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

Appeal(s) Involved:

ST/129/2009-DB

[Arising out of Order-in-Appeal No. 260/2008 dt. 18/11/2008
passed by CCE(Appeals), Mangalore]

CCE MYSORE Appellant(s)
NULL

Versus

KARTHIK TYRE SERVICE Respondent(s)
NO 37 VEENE SHESHANNA ROAD, K.R
MOHALA MYSORE

Appearance:

Shri Pakshirajan, Asst. Commissioner(AR) For the Appellant
Shri Akbar Basha, CA For the Respondent

Date of Hearing: 26/07/2018
Date of Decision: 26/07/2018

CORAM:

HON'BLE MR. S.S GARG, JUDICIAL MEMBER
HON'BLE MR. P. ANJANI KUMAR, TECHNICAL MEMBER

Final Order No. 21014 / 2018

Per : P ANJANI KUMAR

M/s. Karthik Tyre Service are involved in retreading of old tyres used in motor vehicles. Department held that retreading old tyres amounts to reconditioning or restoration and it falls within the'Management, Maintenance or Repair' defined under Section 65(64) of the Finance Act, 1994 w.e.f. 16/06/2005. The Department has issued a show-cause notice demanding service tax of Rs.80,980/- for the period 16/06/2005 to 31/01/2007. Assistant Commissioner vide Order-in-Original dt 20/11/2007 has confirmed the demand along with interest and imposed penalties thereon. On an appeal filed by the respondent, the Commissioner(Appeals) has set aside the order of Assistant Commissioner holding that retreading of old tyres is a process amounting to manufacture and is subject to excise duty and cannot be subjected to service tax. The Department has preferred an appeal on that.

2.1 Learned AR for the Department has brought to the notice of the Bench that Hon'ble Supreme Court in the case of Safety Retreading Company (P) Ltd. and other held that retreading of tyres does not amount to manufacture and it is only a service. The Supreme Court in the said judgment has further held that:-

> *"… … Therefore, simply because goods find a mention in one of the entries of the First Schedule does not mean that they have become liable for payment of excise duty. Goods have to satisfy the test of being produced or manufactured in India. It is settled law that excise duty is a duty levied on manufacture of goods. Unless goods are manufactured in India, they cannot be subjected to payment of excise duty. There is no merit in the argument that simply because a particular item is mentioned in the First Schedule, it becomes eligible to excise duty.*

2.2. Learned AR has also brought to the notice of the Bench the CBEC Circular F.No.137/125/2011-ST dt. 27/02/2012 wherein it was clarified that retreading of tyres is under the ambit of the service 'Management, Maintenance and Repair Services' and is liable to service tax. Learned AR further submitted that as the issue relates to matter of fact, the case may be remanded back to the appellate authority to quantify the component of service involved in the service of the respondents and to confirm the tax accordingly.

3. The learned consultant for the respondents has submitted that their activity came under the ambit of works contract and as held by the Hon'ble Supreme Court in the case of Larsen and Toubro Ltd. [2015-TIOL-187-SC-ST], no service tax is liable before 01/06/2007. He further submitted that this Bench has relied upon this judgment in the case of Hindustan Aeronautics Ltd. [2017-TIOL-3591-CESTAT-BANG].

4. Heard both sides and perused the available records.

5. We find that in view of the Supreme Court's judgment in the case of Safety Retreading Company (P) Ltd., the Commissioner has clearly erred in holding the retreading of tyres to be a manufacturing activity. As clarified by the Hon'ble Supreme Court, it is a service. As clarified by the Board vide Circular quoted above, the same is covered under 'Management, Maintenance and Repair Service' and liable to service tax. In view of the above, we find that there is a force in the contention of the learned AR on the issue. We find that the ratio of Hindustan Aeronautics Ltd. case is not applicable to the present case as the facts are distinguishable. In the case of Hindustan Aeronautics Ltd., it was maintenance and repair of helicopters whereas in the instant case, the question involved is as to whether the activity undertaken by the

respondent amounts to manufacture or service. Therefore we find that it will be in the fitness of the things to remand the matter to the appellate authority for the limited purpose of calculating the service tax payable by the respondents while giving due allowance to the cost of materials involved, in the amounts received, in the light of Hon'ble Supreme Court judgment cited supra.

6. In view of the above, the Department's appeal is allowed by way of remand.

(Operative portion of the Order was pronounced
in Open Court on **26/07/2018**)

P. ANJANI KUMAR,
TECHNICAL MEMBER

S.S. GARG
JUDICIAL MEMBER

Raja...