SUPREME COURT OF INDIA

Safety Retreading Company Ltd.

Vs.

Commissioner of Central Excise

C.A.No.641/2012

(Ranjan Gogoi and Ashok Bhushan,JJ.,)

18.01.2017

JUDGMENT

Ranjan Gogoi,J.,

1. The main issue for consideration in this appeal is whether in a contract for retreading of tyres, service tax is leviable on the total amount charged for retreading including the value of the materials/goods that have been used and sold in the execution of the contract.

2. The definition of ' taxable service' contained in Section 65(105)(zzg) of the Finance Act, 1994, as amended by Finance Act, 2003 may be noticed at this stage.

> " 65. Definitions In this Chapter, unless the context otherwise requires.-¬* * * (105) ' taxable service' means any service provided¬*** (zzg) to a customer, by any person in relation to maintenance or repair;"

3. The expression "maintenance or repair" is defined by Section 65(64) of the Finance Act, 1994 is in the following terms:

> " 65. Definitions In this Chapter, unless the context otherwise requires.-- Page 2
>
> (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, 4in relation to,--
>
> (a) management of properties, whether immovable or not;
>
> (b) maintenance or repair of properties, whether immovable or not; or

(c) maintenance or repair including reconditioning or restoration, or servicing of any goods, excluding a motor vehicle;"

4. Section 66 which is the charging section brought about by the 2003 Amendment to the Finance Act, 1994, authorizes the levy of service tax, at the prescribed rate, on the value of taxable services referred to in, inter alia, sub-clause (zzg) of Clause 105 of Section 65 of the Finance Act, 1994.

5. Section 67 of the aforesaid Act deals with valuation of taxable services and specifically mentions that the same does not include the cost of parts or other material, if any, sold to the customer during the course of providing maintenance or repair service.

6. There is a government notification bearing No.12/2003-ST dated 20th June, 2003 and a CBEC circular dated 7th April, 2004 dealing with the instant matter which may also be noticed and extracted below:

"Notification No.12/2013-ST
dated 2 0 th June, 2003.
' Valuation (Service Tax) - Goods and materials sold by service provider to recipient of service - Value thereof, exempted. In exercise of the powers conferred by section 93 of the Finance Act, 1994 (32 of 1994), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts so much of the value of all the taxable services, as is equal to the value of goods and materials sold by the service provider to the recipient of service, from the service tax leviable thereon under section (66) of the said Act, subject to condition that there is documentary proof Specifically indicating the value of the said goods and materials.

2. This notification shall come into force on the 1st day of July, 2003 (Notification No.12/2003-S.T. dated 20.6.2003)' CBEC Circular dated 7th April, 2004 I am directed to refer to your representation forwarded to Finance Minister vide letter dated 11-3-2003 and state that in terms of the notification 12/2003-ST dated 20-6-2003, the exemption in respect of input material consumed/sold by the service provider to the service recipient while providing the taxable service is available. However, the exemption is available only if the service provider maintains the records showing the material consumed/sold while providing the taxable service. The value of such material should also be indicated on the bill/invoice issued in respect of the taxable service provided."

7. A demand for levy of tax on the gross value of the service rendered including the cost of materials used and transferred was raised and answered against the assessee leading to an appeal before the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench at Chennai (hereinafter referred to as "appellate Tribunal"). The learned appellate Tribunal returned a split verdict with the Technical Member taking the view that the gross value of the

service rendered would be exigible to tax under the Act. The third member (Technical) to whom the matter was referred held as follows:

> ” 21. From the foregoing, the following emerges:
>
> a) There is no evidence of sale of materials in rendering the impugned service of "Maintenance and Repairs".
>
> b) "Maintenance and Repair Service" being as specific service cannot be treated as service under the category of "Works Contract" for the service tax purposes.
>
> c) The concept of "deemed sales" is relevant only in respect of services under the category of "Works Contract" and not in respect of "Maintenance and Repair Service".
>
> d) The assessee has not proved that the conditions under Notification 12/03 ST dated 20.06.2003 have been satisfied and, therefore, they are not entitled to the benefit of deduction of cost of raw materials consumed in providing the impugned service."

8. Aggrieved, this appeal has been filed.

9. We have heard the learned counsels for the parties.

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 mprovided 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 mgross tyre mRetreading charges billed and received for the period from 16.06.2005. In short, they have paid service tax only on The 30% mof the tyre Retreading Charges received from mthe customers, by conveniently omitting 70% of the consideration received towards Retreading charges to avoid tax burden. The verification of invoices of the Appellant mfor the period from Jan-2007 to March-2007, the mofficers 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, m 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.

15. Order of this Court passed today i.e. dated 18th January, 2017 in Civil Appeal No.641 of 2012 will govern the proceedings in Civil Appeal Nos.6375-6376 of 2014 and Civil Appeal Nos.6062-6063 of 2013. Consequently, the appeals are disposed of on the same terms.