CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 2

Service Tax Appeal No. 1605 of 2012

(Arising out of Order-in-Appeal No.149/2012 dated 09.03.2012 passed by the Commissioner of Central Excise (Appeals), Mangalore.)

M/s. Super Engineers
L-14, Industrial Estate, Yeyyady,
Mangalore – 575 008.

Appellant(s)

VERSUS

The Commissioner of Central Excise
V Floor, Trade Centre,
Bunts Hostel,
Mangalore – 575 003.

Respondent(s)

APPEARANCE:

Shri Cheriyan Punnoose, Advocate for the Appellant.

Shri Money Jain, Joint Commissioner, Authorised Representative for the Respondent.

CORAM:

HON'BLE MR. P.A. AUGUSTIAN, MEMBER (JUDICIAL)
HON'BLE MRS. R. BHAGYA DEVI, MEMBER (TECHNICAL)

Final Order No. 20962 / 2025

DATE OF HEARING: 25.06.2025
DATE OF DECISION: 25.06.2025

PER : P.A. AUGUSTIAN

The issue in the present appeal is whether the appellant is eligible to claim the benefit of Notification No.12/2003-ST dated 20.06.2003. The adjudicating authority denied the benefit of the said Notification on the ground that the appellant failed to produce documentary proof regarding value of the material sold. The appellant is rendering Business Auxiliary Service and during audit, it is observed that appellant was paying service tax only on 30% of the gross amount and they have not shown the cost of material separately in the invoices. Thus, alleging that the appellant is not eligible to claim the benefit of Notification No.12/2003-ST dated 20.06.2003, proceedings were initiated and the adjudication authority as per order dated 20.9.2010 confirmed the demand and also imposed penalties under various provisions of law. Aggrieved by the said order, an appeal was filed before the Commissioner (A), who vide order dated 09.03.2012 rejected the appeal and aggrieved by the said order, present appeal is filed.

2. When the appeal came up for hearing, the learned counsel for the appellant submitted that the activity carried out by the appellant is powder coating and it was brought under the service tax net only with effect from 16.06.2005 and appellant is paying service tax thereafter. The dispute involved in the present appeal is from 16.06.2005 to 31.03.2006 and show-cause notice was issued on 08.02.2010 by invoking extended period of limitation. Learned counsel drew our attention to the ST-3 returns filed by the appellant and submitted that while submitting the ST-3 returns, they have shown the details of gross value received and cost of the goods were shown separately and the present show cause notice was issued by adopting the very same figures as reflected in the ST-3 returns filed by the appellant. Learned counsel drew our attention to the Notification No.12/2003-ST dated 20.06.2003 and submitted that the issue regarding extending the benefit of above said Notification is settled as per the judgment of the Hon'ble Supreme Court in the case of **Safety Retreading Company Pvt. Ltd. vs. CCE, Salem: 2017-TIOL-28-SC-ST**.

2.1 Learned counsel also drew our attention to the Karnataka Value Added Tax Rules, 2003 where for civil works like construction of building, bridges and ports, the works contract service is considered as 30% and the appellant by invoking the Sixth Schedule to Section 4(1)(c) of the Karnataka Value Added Tax Act, 2003 settled the VAT liability by paying 4% of the gross amount. Learned counsel further submitted that as per the above Schedule at Sl. No.14 any other works contract like labour charges is only 25% whereas the appellant had paid service tax on 30% of the gross value and rightly discharged the tax liability. Learned counsel further submitted that the entire demand is confirmed by invoking extended period of limitation and submits that once the appellant had submitted the ST-3 return specifying the amount payable by them for the relevant period, invoking extended period of limitation and demanding tax is *prima facie* unsustainable. To support his claim, the learned counsel relied on the decision in the case of **Scott Wilson Kirkpatrick (I) Pvt. Ltd. vs. CST, Bangalore: 2007 (5) STR 118 (Tri.-Bang.)** which has been affirmed by Hon'ble Supreme Court as reported at **2017 (50) STR J153 (SC)**.

3. Learned Authorized Representative (AR) for the Revenue reiterated the finding in the impugned order and submitted that in the absence of any admissible evidence regarding actual cost of goods supplied by the client, the appellant is not eligible to claim the benefit of the said Notification.

4. Heard both sides. The issue to be decided in the present appeal is whether the appellant is eligible to claim the benefit of the Notification No.12/2003-ST dated 20.06.2003. The appellant had submitted ST-3 returns and paid service tax on 30% of the service element by adopting the ratio of the scheme as per the State VAT laws. Further regarding the availing the benefit of exemption Notification No.12/2003-ST dated 20.06.2003, the issue is squarely by the judgment of Hon'ble Supreme Court in the case of **Safety Retreading Company Pvt. Ltd.** (supra) wherein it is held that:

> "**10.** The exigibility of the component of the gross turnover of the assessee to service tax in respect of which the assessee had paid taxes under the local Act whereunder it was registered as a Works Contractor, would no longer be in doubt in view of the clear provisions of Section 67 of the Finance Act, 1994, as

> amended, which deals with the valuation of taxable services for charging service tax and specifically excludes the costs of parts or other material, if any, sold (deemed sale) to the customer while providing maintenance or repair service. This, in fact, is what is provided by the Notification dated 20th June, 2003 and CBEC Circular dated 7th April, 2004, extracted above, subject, however, to the condition that adequate and satisfactory proof in this regard is forthcoming from the assessee. On the very face of the language used in Section 67 of the Finance Act, 1994 we cannot subscribe to the view held by the Majority in the Appellate Tribunal that in a contract of the kind under consideration there is no sale or deemed sale of the parts or other materials used in the execution of the contract of repairs and maintenance. The finding of the Appellate Tribunal that it is the entire of the gross value of the service rendered that is liable to service tax, in our considered view, does not lay down the correct proposition of law which, according to us, is that an assessee is liable to pay tax only on the service component which under the State Act has been quantified at 30%."

Further, we find that appellant was paying service tax by opting the scheme as per the State VAT Rules and also submitted evidence regarding payment of VAT against the value of goods/materials during the relevant period and paid service tax on the balance amount. Following the judgment of Hon'ble Supreme Court in **Safety Retreading Co. Pvt. Ltd.** (supra), once payment is made on the goods portion under VAT and the value of the goods covered on such VAT paid, value of goods has to be excluded. Thus, the appellant has fully discharged the service tax liability.

5. As regarding invoking the extended period of limitation, the issue was considered by this Tribunal in the matter of **Scott Wilson Kirkpatrick (I) Pvt. Ltd.** (supra) which has been affirmed by Hon'ble Supreme Court as reported at **2017 (50) STR J153 (SC).** The Tribunal observed as:

> "**6.** We have gone through the records of the case carefully. The period involved is from March 1999 to March 2004. The Show Cause Notice date is 08-11-2004. Thus a major portion of the period is beyond one year from the date of issue of Show Cause Notice. Thus the lower authorities have invoked longer period. In order to invoke longer period, there should be evidence of non-filing of ST3 Returns and suppression of facts. During the hearing, the learned Advocate took us through all the ST3 Returns filed by the appellants wherein they had given the entire particulars of the amounts received by them from their clients. There is also mention of reimbursable amount received from the clients in the Annexure to the Return. The Chartered Accountant's certificate also has been produced. The lower authorities have passed their orders without proper scrutiny of the information contained in the ST3 Returns. Therefore, it is very clear that the longer period could not be invoked. If this point alone is taken a major portion of the demand would be hit by time bar."

5. In view of the above discussions, the impugned order is set aside and the appeal is allowed.

(Operative portion of the order was pronounced in Open Court on conclusion of hearing.)

(P.A. AUGUSTIAN)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

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