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

Appeal No.ST/164, 165/2012

[Arising out of Order-in-Appeal No.239/2011 & 240/2011 dt. 13.12.2011 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals), Coimbatore]

Bright Marketing Company — Appellant

Versus

Commissioner of Central Excise,
Coimbatore — Respondent

Appearance :

Shri N. Viswanathan, Advocate
For the Appellant

Shri S. Govindarajan, AC (AR)
For the Respondent

CORAM :

Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)
Hon'ble Shri P. Dinesha, Member (Judicial)

Date of hearing / decision : 07.08.2018

FINAL ORDER No. 42249-42250 / 2018

Per Madhu Mohan Damodhar

The facts of the case are that appellants were authorized sales and service dealer of RICOH Photo Copier etc. and undertook repair and maintenance activities. Till 31.3.2008, the appellants were raising invoices for repair and maintenance of photocopier on the basis of total number of copies taken and were charging amount for those copy charges and service tax was paid on the gross amount so charged. From 1.4.2008 onwards, however appellants raised invoices for total number of copies taken but split up the gross amount charged into two, namely 70% of value towards material cost and 30% towards service charges. Service tax was discharged on the latter. The defence of the appellant was that they had already paid VAT on the remaining 70% of the gross charges. Department however, took a view that the goods used in providing the services are to be treated as inputs for providing the service and accordingly the cost of such inputs should form integral part of the taxable value of such services. After being pointed out by the department, the appellant paid up the total tax liability of Rs.4,94,144/- and subsequently filed refund claim on 14.5.2009 for the said amount. The competent original authority vide OIO No.48/2010 dt. 2.12.2010 rejected the refund claim. Around the same time, SCN dt. 31.5.2010 was issued to appellants alleging that service tax amount of Rs.4,94,144/- for the period April 2008 to September 2008 was paid by the appellant belatedly and hence they are liable for payment of interest amount of Rs.37,588/- . The proposed interest demand was confirmed by the adjudicating authority vide OIO No.35/2010 dt. 2.12.2010. Both the order of rejection of refund as well as confirmation of the interest amount were appealed to the Commissioner (Appeals) who vide an impugned order dt.13.12.2011 upheld the orders of the original authorities and rejected the appeals. Hence appellants are before this forum.

2. Today when the matter came up for hearing, on behalf of the appellant, ld. counsel Shri N. Viswanathan submits that the matter is fully covered by the judgment of the Hon'ble Supreme Court in the case of *Safety Retreading Co. (P) Ltd. Vs CCE Salem* - 2017 (48) STR 97 (SC).

3. On the other hand, Ld. A.R Shri S. Govindarajan supports the impugned order.

4. Heard both sides and have gone through the facts.

5. We find that the Ld. Advocate is correct in his assertion that the issue at hand is covered by the judgement of Hon'ble Supreme Court in *Safety Retreading* case (supra) . The Hon'ble Apex Court in the said landmark judgment has unequivocally held that when the assesseee had paid tax under the State statute on the value component of material used, service tax would be exigible only on the remaining value of services provided. Hence respectfully following the ratio laid down by the Hon'ble Supreme Court in *Safety Retreading* (supra), the impugned order is set aside and both the appeals are allowed with consequential benefits, if any, as per law.

(dictated and pronounced in court)

(P. Dinesha)
Member (Judicial)

(Madhu Mohan Damodhar)
Member (Technical)

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