

F.No.137/125/2011-Service Tax

**Government of India
Ministry of Finance
Department of Revenue
(Central Board of Excise & Customs)
New Delhi**

Dated: February 27, 2012

Subject:- Application of Service Tax on Tyre Retreading Activity - clarification regarding;

Please refer to your letter dated 30.8.2011 on the above mentioned subject addressed to the Chairman, Central Board of Excise & Customs. In the said letter you have represented that Service Tax may not be charged on the activity of retreading of tyres under 'Management Maintenance & Repair Service', The argument given by you is that 'retreading of tyre' is specifically figuring in Central Excise Tariff under TI 4012 and therefore, they are excisable goods. Hence, in your view Service Tax cannot be imposed, as Excise Duty is payable as applicable.

2. The matter has been examined. For the purpose of levy of Central Excise, Section 3 of the Central Excise Act 1994, being the charging Section provides that a duty of excise shall be levied on all Excisable Goods, **which are produced or manufactured in India** at the rates set forth in the first schedule of the Central Excise Tariff Act. *Further, 'Excisable Goods' have been defined under Section 2(d) of the Central Excise Act (CEA) as the goods specified in the first and second schedule of the CETA as being subject to a duty of excise and include salt.*

2.2 Thus, it is apparent that if any goods are barely mentioned in the Central Excise Tariff Act, then, though they would qualify as 'excisable goods', however, for the Central Excise Duty to come into operation, **as per Section 3 of the CEA, the additional requirement of these goods to have been produced or manufactured in India would also have to be satisfied.** In this context, judgement of the Hon'ble Supreme Court in the case of *M/s Ahmedabad Electricity Co. Ltd* ([2003-TIOL-17-SC-CX](#)) is relevant. Some of the observations as made in this judgement are reproduced below:

".....in the present case however, we are considering the expression 'excisable goods' in the light of provisions contained in section 3 of the CEA, 1944...."

The Supreme Court in the said judgement has further held that -

"...Therefore, simply because goods find a mention in one of the entries of the First Schedule does not mean that they have become liable for payment of excise duty. Goods have to satisfy the test of being produced or manufactured in India. It is settled law that excise duty is a duty levied on manufacture of goods. Unless goods are manufactured in India, they cannot be subjected to payment of excise duty. There is no merit in the argument that simply because a particular item is mentioned in the First Schedule, it becomes eligible to excise duty."

3. Thus, a mere mention in the Central Excise Tariff Act of "Retreading of Tyres" does not make the activity of Retreading of Tyres excisable, since the test of production or manufacture has to be also satisfied. In this context, the judgement of Hon'ble Supreme Court in the case of *M/s P.C. Cheriyan Vs. Mst. Barfi Devi* ([2002-TIOL-362-SC-CX](#)) is relevant. In the said judgement, Hon'ble Supreme Court has observed that-

"The retreading of old tyres does not bring into being a commercially distinct or different entity. The old tyre retains its original character, or identity as a tyre. Retreading does not completely transform it into another commercial article, although it improves its performance and serviceability as a tyre. Retreading of old tyres is just like resoling of old shoes."

4. Though this judgement is given in the context of Transfer of Property Act, however, the basic principle behind "manufacture" of coming into existence of a commercially different and distinct entity is equally applicable to Central Excise Act and has been relied upon by the Tribunal in certain cases while interpreting 'manufacture' under Section 2(F) of the Central Excise Act.

5. Thus, retreading of tyres is covered under the ambit of the service 'Management Maintenance & Repair Service' and is liable to payment of service tax. You are accordingly requested to advise the Members of your Association to pay Service Tax.

**(Deepankar Aron)
Director (Service Tax)**

