IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH: KOLKATA

Appeal No. ST/106/2009

(Arising out of Order-in-Appeal No.20/JSR/2008 dated 30.01.2009 passed by the Commissioner (Appeals) Central Excise & Service Tax, Ranchi)

Commissioner of Central Excise, JSR

Applicant (s)/Appellant (s)

Vs.

M/s. CIO Tyres (P) Ltd.

Respondent (s)

Appearance:

Shri A.Roy, Suptd.(AR) for the Appellant (s)
Shri N.K.Choudhary, Advocate and Shri I.Banerjee, Advocate for the Respondent (s)

CORAM:
Hon'ble SHRI JUSTICE (DR.) SATISH CHANDRA, PRESIDENT
Hon'ble SHRI V.Padmanabhan, Member (Technical)

Date of Hearing/Decision:- 02.05.2018

ORDER NO. FO/76009/2018

Per Dr. Satish Chandra

1. The present appeal has been filed against the Order-in-Appeal Order-in-Appeal No.20/JSR/2008 dated 30.01.2009.

2. The brief facts of the case are that for the period June, 2005 to July, 2006 respondent entered into rate contract with the governmental concerns and other reputed private concerns to provide re-trading and used tyres services. The re-trading charges fixed in terms of the contract were cumulative values i.e. towards the total of material costs and the service costs. The department has demanded service tax on the total cumulative value. But the Commissioner (Appeals) has allowed the claim of the appellant that the material which were procured for re-trading services was subject to the VAT so the value which

comes 70% of the total retrading charges cannot be included in the total value of the service tax. Aggrieved by the same the present appeal is filed.

3. With this background we heard both sides and perused the appeal record.

4. After perusal of record it appears that respondent was maintaining sales tax assessment order, purchase orders, stock registers, sellers' invoices etc. for retrading and the said material costs normally worked out to 70% of the total retreading charges on which the respondent has paid VAT/CST under the said law. It is undisputed fact that the materials consumed were treated as sale/deemed sale in terms of the local sales tax/Central Sales Tax Act, 1956 which is reflected in the sales tax returns. For the remaining 30% the appellant already paid the service tax. Similar views were expressed in notification no.12/2003-ST dated 20.06.2003 by the Board. Similar views were expressed by the Hon'ble Supreme Court in the case of Safety Retreading Co.(P) Ltd. vs. Commissioner of C.Ex., Salem [2017(48)STR 97 (SC)], where it was observed as under:

> ***"10.*** *The exigibility of the component of the gross turnover of the assessee to service tax in respect of which the assessee had paid taxes under the local Act whereunder it was registered as a Works Contractor, would no longer be in doubt in view of the clear provisions of Section 67 of the Finance Act, 1994, as amended, which deals with the valuation of taxable services for charging service tax and specifically excludes the costs of parts or other material, if any, sold (deemed sale) to the customer while providing maintenance or repair service. This, in fact, is what is provided by the Notification dated 20th June, 2003 and CBEC Circular dated 7th April, 2004, extracted above, subject, however, to the condition that adequate and satisfactory proof in this regard is forthcoming from the assessee. On the very face of the language used in Section 67 of the Finance Act, 1994 we cannot subscribe to the view held by the Majority in the Appellate Tribunal that in a contract of the kind under consideration there is no sale or deemed sale of the parts or other materials used in the execution of the contract of repairs and maintenance. The finding of the Appellate Tribunal that it is the entire of the gross value of the service rendered that is liable to service tax, in our considered view, does not lay down the correct proposition of law which, according to us, is that an assessee is liable to pay tax only on the service component which under the State Act has been quantified at 30%.*
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> ***11.*** *An argument has been advanced by Ms. Pinky Anand, learned Additional Solicitor General that there is no evidence forthcoming*

from the side of the assessee that the value of the goods or the parts used in the contract and sold to the customer amounts to seventy per cent (70%) of the value of the service rendered which is the taxable component under the State Act. The aforesaid argument overlooks certain basic features of the case, namely, the undisputed assessment of the assessee under the local Act; the case projected by the Department itself in the show cause notice; and thirdly the affidavit filed before this Court by one S. Subramanian, Commissioner of Central Excise, Salem.

12. *No dispute has been raised with regard to the assessment of the appellant on its turnover under the local/State Act, insofar as payment of Value Added Tax on that component (70%) is concerned. A reading of the show cause notice dated 24th January, 2008 would go to show that the entire thrust of the Department's case is the alleged liability of the appellant-assessee to pay service tax on the gross value. In the aforesaid show cause notice, the details of the value of the goods, raw materials, parts, etc. and the value of the services rendered have been mentioned and service tax has been sought to be levied at the prescribed rate of ten per cent (10%) on the differential amount. It is now stated before us that the aforesaid figures have been furnished by the assessee himself and, therefore, must be understood not to be authentic. This, indeed, is strange. No dispute has been raised with regard to the correctness of the said figures furnished by the assessee in the show cause notice issued to justify the stand now taken before this Court; at no point of time such a plea had been advanced."*

5. By following the ratio laid down by the Hon'ble Supreme Court we find no reason to interfere with the impugned order and the same is hereby sustained.

6. In the result, the appeal is dismissed.

(Dictated and pronounced in the Open Court)

S/d.
(Justice Dr. Satish Chandra)
President

S/d.
(V.Padmanabhan)
MEMBER (Technical)

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