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

ST/EH/40536/2017 and ST/332/2010

(Arising out of Order-in-Appeal No. 41/2010 (M-III ST) dated 19.3.2010 passed by the Commissioner of Central Excise (Appeals), Chennai)

M/s. Gem Tyre Retreaders — Appellant

Vs.

Commissioner of Central Excise, Chennai – III — Respondent

ST/EH/40486/2017 and ST/642/2010

(Arising out of Order-in-Appeal No.100/2010-ST (SLM) dated 2.8.2010 ~~19.3.2010~~ passed by the Commissioner of Central Excise (Appeals), Salem)

M/s. Nilgiriss Teads — Appellant

Vs.

Commissioner of Central Excise, Salem — Respondent

ST/EH/40485/2017 and ST/539/2012

(Arising out of Order-in-Appeal No. 106/2012 dated 21.5.2012 passed by the Commissioner of Central Excise (Appeals), ~~Chennai)~~ Coimbatore .

M/s. Select Retreading Pvt. Ltd. — Appellant

Vs.

Commissioner of Central Excise, Chennai – III — Respondent

Customs, Excise & Service Tax Appellate Tribunal
सत्यमेव जयते

ST/EH/40535/2017 and ST/40840/2013

(Arising out of Order-in-Appeal No. 31/2013 (P) dated 22.1.2013 passed by the Commissioner of Central Excise (Appeals), Chennai)

M/s.RPM Retreads — Appellant

Vs.

Commissioner of Central Excise, Chennai – III — Respondent

ST/EH/40487/2017 and ST/41295/2015

(Arising out of Order-in-Appeal No. 40/2015-ST dated 19.3.2015 passed by the Commissioner of Central Excise (Appeals – I), Coimbatore)

M/s.Gopalaswamy and Co. — Appellant

Vs.

Commissioner of Central Excise, Coimbatore — Respondent

Appearance

Shri R. Balagoopal, Consultant for the Appellants
Shri S.Govindarajan, AC (AR) for the Respondent

CORAM

Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of Hearing / Decision: **30.10.2017**

Final Order Nos. 42483-42487/2017

Per Bench

The above appeals have come up for hearing as per the early hearing application filed by the appellants.

Excise & Service Tax Appellate Tribunal

2. On behalf of the appellants, ld. consultant Shri R. Balagopal submitted that the issue for consideration in all these appeals stand covered by the decision of the Hon'ble Supreme Court in the case of Safety Retreading Company – 2017-TIOL-28-SC-ST.

3. The ld. AR Shri K.P. Muralidharan was represented by proxy AR Shri S. Govindarajan who reiterated the findings in the impugned order.

4. On examination of the records and after hearing the submissions, we find that the issue is whether the appellants who are rendering tyre retreading service is eligible for abatement as per Notification No. 12/2003. The said issue whether service tax can be levied on the value of materials used for tyre retreading service on which VAT has been paid is analyzed by the Hon'ble Supreme Court in the case of Safety Retreading Company (supra) wherein the issue was held in favour of the appellants. Therefore, we are of the view that the appeals can be heard and disposed out-of-turn and the early hearing applications are thus allowed. With the consent of both sides, the appeals were heard on merits also since the appeals are of the years 2010, 2012, 2013 and 2015 and the Tribunal is now dealing with the appeals of the year 2010 and 2011.

5. The issue for consideration is whether the appellants are eligible for abatement of the cost of materials used in the tyre retreading services. The issue stands covered by the said decision

of the Hon'ble Supreme Court cited supra. In view thereof, the impugned orders passed in Appeal Nos. ST/332, 642 and 539/2010 and ST/4040/2013 are set aside and the appeals are allowed with consequential relief if any.

6. The ld. consultant submitted that in Appeal No. ST/41295/2015, the Commissioner (Appeals) has noted that the appellant has discharged the service tax on 30% of the value of the services by deducting 70% towards material cost. He pointed out that in fact the appellant has not discharged the service tax liability on the bona fide belief that the said services are exempted from payment of service tax by wrong interpretation of the notification. It is also submitted by him that during the disputed period in the said appeal, both the notifications 6/2005 as well as 33/2012 would be applicable and the appellant would be eligible for the abatement.

7. In view thereof, we are of the view that matter requires remand to the adjudicating authority. The impugned order in Appeal ST/41295/2015 is set aside and remanded to the adjudicating authority to reconsider the issue on the basis of the decision by the Hon'ble Supreme Court cited supra. Appeal No. ST/41295/2015 is remanded with the above observations.

(Dictated and pronounced in open court)

Sulekha Beevi

(Madhu Mohan Damodhar)
Member (Technical)

(Sulekha Beevi C.S.)
Member (Judicial)

Rex