturers of tyres, tubes and other rubber products. Compound rubber was one of the intermediate products used by the respondent/assessee in their manufacture of final products. During the material period, ADV tyres i.e. tyres for animal-drawn vehicles were not dutiable and consequently intermediate products such as

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compound rubber used in the manufacture of such tyres were dutiable in terms of Notification No. 217/86 dated 1.4.1986. But such compound rubber was otherwise exempted from payment of Basic Excise Duty under Notification No. 152/87-CE dated 25.5.1987. This notification was rescinded on 1.3.1994. However, after short while, Notification No. 74/94 dated 28.3.1994 was issued by the Central Government restoring the benefit of exemption of compound rubber captively consumed. In the result, exemption from payment of basic excise duty was not available to compound rubber during a short period from 1.3.1994 to 27.3.1994. A show cause notice was issued to the respondent proposing to demand duty on the compound rubber captively used by them for the above period. After due process of law, the original authority confirmed the demand which was upheld by the Commissioner (Appeals). Aggrieved by the order of Commissioner (Appeals), the respondents went in appeal before the Tribunal and vide Final Order No. 572/204 dated 12.7.2004, the matter was remanded to the adjudicating authority with a direction for quantification of the duty liability for the said period. The Tribunal also directed to allow MODVAT credit on the inputs used in the manufacture of compound rubber for ADV tyres. Pursuant to the directions, the original authority confirmed the demand of Rs.9,95,768/- by order dated 31.3.2005. Against this order, the department as well as the respondent filed appeals before Commissioner (Appeals). Both the appeals were taken up simultaneously by the Commissioner (Appeals) and vide order impugned herein, the Commissioner (Appeals) dismissed the appeal filed by the department but however allowed the appeal filed by the respondent and reduced the differential duty demand to Rs.5,34,980/-. Being aggrieved by the quantification / reduction in the differential duty, the department has filed the present appeals.

2. At the time of hearing, the learned counsel for the respondent Shri M. Karthik brought to notice of the Bench that the Hon'ble Apex Court in the judgment of Ralson (India) Ltd. Vs. Commissioner of Central Excise, Chandigarh as reported in 2015 (319) ELT 234 (SC) has held that the exemption is available to compound rubber during the interim period and thus the demand itself has now become unsustainable.

3. Against this, the learned AR Shri S. Govindarajan submitted that in the second round of litigation, the respondent had accepted the duty liability and had challenged only the quantification of the duty on compound rubber. That therefore they cannot now contend that the compound rubber is not subject to duty.

4. We have heard the submissions made by both sides. The department has filed appeal against the order passed by the

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Commissioner (Appeals) who had reduced the duty demand. During the pendency of this appeal, the Hon'ble Apex Court has held that in view of consistent policy of the Government, by granting exemption of compound rubber, withdrawal of exemption by Notification No. 64/94 dated 1.3.1994 was an inadvertent error. That Government realizing this mistake had reintroduced exemption which had to be treated as correction / clarification having retrospective effect. Thus, it was held that for the interim period, the compound rubber was not exigible to duty. When the issue of levy of duty itself is now settled in favour of the respondent / assessee, we find no ground to interfere with the order passed by Commissioner (Appeals).

5. In view of the above, we do not find any infirmity in the order passed by the Commissioner (Appeals) and the appeals filed by the department are dismissed.

(Operative portion of the order was pronounced in open court)

(V. PADMANABHAN)
Member (Technical)

(SULEKHA BEEVI C.S.)
Member (Judicial)

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