**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI**

PRINCIPAL BENCH-COURT NO.-1

Service Tax Appeal No. 50576 of 2015

[Arising out of Order-in-Original No. 88(VC) ST/JPR-I/2013 dated 05.08.2013 passed by Commissioner (Appeals) Central Excise Commissionerate, Jaipur]

Triveni Tyre Retraders **Appellant**
Opp. Road No. 12, V. K. I Area
Sikar Road
Jaipur-Rajasthan

Versus

**Commissioner of Central Excise &
Service Tax, Jaipur-I** **Respondent**
NCR Building, Statue Circle,
C- Scheme, Jaipur
Rajasthan-302005

Appearance
Ms. Priyanka Goel, Advocate for the appellant
Shri R K Manjhi, Authorized Representative for the respondent

CORAM: **Hon'ble Mr. Justice Shri Dilip Gupta, President
Hon'ble Mr. Bijay Kumar, Member (Technical)**

**Date of Hearing: 02.04.2019
Date of Decision: 02.04.2019**

Final Order No: 50596/2019

Per Bijay Kumar

1. The appeal has been preferred against the Order-in-Original No. 88(VC) ST/JPR-I/2013 dated 05.08.2013. In the impugned order learned Commissioner (Appeal) has modified the order passed by the lower Adjudicating Authority, which was consequent upon the issuance of Show Cause Notice dated 20/09/2006 demanding service tax of Rs. 2,58,619/- for the period 16/06/2005 to 13/12/2005 on the appellant.

2. The appellant is engaged in the business of re-trading of old and used tyres and is registered with the Central Excise Department under "Management, Maintenance and Repair Service". It was alleged by the Department that during the aforesaid period the appellant has failed to pay appropriate service tax on the amount collected towards the job charges under the category of "Business Auxiliary Service".

3. Learned Advocate on behalf of the appellant submits that they are engaged in the work of re-trading of old and used tyres which falls under the category of "Management, Maintenance and Repair Service" and not under the " Business Auxiliary Service" as held in the impugned order. The appellant has contested the classification adopted by the Department since the beginning, and therefore, learned Commissioner (Appeal) has incorrectly held that the issue regarding the classification of services remained un-contested. Reliance has also been placed on the clarification issued by the Central Board of Excise and Customs vide letter F. No. 137 /125/2011/ST dated 27/02/2012, wherein it is clarified that the re-trading of tyres is covered under "Management, Maintenance and Repair Services". Learned Advocate further submits that the demand which has been raised by invoking extended period of time is also incorrect. It has further been submitted that if appellant is held liable to pay service tax then they are entitled for exemption under Notification 12/2003 dated 27/02/12

4. Further, it has also been submitted that the impugned order is contrary to the decision of the Supreme Court in **Safety Retrading**

Company Pvt. Ltd. vs. Commissioner of Central Excise, Salem [2017 (1) TMI 1110 (SC)]. Reliance has also been placed on a decision of this Tribunal in **Unique Precured Retreaders vs. Commissioner of Customs, Excise, Jaipur–II Final Order No. 50247 of 2019 dated 05.02.2019.**

5. Learned Authorised Representative on behalf of Department has reiterated the records contained in the impugned order.
6. We have considered the rival submission and has perused the record.
7. The issue to be decided is as to whether the re-trading of tyres is classifiable under "Business Auxiliary Service" or "Management and Maintenance, Repair Services" under the of Finance Act, 1944. In this regard, we find that Central Board of Excise and Customs vide its Circular dated 27/07/2012 has clarified that the re-trading of tyres is covered under the ambit of service "Management, Maintenance and Repair Service" and liable for service tax. The CBEC Circular dated 27/02/2012, is much before the passing of the impugned order by the learned Commissioner (Appeal). We also find from the appeal record that adjudication order was issued after issuance of the Circular by the Central Board of Excise and Customs. It was, therefore, incumbent upon the learned Commissioner (Appeal) to consider the Circular which has been issued by the Central Board of Excise and Customs**.** Since the CBEC has clarified the issue regarding classification of re-trading of old and used tyre under "Management, Maintenance and Repair Services", we do not find any justification in classifying the service under "Business Auxiliary Service". Further the issue is settled in favour of the appellant by the Supreme Court in **Safety re-trading**

company Private Limited and by this Tribunal in **Unique Procured Retraders.** Accordingly, the impugned order is not sustainable, and therefore, set aside. The Appeal is, accordingly, allowed with consequential benefits, if any.

(Operative part pronounced in open court)

(BIJAY KUMAR) **MEMBER(TECHNICAL)**	**(JUSTICE DILIP GUPTA)** **PRESIDENT**

Tejo