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

Appeal No. ST/218/2009

[Arising out of Order-in-Original No.5/2008 (Commr.) dt. 19.02.2009 passed by the Commissioner of Customs, Central Excise, and Service Tax, Coimbatore]

ARC Retreading Co. Pvt. Ltd. Appellant

Versus

Commissioner of Central Excise,
Coimbatore Respondent

Appearance:

Shri J. Shankarraman, Advocate
For the Appellant

Shri A. Cletus, ADC (AR)
For the Respondent

CORAM :

Hon'ble Ms. Sulekha Beevi C.S. Member (Judicial)
Hon'ble Shri B. Ravichandran, Member (Technical)

Date of hearing / decision : 05.09.2017

FINAL ORDER No. 41969/2017

Per B. Ravichandran

The appeal is against order dt. 19.02.2009 of Commissioner of Central Excise, Coimbatore.

Customs, Excise & Service Tax Appellate Tribunal

2. The appellants are engaged in the activity of retreading of tyres. During such activity, they were using tread rubber and other consumable items. The dispute in the present case relates to correct taxable value for the purpose of taxing the appellant under the category of "Maintenance or Repair service" under Section 65 (64) of Finance Act, 1994. The appellants did not include the cost of tread rubber and other consumables used in the course of retreading the tyres for the clients. The Revenue objected to the method of valuation and held that the taxable value should include the materials which are consumed during the course of provision of service. The proceedings initiated against the appellant concluded in the impugned order. The original authority confirmed differential tax liability of Rs.1,11,41,099/- on this account. He also imposed equal penalty under Section 78 apart from penalties under Section 76 & 77 under Finance Act, 1994.

3. Ld. counsel for the appellant submitted that the appellants are specifically showing the cost of tread rubber and consumables and paying VAT under the category of 'works contract' for the State authorities. It is his submission that the tread rubber and other consumables are, in fact, sold to the client though not physically cleared to the client. Such deemed sale has been accepted by the VAT authorities and they were discharging the VAT applicable on such goods. He referred to the recent decision of the Hon'ble Supreme Court in the case of *Safety Retreading Co. (P) Ltd. VS CCE* -2017 (48) STR 97 (SC). The Hon'ble Supreme Court examined

almost identical set of facts and concluded that assessee is liable to pay service tax only on the service component as they have discharged tax to the State authorities from deemed sale of materials during the course of provision of service. The Hon'ble Supreme Court upheld the exclusion of such cost of materials from the taxable value of service tax.

4. The Ld. A.R reiterated the findings of the lower authority.

5. Having heard both sides and upon perusal of the appeal records, we note that the ratio laid down by Hon'ble Supreme Court in the case of *Safety Retreading Co. (P) Ltd.* (supra) is squarely ~~applied~~ applicable to the present case. Accordingly, after setting aside the impugned order, we allow the appeal with consequential relief, if any, as per law.

(dictated and pronounced in court)

(B. Ravichandran) 6917

Member (Technical)

(Sulekha Beevi C.S)

Member (Judicial)

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Customs, Excise & Service Tax Appellate Tribunal