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

ST/40442/2013

[arising out of Order-in-Appeal No.346/2012, dated 20.12.2012 passed by the Commissioner of Customs & Central Excise (Appeals), Tiruchirapalli]

M/s.CHAKRA TYRES APPELLANT

Versus

COMMISSIONER OF CUSTOMS, CENTRAL EXCISE, AND SERVICE TAX, SALEM RESPONDENT

Appearance:

For the Appellant	Shri V. Ravindran, Adv.
For the Respondent	Shri S. Govindarajan, AC (AR)

CORAM:

Hon'be Smt. Sulekha Beevi C.S, Member (Judicial)
Hon'ble Shri P. Venkata Subba Rao, Member (Technical)

Date of hearing/decision **13-06-2019**

FINAL ORDER NO.40841/2019

Per Sulekha Beevi C.S:

Brief facts are that the appellants are engaged in undertaking the work of repairing, reconditioning of tyres of automobiles, namely, four wheelers including buses, lorries, cars and two wheelers also. Intelligence gathered by Headquarters revealed that the appellants were providing taxable services under the category of Management, Repair and Maintenance Services. But the appellant did not register themselves or pay service tax under this category. Show-cause notice was issued invoking extended period to demand service tax with interest and for imposing penalties. After due process of law, the original authority confirmed demand of Rs.45,01,343/- along with interest and also imposed penalties. In appeal, the Commissioner (Appeals) upheld the same. Hence this appeal.

2.0 On behalf of the appellant, the learned counsel Shri V. Ravindran submitted that the value of the materials consumed by the appellant while providing the services has to be excluded from the total value as per Notification No.12/2003. In this regard, he relied upon the decision of the Hon'ble Apex Court in the case of *M/s. Safety Retreading Co. (P) Ltd., Vs Commissioner of Central Excise, Salem* reported in *2017 (48) S.T.R.97 (S.C.)*. It is argued by learned counsel for the appellant that when the value of materials consumed for providing the services is excluded from the total value, the appellant would be eligible for the benefit of threshold limit.

2.1 The second argument put forward by the learned counsel is that the Board vide its Circular F.No.137/125/2011-ST, dated 27.02.2012 had stated that there is a doubt about the taxability of the retreading of old and used tyres and the service tax payable on such activity as the activity can also be considered as manufacture. The Board clarified that the activity falls under service. During the relevant period, there was a doubt whether the activity would fall under 'services' or 'manufacture'. For this reason the appellant has not taken registration or discharged the service tax liability. The allegation that the appellant has suppressed facts with intent to evade payment of service tax therefore cannot sustain. He prayed to set aside the demand, raised invoking extended period.

3. The learned Authorised Representative for the Revenue Shri S. Govindarajan, AC (AR) supported the findings in the impugned order. He submitted that in para 5.8 of the impugned order, the Commissioner (Appeals) has specifically noted the details with regard to the charges collected by the appellant from the customers for the year 2009-10. The appellant has separately given the value of materials. Thus, even though for previous years, the appellant has shown the value of materials on which VAT discharged as 70%, the value of materials has been separately charged for the year 2009-10. This would indicate that the appellant is not liable for the benefit of Notification No.12/2003 for the year 2009-10. It is also submitted by him that to verify whether the appellant falls within the threshold limit, the matter requires to be remanded.

4. Heard both sides.

5. On perusal of the records as well as after considering the submissions made by the appellants, it is seen that the demand has been raised after including the value of materials in the total taxable value. The Hon'ble Apex Court in the case of *M/s. Safety Retreading Co. (P) Ltd.,* (supra) has held that value of materials cannot be included for arriving at the total taxable value on which VAT has been discharged. Following the said decision, we are of the view that the

demand raised including value of materials cannot sustain. The learned counsel has submitted that if the value of materials is excluded from the total taxable value as raised in the show-cause notice, the appellant would fall within the threshold limit for the disputed period. However, this fact requires to be verified. For the limited purpose of verifying as to whether the appellant falls within the threshold limit, the matter is remanded to the adjudicating authority. Needless to say that if the appellant falls within the threshold limit, there would be no liability. Since VAT and service tax being mutually exclusive, the appellants will not be liable to pay service tax on the amounts which have suffered VAT.

6. With regard to the issue of limitation, the learned counsel has relied upon the Board's Circular dated 27.02.2012 to argue that there was much doubt as to the taxability of retreading activity and that the Board has clarified in the above Circular, that the activity is not manufacture and only service. This contention of the appellant cannot be accepted. The appellant has not taken any Service Tax or Central Excise registration. The Board by its Circular dated 27.02.2012 has only clarified that the tyre retreading activity is subject to levy of service tax. The said Circular does not give any confirmation that the Board was having any doubt as to whether it would be manufacture. The evasion of tax would not have come to light but for interference by department. For these reasons, we find that the contentions raised by the appellant that the extended period is not invocable cannot sustain. Thus argument on limitation fails.

7. From the above discussions, the appeal is partly allowed and remanded for the limited purpose of verification and reqantification by excluding the material consumed for providing the services from the total quantity of taxable value and if so to verify whether the appellant would be eligible for threshold limit exemption. Appeal partly allowed in the above terms.

(Dictated and pronounced in open court)

(P. VENKATA SUBBA RAO)
MEMBER (TECHNICAL)

(SULEKHA BEEVI C.S)
MEMBER (JUDICIAL

ksr
13-06-2019

	DRAFT			Remarks
	I	II	III	
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