CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH - COURT NO. 01

Service Tax Appeal No. 85974 Of 2016

(Arising out of Order-in-Appeal No. PUN-EXCUS-001-APP-0200-15-16 dated 21.01.2016 passed by Commissioner of Central Excise (Appeals-I), Pune.)

M/s Padmashree Tyre Retreading Works .....**Appellant**
Gat No. 397, Dehu Alandi Road, Talawade,
Pune-412 114.

VERSUS

Commissioner of Central Excise And Service Tax-Pune-I .....**Respondent**
ICE House, 41-A, Sasson Road, Opposite Wadia
College, Pune-411 001.

Appearance:

Shri Sachin Chitnis, Advocate for the Appellant
Shri Badhe Piyush Barasu, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85037/2024

Date of Hearing: 03.01.2024
Date of Decision: 03.01.2024

PER : S. K. MOHANTY

Heard both sides and perused the case records.

2. Briefly stated, the facts of the case are that the appellant herein are engaged in the business of retreading of tyres, which includes re-conditioning of worn-out tyres received from the customers. The retreading process requires use of certain raw materials like tread rubber, tread bonding solutions, bonding gum blocks, consumables, etc. The appellant is also registered with the

Sales Tax/VAT authorities for payment of Sales Tax/VAT on use of such raw materials for carrying out the activities of re-treading of tyres. The appellant had discharged the Service Tax liability on the labour component up to the period July 2007, and subsequently had not paid any Service tax on the labour component, owing to the reason that they were under the threshold exemption limit for non-payment of service tax. Since the appellant were under the Service tax net and were not entitled for the benefit of SSI exemption, started paying service tax on the labour component for retreading the tyres. Non-payment of the service tax on the material component was disputed by the department and the show cause notice dated 14.09.2009 was issued, seeking for recovery of the service tax amount on the material used for re-treading the tyres. The matter arising out of the show cause notice for the period 16.06.2005 to 31.03.2009 was adjudicated by the order dated 29.03.2014, wherein the original authority had confirmed service tax demand of Rs. 27,95,320/- as proposed for recovery in the SCN. The said order had also confirmed the interest demand and imposed penalty on the Appellant under Section 78 of the Finance Act, 1994. On appeal against the said adjudication order dated 29.03.2014, the Learned Commissioner (Appeals) vide the impugned order dated 21.01.2016 has upheld confirmation of the adjudged demand. Feeling aggrieved with the impugned order, the appellant had preferred this appeal before the Tribunal.

3. It is an admitted fact on record that the appellant had used various raw materials for accomplishing the purpose of re-treading of the tyres and that on the material components, they

had discharged appropriate VAT liability. Since, on the basis of the records maintained by the appellant, the Sales Tax/VAT liability was determined, which was assessed in favour of the appellant by the competent authorities, the service tax department cannot plead that the benefit provided under the Notification No. 12/2003-ST dated 20.06.2003 shall not be available to the appellant. Since, the authorities below have not specifically alleged that the appellant did not maintain the records, demonstrating use of the raw materials for carrying out the activities of retreading the tyres, in our considered view, the exemption benefit provided under the said Notification No.12/2003-ST dated 20.06.2003 should be available to the appellant. Further, we also find that the issue arising out of present dispute is no more *res-integra* in view of the judgement of Hon'ble Supreme Court in the case of *Safety Retreading Co.(P) Ltd. Vs Commissioner of C. Ex. Salem* – 2017 (48) S.T.R. 97 (S.C.). The relevant paragraphs of the said judgement are extracted herein below:

> "**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%.

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.

13. Besides the above, the affidavit of the learned Commissioner, referred to above, proceeds on the basis that the appellant assessee is also liable to pay service tax on the remaining seventy per cent (70%) towards material costs in addition to the 30% of the retreading charges. This is clear from the following averments made in the said affidavit of the learned Commissioner:

> "The relevant bills showed that the Appellant had paid service tax only on the labour component after deducting 70% towards material cost on the gross tyre Retreading charges billed and received for the period from 16-6-2005. In short, they have paid service tax only on the 30% of the tyre Retreading charges received from the customers, by conveniently omitting 70% of the consideration received towards Retreading charges to avoid tax burden.
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> The verification of invoices of the Appellant for the period from Jan.-2007 to March-2007, the officers noticed that the Appellant have shown material cost, patch cost and misc. charges i.e. Labour charges separately in their invoices. However, on the follow-up action the customers of the Appellant revealed that they have neither purchased nor received raw materials intended for Retreading and they had paid only the Retreading charges for carrying out the Retreading activity."

The invoices which the appellant assessee has also brought on record by way of illustration show the break up of the gross value received. There is again no contest to the same. Leaving aside the question that the case now projected, with regard to lack of proof of incurring of expenses on goods and materials which has been transferred to the recipient of the service provided, appears to be an afterthought, even on examination of the same on merits we have found it to be wholly unsustainable.

14. We, therefore, in the light of what has been discussed above, set aside the majority order of the Appellate Tribunal dated 14th October, 2011 and hold that the view taken by the learned Vice-President of the Appellate Tribunal is correct and the same will now govern the parties. All reliefs that may be due to the appellant-assessee will be afforded to it forthwith and without any delay. All amounts, as may have been, deposited pursuant to the order(s) of this Court shall be returned forthwith to the appellant, however, without any interest. Bank guarantee furnished insofar as the penalty amount is concerned shall stand discharged.

The appeal is allowed in the above terms."

3. In view of the foregoing discussions and the ratio of the judgement delivered by the Hon'ble Supreme Court in the case of *Safety Retreading Co. (P) Ltd.* (*supra*), we find that the issue arising out of the present dispute is no more open for the debate. Therefore, the impugned order passed by the Learned Commissioner (Appeals) in upholding confirmation of the

adjudged demand on the Appellant cannot be sustained. Accordingly, the impugned order is set aside and the appeal is allowed in favour of the Appellant.

(Dictated and pronounced in the open court)

(S.K. Mohanty)
Member(Judicial)

(M.M. Parthiban)
Member (Technical)

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