CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH
CHENNAI

Appeal No. E/843/2005

[Arising out of Order-in-Original No.16/2004 dt. 31.12.2004 passed by the Commissioner of Central Excise, Trichy]

Appeal No.E/114/2006

[Arising out of Order-in-Original No.03/2005 dt. 31.3.2005 passed by the Commissioner of Central Excise, Trichy]

Appeal No.E/115/2006

[Arising out of Order-in-Original No.05/2005 dt. 31.5.2005 passed by the Commissioner of Central Excise, Trichy]

Commissioner of Central Excise,
Tiruchirappalli — Appellant

Versus

Bharat Heavy Electricals Ltd. — Respondent

Appearance:

Shri A. Cletus, ADC (AR)
For the Appellant

Shri S. Muthuvenkatraman, Advocate
For the Respondent

Customs, Excise & Service Tax Appellate Tribunal

CORAM :

Hon'ble Ms. Sulekha Beevi C.S. Member (Judicial)
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of hearing / decision : 24.07.2017

FINAL ORDER No. 41271 - 41273/2017

Per Bench

The issue involved in all these cases being the same, they were heard together and disposed by this common order.

2. The issue involved is with respect to the classification of boiler parts cleared by respondents. The respondents/assessee have adopted the classification as CSH 8402.10 while the department contends the same to be classified under 8402.90. Boilers are classifiable under CSH 8402.10 whereas parts of boilers are classifiable under 8402.90. It has to be stated that with effect from 3/99 the rate of duty for both these sub-headings and other sub-headings under which the various parts can be classified individually are the same. The respondents entered into contract for supply of boiler/boiler parts. In the impugned order, the finding is that the clearances made were components of boilers against orders for supply of boilers.

3. At the time of hearing the Ld Counsel Shri S.Muthu Venkataraman appearing for respondents, namely BHEL submitted that in respondents' own case, the Tribunal vide Final Order No.377/09 dt.31.3.2009 has held that the impugned goods are classifiable under CSH 8402.10 upholding the classification adopted by respondents/assessee. The Tribunal in the said judgement had followed the proposition laid in *CCE, Pune I Vs Thermax Bobcock & Wilcox Ltd.* - 2005 (182) ELT 336 (Tri-Mum). This judgement was relied upon by the Ld. Counsel. The relevant portions of the judgement in the case of *Thermax Bobcock & Wilcox Ltd*. is reproduced as under :

"4. The dispute pertains firstly to the classification of pressure and non pressure parts cleared from the factory. The rival contention are that the parts cleared from the factory are incomplete boilers removed in unassembled form and are therefore classifiable under 8402.10 as boilers according to respondent. The Revenue contends that the parts removed from the factory have to be classified as parts under Sub-heading 8402.90. Secondly the value of brought out items should be added to the assessable value of the boilers in case it is considered that the respondent removed boilers in unassembled form from

Customs, Excise & Service Tax Appellate Tribunal their factory, according to the excise authorities. The respondent contends that the bought out items are accessories and therefore their value can't be added.

....

7. According to the Revenue a boiler, as complete functional unit, comes into existence only after the goods cleared from the factory and bought items directly received at site, are assembled at site. It is argued that the contract is for erection of a boiler and therefore the value of the bought out item form part of the assessable value. The fact that no processing was done on the bought out items and that no credit is availed is immaterial according to revenue.

....

11. The appeal of the Revenue is decided thus :

(a) The goods as cleared by the respondents are classifiable under 8402.10 as boilers.

(b) The value of bought out items received at site and used in the erection of boilers have to be added to the assessable value of boilers."

(emphasis added)

4. The Ld. AR has reiterated the grounds of appeal.

5. We find that the issue stands covered by the decision of the Tribunal in the case of BHEL as well as the judgement reported in the case of *Thermax Bobcock & Wilcox Ltd.* (supra). Following the same we find no merits in the appeals filed by department.

6. The appeals are dismissed.

(Operative part of the order pronounced in court)

Sulekha Beevi

(Madhu Mohan Damodhar)
Member (Technical)

(Sulekha Beevi C.S)
Member (Judicial)

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Customs, Excise & Service Tax Appellate Tribunal
सत्यमेव जयते

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