

**IN THE CUSTOMS, EXCISE & SERVICE TAX  
APPELLATE TRIBUNAL, CHENNAI**

**Service Tax Appeal No. 41763/2016**

(Arising out of Order in Original No. MDU-ST-COM-06-2016 dated 29.6.2016 passed by the Commissioner of Central Excise, Madurai)

**M/s. Super Transports (P) Ltd.**  
120/4, Theni Main Road  
Madurai – 625 010.

**Appellant**

Vs.

**Commissioner of GST & Central Excise**  
No. 4, Lal Bahadur Shastri Road  
Bibikulam, Madurai – 625 002.

**Respondent**

**APPEARANCE:**

Shri Raghav Rajeev, Advocate and  
Ms. Nimrah Ali, Advocate for the Appellant  
Smt. G. Krupa, Authorised Representative for the Respondent

**CORAM**

**Hon'ble Shri M. Ajit Kumar, Member (Technical)**  
**Hon'ble Shri Ajayan T.V., Member (Judicial)**

FINAL ORDER NO. 40377/2026

Date of Hearing: 07.11.2025

Date of Decision: 18.03.2026

**Per M. Ajit Kumar,**

This appeal is filed by the appellant against Order in Original No. MDU-ST-COM-06-2016 dated 29.06.2016 passed by the Commissioner of Central Excise, Madurai (impugned order).

2. The appellant provides 'Maintenance or Repair Service' and 'Transport of Goods by Road' through units at Madurai, Dindigul and Paramakudi. Centralized accounts for the units are maintained at the Madurai Branch Office. Prior to 01.07.2012, the appellant classified tyre retreading services under 'Maintenance & Repair Service', with

service tax paid on the gross amount after availing CENVAT credit. From 01.07.2012, the appellant shifted to 'Works Contract Service' claiming the benefit under Notification No. 24/2012 dated 06.06.2012. During Departmental audit of the accounts and ST-3 returns for August 2011 to March 2014, it was found that the appellant valued the service portion under Rule 2A(i) of the Service Tax (Determination of Value) Rules, 2006 (**Valuation Rules 2006**), by considering only labour charges and excluding material cost. The Department held that Rule 2A(i) was inapplicable since the value of property in goods transferred was not determinable and the appellant had admitted that labour charges were not ascertainable for VAT purposes. Accordingly, valuation under Rule 2A(ii)(B), requiring adoption of 70% of the total contract value, was considered applicable. Hence Show cause Notice (**SCN**) for a differential service tax demand of ₹1,07,24,022/- for the period July 2012 to September 2014, was issued by the department. The Commissioner passed the impugned Order-in-Original (**OIO**), and confirmed the demand while imposing penalties under Sections 78 and 77(2) of the Finance Act, 1994, leading to the present appeal.

3. The learned Advocates Shri Raghav Rajeev and Ms. Nimrah Ali appeared for the appellant and Ld. Authorized Representative Smt. G. Krupa appeared for the respondent.

3.1 Shri Raghav Rajeev the Ld. Counsel for the appellant submitted that the Appellant is engaged in the retreading of used motor vehicle tyres. Customers supply worn-out tyres, which undergo buffing, rasping, cementing, tread building, enveloping and curing, after

which the retreaded tyres are inspected and delivered. For this activity, the Appellant procures materials such as tread rubber, bonding gum and vulcanizing cement. Upon completion of retreading, the property in such goods is transferred to the customers along with the retreaded tyres. Accordingly, the activity constitutes a works contract involving transfer of property in goods, which is not disputed by the Department. Since the activity qualifies as a works contract and the material and labour components are separately ascertainable from the invoices, the Appellant discharged service tax only on the service portion, i.e. actual labour charges, after excluding the value of goods transferred, in terms of Rule 2A(i) of the Valuation Rules 2006. VAT was discharged on the value of transfer of property in goods under Section 5 of the Tamil Nadu Value Added Tax Act, 2006 (**TNVAT Act, 2006**) read with Rule 8(5)(d) of the Tamil Nadu Value Added Tax Rules, 2007 (**TNVAT Rules, 2007**). The Ld. Counsel submitted that:

- A. The Appellant is engaged in tyre retreading, an admitted works contract involving transfer of property in goods. The Department does not dispute the classification.
- B. The Appellant's invoices separately disclose material cost and labour charges. Accordingly, in terms of Section 67(1)(i) of the Finance Act, 1994, service tax is payable only on the consideration for the service element, namely labour charges.
- C. Since the value of goods transferred and labour charges are clearly ascertainable from the invoices, valuation under Rule 2A(i) of the Valuation Rules is squarely applicable. Rule 2A(ii)

applies only where such values are not determinable, which is not the case here.

- D. The impugned order erroneously rejects Rule 2A(i) and mechanically applies Rule 2A(ii)(B), despite the statutory precondition for invoking Rule 2A(ii) not being satisfied.
- E. The issue is no longer res integra and stands settled in favour of the Appellant by decisions including **Chakita Ranjini Udyam v. CCE** (2009 (16) STR 172) and in the Appellant's own case, **Super Transport Pvt. Ltd. v. CCE** (2017 (51) STR 46).
- F. Without prejudice, even assuming the Department's stand that VAT was paid on 70% of the contract value, service tax can be levied only on the remaining 30%. On this basis, the maximum service tax liability works out to ₹80,54,155/-, whereas the Appellant has already discharged ₹80,60,007/-.
- G. The Ld. Counsel relied upon the following judgments in support of his submissions:
- a. **Wipro GE Medical Systems Pvt. Ltd. vs. Commissioner of Service Tax, Bangalore**, 2009 (14) STR 43 (Tri-Bang), upheld by the Hon'ble Supreme Court in **Commissioner vs. Wipro GE Medical Systems Pvt. Ltd.**, 2012 (28) S.T.R. 144 (S.C.).
  - b. **Safety Retreading Company (P) Ltd. and others vs. Commissioner of Central Excise, Salem and other**, 2017 (48) S.T.R. 97 (SC).

c. **M/s. Johnson Lifts Pvt. Ltd. vs. Commissioner of G.S.T and Central Excise**, 2023 (9) TMI 79-CESTAT Chennai.

d. **M/s. Touchstone Infrastructure and Solutions Pvt. Ltd. vs. The Commissioner of Central Taxes and Central Excise, Chennai North Commissionerate**, 2021 (11) TMI 695-CESTAT Chennai.

H. Consequently, no further service tax demand is sustainable.

3.2 Smt. G. Krupa the Ld. AR for the respondent submits that:

A. During audit, it was noticed that the invoices raised by the Appellant determined the taxable value by adopting Rule 2A(i) of the Service Tax (Determination of Value) Rules, 2006, paying service tax only on labour charges and excluding the value of materials.

B. Under Rule 2A(i), the value of service is the gross amount charged less the value of property in goods transferred, which must correspond to the value adopted for payment of VAT or sales tax.

C. The Appellant is required to discharge VAT on the material portion of the works contract and has paid VAT under the Tamil Nadu Value Added Tax Act, 2006.

D. Rule 8(5)(d) of the TNVAT Rules, 2007 permits VAT payment either by deduction of actual labour charges, where ascertainable, or by adopting a prescribed percentage where labour charges are not ascertainable.

E. In the present case, the Appellant admittedly adopted the percentage method for VAT, having been unable to ascertain actual labour charges. Consequently, the labour and material components were not separately determinable.

F. Since the Appellant could not identify actual labour charges for VAT purposes, Rule 2A(i) could not be applied for service tax valuation. The case therefore falls under Rule 2A(ii).

G. The activity is covered under Rule 2A(ii)(B)(i), relating to maintenance or repair of goods, under which service tax is payable on 70% of the total contract value.

H. The Appellant's reliance on **Wipro GE Medical Systems** (supra), is misplaced, as the decision pertains to a pre-01.07.2012 period. The issue of valuation under the amended Rule 2A has since been settled by the Hon'ble Supreme Court in **Interarch Building Products Pvt. Ltd.** [2023 (73) GSTL 433 (SC)].

I. The extended period of limitation has been rightly invoked, as the Appellant mis-declared taxable value in ST-3 returns, and the discrepancy came to light only upon detailed audit and investigation.

J. The appeal filed by the Appellant therefore deserves to be dismissed in toto.

4. We have heard the parties and considered the appeals, submissions, and relevant judgments. We note that the classification of tyre retreading as a works contract is not in dispute. The

controversy in the present appeal is confined solely to the valuation adopted for the purpose of payment of service tax.

5. The Appellant after classifying the activity as "Works Contract Service" was availing the benefit of Notification No. 24/2012 dated 06.06.2012, whereby they were liable to pay service tax on the service charge excluding the material cost, in terms of Valuation Rules 2006, as amended by notification No 24/2012, dated: 06.06.2012. The Appellant is being clever when he states that the invoices separately disclose material cost and labour charges. While such a split is made in the invoice it is not based on actuals. The dispute is whether the goods are to be valued as per Rule 2A(i) [Appellant] or Rule 2A(ii) [Revenue].

6. Rule 2A of the Service Tax (Determination of Value) Rules 2006 is reproduced below for ease of reference:

**2A. Determination of value of service portion in the execution of a works contract.:**

Subject to the provisions of Section 67, the value of service portion in the execution of a works contract, referred to in clause (h) of Section 66E of the Act, shall be determined in the following manner, namely:-

(i) **Value of service portion in the execution of a works contract shall be equivalent to the gross amount charged for the works contract less the value of property in goods, or in goods and land or undivided share of land, as the case may be transferred in the execution of the said works contract.**

Explanation-For the purposes of this clause,-

(a) gross amount charged for the works contract **shall not include Value Added Tax (VAT) or sales tax,** as the case may be, paid, if any, on transfer of property in goods involved in the execution of the said works contract;

(b) value of works contract service shall include,

- (i) labour charges for execution of the works;
- (ii) amount paid to a subcontractor for labour and services;
- (iii) charges for planning, designing and architect's fees;
- (iv) charges for obtaining on hire or otherwise, machinery and tools used for the execution of the works contract;
- (v) cost of consumables such as water, electricity, fuel, used in the execution of the works contract;
- (vi) cost of establishment of the contractor relatable to supply of labour and services;
- (vii) other similar expenses relatable to supply of labour and services; and
- (viii) profit earned by the service provider relatable to supply of labour and services;

(c) Where value added tax or sales tax has been paid or payable **on the actual value of property in goods transferred in the execution of the works contract, then, such value adopted for the purposes of payment of value added tax or sales tax, shall be taken as the value of property in goods transferred** in the execution of the said works contract for determination of the value of service portion in the execution of works contract under this clause.

(ii) **Where the value has not been determined under clause (i)**, the person liable to pay tax on the service portion involved in the execution of the works contract shall determine the service tax payable in the following manner, namely:-

(A) in case of works contracts entered into for execution of original works, service tax shall be payable on forty per cent. of the total amount charged for the works contract;

Provided that where the amount charged for works contract includes the value of goods as well as land or undivided share of land, the service tax shall be payable on thirty per cent. of the total amount charged for the works contract.

(B) in case of works contract, not covered under sub-clause (A), including works contract entered into for-

(i) maintenance or repair or reconditioning or restoration **or servicing of any goods**; or

(ii) maintenance or repair or completion and finishing services such as glazing or plastering or floor and wall tiling or installation of electrical fittings of immovable property,

**service tax shall be payable on seventy per cent. of the total amount charged for the works contract.**

(emphasis added)

7. It is revenue's contention that as per the invoices raised there is no transfer of property in goods involved in the execution of the said works contract. As stated in the SCN the Appellant have been discharging VAT under the provisions of TNVAT, 2006. Rule 8(5) of the TNVAT Rules, 2007 prescribes two methods under which VAT is required to be discharged.

(i) Clause (d) of the said Rule 8(5) states that, all amount towards labour charges and other charges not involving any transfer of property in goods, actually incurred in connection with the execution of works contract or;

(ii) Such amounts calculated at the rate specified in Column (3) of the table mentioned in the Rule, if they are not ascertainable from the books of accounts maintained and produced by a dealer before the assessing authority.

Thus, an assessee has two options to pay VAT, (i) if the labour charges actually incurred are available, then the VAT on the transfer of property in goods involved shall be arrived by deduction of such labour charges actually incurred from the total turnover of that dealer

and (ii) in cases where the labour charges actually incurred are not ascertainable from the books of accounts of the dealer, then the dealer has to adopt the percentage deduction method to arrive at the taxable turnover to pay the VAT. In the instant case, admittedly, the Appellant had adopted the percentage method to pay VAT on 70% of the total value of the works contract, for the reason that they could not ascertain the actual labour charges incurred by them.

8. The Appellant has stated even in the event of going by the notice, they would have to pay service tax only on 30% of the total contract value in as much as they had already paid VAT on the 70% value. In this regard, they placed reliance on the decision of **Wipro GE Medical Systems vs Commissioner of Service Tax, Bangalore** [2009 (14) STR 43 (Tri.-Bang)]. However, it is submitted by revenue that the period involved in the above Order was prior to 01/07/2012 and much before the amended Rule 2A. On the other hand, revenue has placed reliance on the decision of the Apex Court in the case of **Commissioner of Customs & C.Ex. and ST, Noida Vs Interarch Building Products Pvt. Ltd** [2023 (73) GSTL 433 (SC)], wherein the valuation under Rule 2A and its sanctity has been elaborately discussed by the Hon'ble Apex Court.

9. By the Constitution (46th Amendment) Act, 1982, Parliament inserted **Article 366(29A)**, deeming certain indivisible works contracts to be divisible into a sale of goods and a provision of services. This legal fiction enabled the States and the Centre to tax, separately, the transfer of property in goods and the service component involved in such composite contracts.

10. The Hon'ble Supreme Court in **S. APPUKUTAN Vs. THUNDIYIL JANAKI AMMA & ANR.** [AIR 1988 SUPREME COURT 587/ 1988 SCC (2) 372], examined the way statutory fiction should be interpreted. It held:

"As to how statutory fictions are to be interpreted is by now well-settled. The approach formulated by Lord Asquith in **East End Dwelling Co. Ltd. Vs Finsbary Borough Council, [1952] AC 109** has been approved by this Court in a number of cases. The line of approach set out by Lord Asquith is as under:

"If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consequences and incidents which if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanies it. The statute says that you must imagine a certain state of affairs; it does not say that having done so, you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs. "

This line of approach has been adopted by this Court in a number of cases and we may refer only to some of them. See **M.K. Venkatachalam Vs Bombay Dyeing and manufacturing Co. Ltd., [1959] SCR 703: AIR 1958 SC 875; Commissioner of Income Tax, Delhi Vs Teja Singh, AIR 1959 SC 355** In Commissioner of Income Tax Delhi Vs Teja Singh (supra), this Court pointed out that "it is a rule of interpretation well-settled that in construing the scope of a legal fiction it would be proper and even necessary to assume all those facts on which alone the fiction can operate." In **Industrial supplies Pvt. Ltd. Vs Union of India, [1980] IV SCC 341**, this Court observed as follows:

**"It is now axiomatic that when a legal fiction is incorporated in a statute, the court has to ascertain for what purpose the fiction is created. After ascertaining the purpose, full effect must be given to the statutory fiction, and it should be carried to its logical conclusion.** The court has to assume all the facts and consequences which are incidental or inevitable corollaries to giving effect to the fiction."

11. As discussed above, under the TNVAT Rules, 2007, as in the case of Service Tax, VAT may be discharged either by deducting

actual labour charges where ascertainable or, where they are not, by adopting a deemed percentage of the contract value. In the present case, it is undisputed that the Appellant adopted the percentage method and paid VAT on 70% of the contract value, as actual labour charges were not ascertainable. Since VAT and service tax are mutually exclusive, it would be impermissible to levy service tax again on the same 70% under Rule 2A(ii)(B)(i) of the Valuation Rules, 2006. The Service Tax Department cannot take a contrary stand and adopt an inconsistent approach while dealing with the same set of facts as well as legal background, as consistently held by the Hon'ble Supreme Court. [See: **Birla Corporation Ltd. Vs CCE** - 2005 (186) ELT 266 (SC); **Indian Oil Corporation Ltd. Vs Collector of C. Ex., Baroda** - 2006 (202) ELT 37 (SC); **Boving Fouress Ltd. Vs Commissioner of Central Excise, Chennai** - 2006 (202) ELT 389 (SC)]. A harmonious construction of the constitutional and statutory deeming provisions is therefore required. Full effect must be given to the statutory fiction, and it should be carried to its logical conclusion, as stated in **S. APPUKUTAN** (supra). Accordingly, we are of the opinion that once VAT has been discharged on 70% of the contract value, Service Tax can be levied only on the remaining 30%.

**Judgments cited by revenue:**

12. In **Commissioner of Customs & C.Ex. and ST, Noida Vs Interarch Building Products Pvt. Ltd** [2023 (73) GSTL 433 (SC)], the short question which is posed for consideration before the Hon'ble Supreme Court was as to whether an assessee who is liable to pay

service tax under works contract service has the legal right not to follow Rule 2A of the Service Tax (Determination of Value) Rules, 2006 nor the Composition Scheme on the ground that in terms of Section 67 of the Finance Act, 1994 an assessee is entitled to take the total contract value which includes both goods and services and remit service tax on the entire value as works contract service and in the process also entitled to avail the CENVAT Credit? The Hon'ble Court held:

**"59. With respect to the 'works contract service' and/or the Composition Works Contract the valuation has to be made as per Rule 2A of the Valuation Rules, 2006.** Even as per the Composition Scheme vide Notification 32/2007 dated 22.04.2007 an assessee has an option to discharge the service tax liability on the works contract service provided or to be provided, instead of paying service tax at the rate specified in Section 66 of the Act by paying equivalent to 2% of the gross amount charged for the works contract. It is to be noted that Rule 3(1) provides notwithstanding anything contained in Section 67 of the Act and Rule 2A of the Service (Determination of Value) Rules, 2006. **Therefore, as per the Scheme of the Act the determination of value of service portion in the execution of the works contract is to be made as per Rule 2A, however with an option to the assessee to avail the benefit of Composition Scheme.** Therefore, either the assessee has to go for Composition Scheme or go for Determination of Value as per Rule 2A and the assessee has to pay service tax on the service element and can claim CENVAT Credit on the said amount only.

The above judgment affirms that with respect to the 'works contract service' and/or the Composition Works Contract the valuation has to be made as per Rule 2A of the Valuation Rules, 2006. The applicability of the said Rule is not disputed in the impugned appeal. The question was as to which sub-section would be more appropriately applicable to the case. The above judgment does not deal with the same and to that extent does not help revenues cause.

**Judgments cited by appellant:**

13. In **SAFETY RETREADING CO. (P) LTD. Vs COMMISSIONER OF C. EX., SALEM** [2017 (48) S.T.R. 97 (S.C.)], the main issue for consideration before the Hon'ble Supreme Court was 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. However the judgment records:

**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.

Hence the judgment was based on certain facts peculiar to the case and cannot serve as a precedent here.

14. In **Wipro GE Medical Systems Pvt. Ltd. Commissioner-of Service Tax, Bangalore** [2009(14) STR 43 (Tri-Bang)], the issues are somewhat similar to the impugned appeal. The facts in **Wipro GE** are that the appellants claimed 70% deduction in respect of spares and parts in terms of Annual Maintenance Contracts (AMC). The Tribunal remanded the matter to examine the invoices produced by the appellants with regard to the cost of spares and parts. The Tribunal held:

"8. On a very careful consideration of the fact, we find that there is no dispute with regard to the leviability of service tax on the maintenance and repair services. The main point of dispute is with regard to the valuation. However, Section 67 of the Finance Act clearly provides for the abatement of the value of the goods sold in the course of the carrying out of the service. The point is whether the goods are actually sold. According to the department, the contract is only for the maintenance and repair. Therefore, it cannot be said that the spare parts were sold. This view is not correct. The chartered accountant has actually given a certificate with regard to the consumption of materials. It is also not denied that in the course of the maintenance no material was used. In several decisions it has been held that service tax cannot be levied on that portion of the value on which sales tax has been charged. This position has been elaborately dealt with in the decision of the Shilpa Colour Lab case decided by this Bench and cited supra. This view has been affirmed in many decisions. **Once, the sales tax has been paid on the materials, then on the same service tax also cannot be charged.** In fact, the appellants had relied on the decision of the Honble Karnataka High Court which has been upheld by the Honble Supreme Court. In the Modi Xerox case it has been clearly held that in the Annual Maintenance Contract, the replacement of spares etc. would be considered as sale. **Even in the present case, on 70% of the value sales tax has been paid and this has been accepted by the Government of Karnataka. This fact also cannot be ignored.** Moreover, Notification No. 12/2003 dated 20.06.2003 clearly provides for exempting the value of the materials sold during the provision of the service. Whenever, any service is provided if in the course of the provision of the service certain materials are used they will definitely be considered as sale. This is clearly covered by the Constitutional Article 366(29)(B) cited by the learned Advocate. We do not agree with the learned Commissioner that the said Constitutional provision has no application here. The Maintenance and Repair Contract entered by the appellant with their customers has been recognized as Works Contract by the Government of Karnataka and the registration has been obtained for payment of sales tax. When that is the case, it cannot be said that the spare parts received by the clients of the appellant have not been sold to them. We hold that in any Annual Maintenance Contract the spare parts etc. which have been used in the course of the maintenance service are definitely to be considered as sold and when sales tax has been paid on the value of such goods, simultaneously one cannot

charge them to the service tax. **In view of these clear legal provisions, there is absolutely no justification for levy of service tax beyond 30% of the value of the total contract.**

The above Order was upheld by the Hon'ble Supreme Court in **Commissioner Vs Wipro GE Medical Systems Pvt. Ltd.** [2012 (28) STR 144 (SC)]. Revenue has stated that the decision pertains to a pre-01.07.2012 period and is hence not relevant. We find that the legal principle, regarding the non-overlap of sales tax and service tax, stated therein is not affected by any subsequent change to the law. The Order supports our view and clearly holds that once, the sales tax has been paid on the materials, then on the same service tax also cannot be charged.

15. In the light of the discussions above we find that the question raised in the dispute is answered in favour of the appellant and the impugned order merits to be set aside. We order accordingly. The appellant is eligible for consequential relief as per law. The appeal is disposed of accordingly.

(Order pronounced in open court on 18.03.2026)

**(AJAYAN T.V.)**  
Member (Judicial)

**(M. AJIT KUMAR)**  
Member (Technical)

Rex