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

REGIONAL BENCH - COURT NO.1

Service Tax Appeal No.345 of 2010

(Arising out of Order-in-Original No.V(5)24/ST/B-I/2009/23073-A dated 18.08.2010 passed by Commissioner Central Excise, Customs & Service Tax, Bhubaneswar-I.)

M/s. Popular Tyre Retreaders
(At/PO-Karadagadia, Anugul-759132, Orissa.)

...Appellant

VERSUS

Commissioner of Central Excise, Customs & Service Tax, Bhubaneswar-I

.....Respondent

(C.R. Building, Rajaswa Vihar, Bhubaneswar-751007, Orissa.)

WITH

(i) Service Tax Appeal No.346 of 2010 (M/s. Tyre N Tyre v. Commissioner of Central Excise, Customs & Service Tax, Bhubaneswar-I); (ii) Service Tax Appeal No.347 of 2010 (M/s.Prasad Enterprises v. Commissioner of Central Excise, Customs & Service Tax, Bhubaneswar-I); (iii) Service Tax Appeal No.348 of 2010 (M/s.Ganapati Cold Retreaders v. Commissioner of Central Excise, Customs & Service Tax, Bhubaneswar-I); (iv) Service Tax Appeal No.349 of 2010 (M/s.Hindusthan Retradings v. Commissioner of Central Excise, Customs & Service Tax, Bhubaneswar-I); (v) Service Tax Appeal No.146 of 2011 (M/s.Maa Cold Retreads v. Commissioner of Central Excise, Customs & Service Tax, Bhubaneswar-I); (vi) Service Tax Appeal No.147 of 2011 (M/s.Utkal Retread Pvt.Ltd. v. Commissioner of Central Excise, Customs & Service Tax, Bhubaneswar-I); (vii) Service Tax Appeal No.148 of 2011 (M/s.IB Tyre Retreaders v. Commissioner of Central Excise, Customs & Service Tax, Bhubaneswar-I);

(i) (Arising out of Order-in-Original No.V(5)24/ST/B-I/2009/23076-A dated 18.08.2010 passed by Commissioner Central Excise, Customs & Service Tax, Bhubaneswar-I.)

(ii) (Arising out of Order-in-Original No.V(5)24/ST/B-I/2009/23072-A dated 18.08.2010 passed by Commissioner Central Excise, Customs & Service Tax, Bhubaneswar-I.)

(iii) (Arising out of Order-in-Original No.V(5)24/ST/B-I/2009/23074-A dated 18.08.2010 passed by Commissioner Central Excise, Customs & Service Tax, Bhubaneswar-I.)

(iv) (Arising out of Order-in-Original No. V(5)24/ST/B-I/2009/23075-A dated 18.08.2010 passed by Commissioner Central Excise, Customs & Service Tax, Bhubaneswar-I.)

(v) (Arising out of Order-in-Original No. IV(6)7/S.Tax/B-II/2009/23789-A dated 24.12.2009 passed by Commissioner Central Excise, Customs & Service Tax, Bhubaneswar-I.)

(vi) (Arising out of Order-in-Original No. IV(6)7/S.Tax/B-II/2009/23794-A dated 24.12.2009 passed by Commissioner Central Excise, Customs & Service Tax, Bhubaneswar-I.)

(vii) (Arising out of Order-in-Original No. IV(6)7/S.Tax/B-II/2009/23799-A dated 24.12.2009 passed by Commissioner Central Excise, Customs & Service Tax, Bhubaneswar-I.)

APPEARANCE

Shri J. Mohanty & Ms. Shreya Mundhra, Advocates for the Appellant M/s.Popular Tyre Retreaders & Appellant Nos.(i) to (iv) above and NONE for Appellant Nos.(v) to (vii) above.

Shri S.Dey, Authorized Representative for the Revenue

CORAM: HON'BLE SHRI ASHOK JINDAL, MEMBER(JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER(TECHNICAL)

FINAL ORDER NO. 77172-77179/2025

DATE OF HEARING : 30.07.2025
DATE OF DECISION : 05.08.2025

Per : ASHOK JINDAL :

All the appeals are having common issue, therefore, all are disposed of by a common order.

2. The facts of the case are that the appellants are engaged in the business of retreading of tyres. The retreading process is based on the concept of procuring the tread and having the retreader bond the tread

to a buffed casing. The tyre is first inspected and buffed perfectly and applied with a coat of rubber cement. A thin layer of unvulcanized rubber compound called Bonding Gum is applied to this surface. Over this, the procured tread belt of the desired design and size is built. This assembly is subjected to heat and pressure inside a chamber, which cured the bonding gum, thus bonding the procured tread firmly to the tyre within specified time.

3. After amendment of Central Excise Tariff Act, w.e.f. 28.02.2005 providing retreading of tyre to be covered under Chapter sub-heading 4012, the appellants ascertained that the activity of retreading cannot lawfully constitute service activities so as to incur liability of service tax under the provisions of Finance Act. As per Chapter sub-heading 4012 of the Central Excise Tariff Act "re-treading or used pneumatic tyres" is liable to Central Excise duty. Though, no rate of tax is prescribed in the tariff for heading No.4012, the activity of re-treading of tyres is considered as process amounting to manufacture, hence, no service tax is payable on the same on or after 28.02.2005. The appellants after submitting the representation before the Central Excise Commissioner to accept surrendering of service tax registration certificate under "maintenance or repair services" in view of activity of re-treading of tyres being an activity liable to Central Excise duty under Central Excise Act and not to insist upon further payment of service tax and further to grant refund of service tax already paid by the petitioner within a reasonable time. Representation made by the appellants was not entertained by the Ld.Commissioner, therefore, the appellants approached the Hon'ble High Court and the Hon'ble High Court directed the Ld.Commissioner to decide their representation within a reasonable time. Thereafter, vide order dated 18.08.2010 it was held that the retreading of tyres does not qualify for exclusion under section 65(64) of the Finance Act, 1994 as maintenance/repair of motor vehicle, and

further held that the activity is liable to service tax under the provisions of the Finance Act. Against the said order, the appellants are before us.

4. The Ld.Counsel appearing on behalf of the appellants submits that retreading of tyres is excluded from service tax under section 65(64) of the Finance Act, 1994 as it constitutes maintenance/repair of motor vehicle. It is the submission of the Ld.Counsel that tyres are integral, essential and indispensable parts of motor vehicles without which a motor vehicle cannot function/move or be operated on roads. A motor vehicle without tyres is incomplete and non-functional.

5. Further, the retreading process involves reconditioning and restoration of worn-out tyres by applying new tread rubber, which extends their life span and makes them roadworthy again. This process directly enhances the performance and serviceability of the motor vehicle, thereby constituting maintenance/repair of motor vehicle. Further, the retreading process does not create a new product but restores and reconditions the existing tyre to its serviceable condition, which is essentially maintenance and repair. As such, the said activity performed for the motor vehicle is excluded from the definition of management, maintenance or repair and is not leviable to Service Tax. The ld.Advocate relied on the decision in the case of **M/s.Kuttukaran Trading Ventures v. Commissioner of Central Excise [2014 (5) TMI 1023 – KERALA HIGH COURT]**, which has been affirmed by the Hon'ble Apex Court reported as **2015 (1) TMI 858 – SC ORDER**.

6. The Ld. Counsel further submits that retreading activity amounts to manufacture under Central Excise Act, 1944 and is covered under Chapter sub-heading 4012 and cannot simultaneously be subject to Service Tax. He further submitted that without prejudice, the said activity is in the nature of works contract service, where only 30% of the consideration represents service component, and the balance 70%

being material component is not liable to Service Tax. The service component is anyway not excisable to Service Tax in terms of the exclusion provided in the definition of management, maintenance or repair. Hence, the said activity is not excisable to Service Tax. He also relied on the decision of **Hindustan Retreadings** passed by the Ld.Commissioenr(Appeals), Central Excise, Customs & Service Tax, Bhubaneswar vide Order-in-Appeal No.36/ST/B-I/2017 dated 27.04.2017.

7. On the other hand, the Ld.Authorized Representative for the Revenue relied on the instructions vide letter F.No.137/125/2011-ST dated 27.02.2012 to say that on the activity of retreading of tyres, the appellants are liable to pay Service Tax under "Management, Maintenance and Repair Dervices".

8. Heard the parties, considered the submissions.

9. On going through the arguments advanced before us the following issues emerge:

(A) Whether the retreading of tyres constitute as service under the category of "Maintenance and Repair Service" of motor vehicle and excluded from Service Tax under section 65(64) of the Finance Act, 1994 w.e.f. 01.05.2006 or not ?

(B) Whether the activity is in nature of "Works Contract Service" or not ?

(C) Whether w.e.f. 20.08.2005 when a specific entry has been introduced under Central Excise Tariff Act, the retreading activity is excisable goods or service ?

Issue - A <u>Whether the retreading of tyres constitute as service under the category of "Maintenance and Repair Service" of motor vehicle and excluded from Service Tax under section 65(64) of the Finance Act, 1994 w.e.f. 01.05.2006 or not ?</u>

10. We find that whether the activity of retreading of tyres is exempt in terms of section 65(64) of the Finance Act, 1994 w.e.f. 01.05.2006 or not ? For better appreciation of the facts the said section 65(64) of the Finance Act, 1994 is reproduced hereunder:-

> 65. In this Chapter, unless the context otherwise requires, -
>
> ……………..
>
> [(64) "management, maintenance or repair" means any service provided by –
>
> (i) any person under a contract or an agreement; or
>
> (ii) a manufacturer or any person authorized by him, in relation to, -
>
> (a) management of properties, whether immovable or not;
>
> (b) maintenance or repair or properties, whether immovable or not; or
>
> (c) maintenance or repair including reconditioning or restoration, or servicing of any goods, excluding a motor vehicle.]

11. Further, the appellant is seeking exclusion from payment of Service Tax under "Management, Maintenance and Repairs" on the ground that the retreaded tyres are the part of motor vehicle, therefore, it is excluded from levy of Service Tax. To support this contention, we find that the Ld.Counsel relied on the decision of M/s. Kuttukaran Trading Ventures (supra), wherein the Hon'ble High Court has held as under :-

"The word exclusion apparently means excluding any maintenance or repair relating to a motor vehicle. A motor vehicle has several parts and if only a part of the motor vehicle requires maintenance or repair, can it be said that it is not maintenance or repair of a motor vehicle The motor vehicle in question has to be dismounted at some place either in the workshop of the appellant or in the workshop of any other person or even at the residence of the customer in order to effect repairs. Once a part is repaired and it is thereafter fitted to the motor vehicle, it will have the character of a motor vehicle, which can be used on road. It is not in dispute that if the motor vehicle was brought to the service centre of the appellant and they themselves had dismounted the engine and repaired it and then refitted it to the motor vehicle, they are entitled for the exclusion. But exclusion is not given by stating that dismounting has taken place at a different place. Such a view, according to us, cannot be accepted on account of the fact that motor vehicle apparently includes all its parts as well. Without its individual parts, it does not become a motor vehicle. Such part cannot be used for any other purpose as well and it is normally fitted to the same vehicle from which it is dismounted. Therefore, if any service centre or maintenance centre or workshop does maintenance or repairs to any part of the motor vehicle, it is also entitled to get the benefit of exclusion, as provided under Section 65(64) of the Finance Act, 1994."

12. Admittedly, without tyres the motor vehicle cannot become functional and shall remain incomplete, therefore, the tyres (retreaded or new tyres) are essential component of motor vehicle. In that circumstances, we hold that the activity of retreading of tyres is to be excluded from levy of Service Tax in terms of section 65(64) of the Finance Act, 1994.

Issue – B - <u>Whether the activity is in nature of "Works Contract Service" or not ?</u>

13. We find that the Ld.Counsel for the appellants have taken alternate ground that the activity of re treading of tyres is having merit classification under "Works Contract Service" as only 30% of the consideration represents service component and the balance 70% being material component. To support this contention both the sides have relied on the decision of **Padmashree Tyre Retreading Works v. Commissioner of Central Excise And Service Tax, Pune-I [(2024) 20 Centax 590 (Tri.-Bom)], Safety Retreading Co. (P) Ltd. v. Commissioner of C.Ex., Salem [2017 (48) S.T.R. 97 (SC)], Tojo Tyre Retread v. Commissioner of GST and Central Excise [Final Order No.40120/2025 dated 24.01.2025]**.

14. Admittedly, the activity of retreading of tyres involves material as well as service component. In that circumstances, merit classification thereof is "Works Contract Service" and in negative regime the appellant is entitled to claim rebate to the extent of VAT paid on the material used in retreading of tyres.

Issue 'C' - <u>Whether w.e.f. 20.08.2005 when a specific entry has been introduced under Central Excise Tariff Act, the retreading activity is excisable goods or service ?</u>

15. We find that the specific entry has been introduced in Central Excise Tariff Act, 1985 w.e.f. 20.08.2005 wherein Chapter Heading 4012 has been introduced and the same is extracted hereinbelow for better appreciation of facts :

4011 99 00	-- Other		
4012	**Retreaded or used pneumatic tyres of rubber, solid or cushion tyres, tyre treads and tyre flaps, of rubber**		
	- *Retreaded tyres :*		
4012 11 00	-- Of a kind used on motor cars (including station wagons and racing cars)	u	£
4012 12 00	-- Of a kind used on buses or lorries	u	£
4012 13 00	-- Of a kind used on aircraft	u	£
4012 19	-- *Other :*		
4012 19 10	--- For two wheelers	u	£
4012 19 90	--- Other	u	£
4012 20	- *Used pneumatic tyres :*		
4012 20 10	--- For buses, lorries and earth moving equipments including light commercial vehicles	u	£
4012 20 20	--- For passenger automobile vehicles, including two wheelers, three wheelers and personal type vehicles	u	£
4012 20 90	--- Other	u	£
4012 90	- *Other :*		
4012 90 10	--- Solid rubber tyres for motor vehicles	kg.	12.5%
4012 90 20	--- Solid rubber tyres for other vehicles	kg.	12.5%
4012 90 30	--- Tyres with metal framework	kg.	12.5%
	--- *Tyre flaps :*		
4012 90 41	---- Of a kind used in two-wheeled and three-wheeled motor vehicles	kg.	12.5%
4012 90 49	---- Other	kg.	12.5%
4012 90 50	--- Tyre treads, interchangeable	kg.	12.5%
4012 90 90	--- Other	kg.	12.5%

16. Admittedly, the activity of retreading of tyres i.e. retreaded Tyres finds place in Central Excise Tariff Act, 1985, in that circumstances, we have to find out whether it is excisable goods or not ?

17. Section 2(d) of Central Excise Act, 1944 defines excisable goods means goods specified in first schedule and second schedule of Central Excise Tariff Act, 1985 as being subject to a duty of excise including salt. The expression to that is for the purpose of this Clause "goods" includes any article, material or substance which is capable of being bought and sold for a consideration and such goods shall be deemed to be marketable. Admittedly, Retreaded Tyres qualifies as goods as it is being sold for a consideration and is marketable. Therefore, if the same finds place in the Central Excise Tariff Act, 1985, the same is to be termed as "excisable goods", and retreaded tyres falls within the first schedule to the Central Excise Tariff Act, under Tariff Item No.4012. However, no rate of excise has been prescribed for Retreaded Tyres

under the said Tariff Item. In that circumstances, the issue arises whether retreaded tyres be treated as excisable goods or not ?

18. The said issue has been dealt by this Tribunal in the case of **Bokaro Power Supply Co. (P) Ltd. vs. Principal Commissioner, Central Goods & Service Tax and Central Excise [Final Order No.76981/2025 dated 10.07.2025]**, where this Tribunal was dealing the issue of excisability of electricity or not and observed as under :-

> *14. The issues before us in this appeal are as under:-*
>
> > *(1) Whether the electricity generated / manufactured by the appellant amounts to manufacture of 'excisable goods' in terms of Section 2(d) of the Central Excise Act, 1944 or not.*
> >
> > *(2) Whether on the sale of electricity, Service Tax is leviable or not.*
>
> *15. Section 2(d) of the Central Excise Act, 1944 defines "excisable goods" to mean "goods specified in the First Schedule and Second Schedule to the Central Excise Tariff Act, 1985 as being subject to a duty of excise and includes salt". The explanation to that is: "For the purposes of this clause, "goods" includes any article, material or substance which is capable of being bought and sold for a consideration and such goods shall be deemed to be marketable.". Admittedly, electricity qualifies as goods as it is being sold for a consideration and is marketable. Therefore, if the same finds place in the Central Excise Tariff Act, 1985, the same is to be termed as "excisable goods" and electricity falls within the first schedule to the Central Excise Tariff Act, under Tariff Item No. 2716 0000. However, no rate of excise has been prescribed for electricity under the said Tariff Item.*
>
> *15.1. In this regard, reliance has been placed by the Ld. Special Counsel for the Revenue on the decision in the case of Collector of C.Ex. v. Solaris Chemitech Ltd. [2007 (214) E.L.T. 481 (S.C.)] to say that "we may clarify that electricity is not an excisable item", which has been followed by the Ld. Commissioner of Customs and Central Excise*

(Appeals), Pune-II in the case of In re: Shri Datta SSK Ltd. [2010 (261) E.L.T. 792 (Commr. Appl.)] However, we find that the decision in Solaris is in regard to the MODVAT scheme and the said issue has been examined by the Hon'ble Delhi High Court in the case of Commissioner of C.Ex. & S.T., LTU, Delhi v. Nangalamal Sugar Complex [2020 (371) E.L.T. 501 (Del.)] wherein the Hon'ble High Court has observed as under: -

> *"46. The first decision, to which reference requires to be made, is the judgment of the Supreme Court in Solaris Chemtech Ltd., on which extensive reliance has been placed by the High Court in Gularia Chini Mills, for the proposition that electricity/electrical energy did not constitute "excisable goods". In Solaris Chemtech Ltd., the respondent-assessee - hereinafter referred to as "Solaris" - was using Low Sulphur Heavy Stock (LSHS) and furnace oil to generate electricity, which was captively consumed for manufacture of final products such as caustic soda and cement. Solaris desired to avail Modvat credit, under Rule 57A of the Central Excise Rules, 1944, of the duty paid on the furnace oil and LSHS. For this purpose, reliance was placed, by Solaris, on clause (c) in the Explanation to Rule 57A(1), which was inserted vide Notification No. 4/94, dated 1st March, 1994, which included, in "inputs", "inputs used as fuel". Solaris contended that LSHS was eligible to be regarded as "inputs used as fuel". The Revenue contended, per contra, that LSHS was used for manufacturing electricity, which was not excisable and that, therefore, LSHS could not be treated as an input used as fuel. It was also contended that, though LSHS generated electricity, it could not be said that LSHS was used in, or in relation to, the manufacture of the final products, namely caustic soda and cement. Electricity, it was contended, was not the final product, and Modvat credit of the duty paid on LSHS was not admissible. Essentially, therefore, the Revenue sought to contend that generation of electricity, by heating of LSHS, was a process which was independent of the process of manufacture of cement*

and caustic soda. The generation of electricity from LSHS, according to the Revenue in that case, did not result in the manufacture of cement and caustic soda and, consequently, Modvat credit, of the input used to generate electricity, could not be availed. 47. Dealing with the contention, the Supreme Court, in Para 8 of the report, commenced with a clarification that "electricity is not an excisable item". It went on to hold that "fuel either utilised directly or for generating electricity, as an intermediary product, integrally connected with several operations which resulted in the emergence of the final product, namely cement/caustic soda". It was emphasised, by the Supreme Court, that, "without utilisation of LSHS, it is not possible to manufacture cement/caustic soda", inasmuch as "the electrolysis process is dependent on continuous flow of electricity". As such, it was held, LSHS came within the ambit of the expression "used in or in relation to the manufacture of the final product". The utilisation of the captively generated electricity, in the production of the final product, it was observed, was crucial, and, therefore, Modvat credit, on the LSHS used in the production of electricity, could not be denied. The Supreme Court went on to expound on the concept of usage "in or in relation to the manufacture of final products", especially the expression "in relation to". In view of the wide ambit of this expression, the Supreme Court held that Modvat credit, of the duty paid on LSHS, was available to Solaris.

48. Though the judgment of the Supreme Court in Solaris Chemtech Ltd. does not set out the period, to which the demand in that case pertained, it is obvious that it was prior to 1st April, 2000, as it dealt with Modvat credit, which was replaced by Cenvat credit with effect from the said date. The position in the Tariff, as it existed during the period to which Solaris Chemtech Ltd. related is, therefore, not known. It is also to be borne in mind that the Explanation, to Section 2(d) of the Act, whereby goods which were bought and sold were, ipso facto, deemed to be marketable, was introduced only w.e.f. 10 th May, 2008. Prior *thereto, it was necessary to establish, as an independent fact, the "marketability" of any item, in order to regard it as "excisable". Inasmuch as the judgment in Solaris Chemtech Ltd. was itself rendered prior to the addition of the Explanation to Section 2(d) of the Act, and the period of dispute, in the said case, was prior to 1st April, 2000, it is doubtful whether the "clarification", in the opening sentence of Para 8 of the report in the said decision, that "electricity is not an excisable item" could operate as a precedent, for all times to come, under Article 141 of the Constitution of India.*

49. We are, of course, aware of the fact that, in Gularia Chini Mills, the High Court expressly rejected the specific contention, advanced before it, that the insertion of the Explanation to Section 2(d) of the Act diluted the applicability of the judgment in Solaris Chemtech Ltd. We are not, however, aware of the exact reason for such rejection, as it is not forthcoming from the judgment. To us, it appears that, after the addition of the Explanation to Section 2(d), in the Act, the declaration of the law, in Solaris Chemtech Ltd., that electricity is not an excisable item, would not continue to hold good, as (i) electrical energy finds specific place in Sub-Heading 2716 00 00 of the Tariff, and (ii) electricity was, in fact, bought and sold by the respondent.

…

57. Regarding ground (ii), we reiterate our view that the non-specification of any rate of duty, against a particular sub-heading of the Tariff, would not result in the product becoming "non-excisable". To the extent that the judgment of the High Court of Allahabad, in Gularia Chini Mills opines to the contrary, therefore, we respectfully record our disagreement."

15.1.1. Therefore, as it has been held by the Hon'ble High Court that electricity, falling under Tariff Item No. 2716 0000 of the Central Excise Tariff Act, is excisable goods as per Explanation to Section 2(d) of the Central Excise Act, 1944 with effect from 10.05.2008, in these circumstances, we find that electricity is excisable goods.

15.2. The Ld. Special Counsel for the Revenue has further relied upon the decision in the case of Commissioner of C.Ex., Tirunelveli v. Ramesh Flowers (P) Ltd. [2009 (236) E.L.T. 366 (Tri. – Chennai)]. The said decision of this Tribunal is not applicable to the facts of this case as in the said case, the issue was that of classification of 'Potpourris' which is not the subject matter of the appeal before us.

15.3. Further, he has also relied on the decision, which has been affirmed by the Hon'ble Apex Court, in the case of Dunar Foods Ltd. v. Commissioner of C.Ex., Panchkula [2017 (346) E.L.T. 612 (Tri. – Chan.)]. In the said case, this Tribunal came to the conclusion that conversion of paddy into rice is an activity of agriculture and therefore, no excise duty is payable on that. However, that is not the case before us.

15.4. In view of the above, we find that the reliance placed by the Ld. Special Counsel for the Revenue on the above decisions is misplaced. Accordingly, the same are not applicable to the facts of this case.

16. We take note of the fact that electricity finds place in the Tariff Item No. 2716 0000 of the Central Excise Tariff Act, 1985 and is 'goods' as per Explanation to Section 2(d) of the Central Excise Act, 1944. Therefore, we hold that electricity is 'excisable goods' and although the rate of duty column is kept blank, it cannot be said that it is not 'excisable goods'."

19. Admittedly in this case the retreaded tyres find place in Tariff Item No.4012 of Central Excise Tariff Act, 1985 and is goods as per explanation to section 2(d) of the Central Excise Act, 1944, therefore, we hold that the retreaded tyre is excisable goods although the rate of duty column is blank, therefore, it cannot be said that it is not excisable goods.

20. In view of the above observation, we hold that it is an excisable goods and not a service.

21. We further take note of the fact that in the case of **P. Cheriyan v. Mst. Barti Devi [1979 (4) ELT 593 (SC)]** held that retreading of old tyres does not amount to manufacture in terms of section 2(f) of the Central Excise and Salt Act, 1944. We do agree with the observation made by the Hon’ble Apex Court in the case of **P. Cheriyan v. Mst. Barti Devi** (supra). At that time the retreaded tyres does not have any entry in the Central Excise Tariff Act. Admittedly the said entry brought into Central Excise Tariff Act w.e.f. 28.02.2005 and the decision of the Hon’ble Apex Court was delivered on 16.08.1979. In that circumstances, the decision in the case of P. Cheriyan v. Mst. Barti Devi (supra) is not applicable to the facts of the present case.

22. We further take note of the fact that except in the case of **P. Cheriyan v. Mst. Barti Devi** (supra), the issue was not before the Tribunal or Hon’ble High Court or Hon’ble Apex Court <u>where the activity of retreading of tyres after 28.02.2005 is an activity of excisable goods or service</u>. The said issue has been raised before us, therefore, we are deciding the said issue in favour of the appellants holding that the activity of retreading of tyres is excisable goods in terms of Central Excise Tariff Act Chapter 4012, therefore, no Service Tax is payable by the appellants.

In view of the above observations, the appeals are disposed of.

(Pronounced in the open Court on 05.08.2025.)

Sd/
(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/
(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

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