# CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, WEST ZONAL BENCH : AHMEDABAD

REGIONAL BENCH - COURT NO. 3

**SERVICE TAX Appeal No. 11836 of 2013**

[Arising out of Order-in-Appeal No. OIA-PJ/632/VDR-I/2012-13 dated 29.03.2013 passed by Commissioner) of Central Excise & ST, Vadodara]

**Paramount Cold Re Treads** **.... Appellant**
804, GIDC, Ranoli, VADODARA
GUJARAT

*VERSUS*

**Commissioner of Central Excise & ST, Vadodara** **.... Respondent**
1st Floor, Central Excise Building,
Race Course Circle, Vadodara,
Gujarat -390007

**With**

**SERVICE TAX Appeal No. 11837 of 2013**

[Arising out of Order-in-Appeal No. OIA-PJ/633/VDR-I/2012-13 dated 29.03.2013 passed by Commissioner) of Central Excise & ST, Vadodara]

**Perfect Re Treads** **.... Appellant**
501/2, GIDC, Ranoli, VADODARA
GUJARAT

*VERSUS*

**Commissioner of Central Excise & ST, Vadodara** **.... Respondent**
1st Floor, Central Excise Building,
Race Course Circle, Vadodara,
Gujarat -390007

**APPEARANCE :**

Shri S.R. Dixit, Advocate for the Appellant
Shri Vinod Lukose, Superintendent (AR) for the Respondent

**CORAM: HON'BLE MR. RAMESH NAIR, MEMBER (JUDICIAL)**
**HON'BLE MR. RAJU, MEMBER (TECHNICAL)**

**FINAL ORDER NO. A/11107-11108 / 2020**

DATE OF HEARING : 05.12.2019
DATE OF DECISION : 04.06.2020

**RAMESH NAIR :**

The brief facts of the case are that the appellant is engaged in retreading of old tyres. They purchase tread rubber etc. and carry out the retreading of tyre. They raise the bills showing labour charges and material cost separately. The appellant have taken service tax registration under the head of "Management, maintenance or repair" service and undertake to pay service tax only on service charges i.e. labour charges and in respect of material used, they claim exemption notification No.12/2003-S.T. dated 20.06.2003. Department issued show cause notices proposing denial of exemption notification No. 12/03-ST and consequential demand of excise duty on the total value i.e. material cost plus labour charges. The adjudicating authority confirmed the demand along with interest and also imposed penalties under Section 76 and 78 of the Finance Act, 1994. Being aggrieved by the orders-in-original, the appellants filed appeals before the Commissioner (Appeals) who, except reducing a portion of the penalty under section 76, upheld the remaining portion of the orders. Therefore the present appeals filed by the appellants.

2. Shri S.R. Dixit, learned Counsel appearing on behalf of the appellants submits that the appellant shown the value of material as well as labour charges separately. The material cost is subject to payment of sales tax/VAT. The appellants have filed sales tax return wherein the sales of the material used for tyre treading is shown. He placed on records all the documents such as Bills, year wise breakup of labour charges and sale of material, sales tax returns etc. Therefore the appellants are entitled for the exemption Notification No.12/03-ST. As regard the case of Perfect Re-treads, in addition, he submits that the material was sold by an independent proprietorship concern and the appellant raised the invoice only for labour charges. In this case even if the notification is denied, the value of material of different entity cannot be clubbed with that value of the appellant. In support of his submissions, he placed reliance on the following judgments:

(a) Shree Krishna Nylon Pvt. Limited vs. CCE, Mumbai – 2015 (327) ELT 626 (Tri. Mumbai)

(b) Super Pumps Pvt. Limited vs. CCE, Bhopal – 2016 (341) ELT 345 (Tri. Del.)

(c) C.C. (NS-III), JNCH, Nhava Sheva vs. Physical Research Laboratory – 2017 (357) ELT 475 )Tri. Mumbai)

3. Shri Vinod Lukose, learned Superintendent (Authorised Representative) appearing on behalf of the revenue reiterates the findings of the impugned order.

4. We have heard both sides and perused the records. The main issue involved in both the appeals is that whether the appellants are entitled for the exemption Notification No.12/03-ST in respect of the value of the material i.e. tread rubber etc. used in providing the service of retreading of old and used tyre under the service head of "Management, maintenance or repair". The learned Commissioner (Appeals) denied the exemption on the ground that the material on which the exemption was claimed gets consumed during the process of retreading of tyre and as per judgment of Tribunal in the case of Safety Retreading Company (P) Limited- 2012 (26) STR 25 (Tri.-Chennai) the appellant are not entitle for the exemption. He also held that the quantity of the goods was not separately declared. As regard documentary evidence for value of goods sold, we find that the Learned counsel submitted sufficient documents from which it can be conveniently revealed that the appellants have clearly shown the value of goods separately. The Commissioner (Appeals) also accepted that the appellant has shown in their bills the labour charge and material value separately. Therefore on fact also the appellants have been able to establish their case. It was also contended that the appellant M/s Perfect Re-treads

have created proprietory concern M/s Perfect Rubber only to evade service tax and the sale value of the material sold by Perfect Rubber was held to be included in the gross value of service provided by the Appellant. We find that the contention of the learned Commissioner (Appeals) that since the material used in retreading has been consumed therefore the appellant will not get exemption. This contention is solely based on the Tribunal Chennai's judgment in the case of Safety Retreading Company supra. However this Tribunal judgment was reversed by the Hon'ble Supreme Court as reported at Safety Retreading Company (P) Limited vs. Commissioner of C.Ex. Salem – 2017(48) S.T.R. 97 (SC) wherein the Apex court considering the identical facts in as much as the tread rubber was used for retreading, has held that the value of such tread rubber is not liable to service tax. Therefore in view of this Apex Court judgment the dispute in hand came to rest and it is not res integra. As regard the clubbing of value of material sold by M/s Perfect Rubber, firstly as per our above discussion, the material cost is not includible in the gross value of service of retreading. Moreover, the Perfect rubber is an independent proprietory concern and sale of goods by them is not in dispute. We do not find any reason for clubbing of value of goods sold by M/s Perfect Rubber in the value of the appellant M/s Perfect Re-treads. Therefore this reason also the value of material sold by M/s. Perfect Rubber cannot be included in the value of M/s Perfect Re-treads. As regard penalties simultaneously under Section 76 and 78, the Jurisdictional Hon'ble High Court of Gujarat in the case of Raval Trading Company vs. CST – 2016 (42) STR 210 (Guj.) held that once the penalty under Section 78 has been imposed, penalty under Section 76 cannot be imposed. Following the said judgment, the penalty under Section 76 is set aside. Since the issue relates to interpretation of Notification No.12/03-ST, we are of the view that penalty under section 78 is not imposable invoking Section 80 0f the Finance Act,

1994. Accordingly, the penalty imposed under Section 78 is also set aside. The appellant, however, liable to pay service tax on the service charges only, if any liability arises and interest thereupon in case of delay in payment of service tax, if any. Appeals are allowed in the above terms.

*(Pronounced in the open court on* 04.06.2020*)*

**(Ramesh Nair)**
**Member (Judicial)**

**(Raju)**
**Member (Technical)**

**KL**