IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
SOUTH ZONAL BENCH, CHENNAI

COURT HALL No.III

(1) EXCISE APPEAL No.42207 OF 2013
(with E/CO/42343 of 2014)

(Arising out of Order-in-Original No.16-19/2013 (CE) dated 05.07.2013 passed by Commissioner of Central Excise, Chennai III Commissionerate, 26/1, Mahatma Gandhi Road, Nungambakkam, Chennai 600 034)

The Commissioner of GST & Central Excise .... Appellant
Chennai Outer Commissionerate
No.2054, I Block, II Avenue,
12th Main Road, Anna Nagar,
Chennai 600 040.

Versus

M/s.Thermodyne Technologies Pvt. Ltd. ...Respondent
Unit - I,
Plot No.14, SIDCO Industrial Estate,
Ranipet 632 406.

(2) EXCISE APPEAL No.42208 OF 2013
(with E/CO/42344 of 2014)

(Arising out of Order-in-Original No.16-19/2013 (CE) dated 05.07.2013 passed by Commissioner of Central Excise, Chennai III Commissionerate, 26/1, Mahatma Gandhi Road, Nungambakkam, Chennai 600 034)

The Commissioner of GST & Central Excise .... Appellant
Chennai Outer Commissionerate
No.2054, I Block, II Avenue,
12th Main Road,
Anna Nagar,
Chennai 600 040.

Versus

M/s.Thermodyne Technologies Pvt. Ltd. ...Respondent
Unit-V, 4/3, Musiri Road, Thenkadapanthangal village,
Walajapet 632 513.

(3) EXCISE APPEAL No.42209 OF 2013
(with E/CO/42260 of 2014)

(Arising out of Order-in-Original No.16-19/2013 (CE) dated 05.07.2013 passed by Commissioner of Central Excise, Chennai III Commissionerate, 26/1, Mahatma Gandhi Road, Nungambakkam, Chennai 600 034)

The Commissioner of GST & Central Excise .... Appellant
Chennai Outer Commissionerate
No.2054, I Block, II Avenue,
12th Main Road,
Anna Nagar,
Chennai 600 040.

Versus

M/s.Thermodyne Technologies Pvt. Ltd. ...Respondent
Unit - III,
Plot No.29, SIDCO Industrial Estate,
Ranipet 632 406.

(4) EXCISE APPEAL No.42211 OF 2013
(with E/CO/42261 of 2014)

(Arising out of Order-in-Original No.16-19/2013 (CE) dated 05.07.2013 passed by Commissioner of Central Excise, Chennai III Commissionerate, 26/1, Mahatma Gandhi Road, Nungambakkam, Chennai 600 034)

The Commissioner of GST & Central Excise .... Appellant
Chennai Outer Commissionerate
No.2054, I Block, II Avenue,
12th Main Road,
Anna Nagar,
Chennai 600 040.

Versus

M/s.Thermodyne Technologies Pvt. Ltd. ...Respondent
Unit - II,
Plot No.15, SIDCO Industrial Estate,
Ranipet 632 406.

(5) EXCISE APPEAL No.42249 OF 2013

(Arising out of Order-in-Original No.16-19/2013 (CE) dated 05.07.2013 passed by Commissioner of Central Excise, Chennai III Commissionerate, 26/1, Mahatma Gandhi Road, Nungambakkam, Chennai 600 034)

M/s.Thermodyne Technologies Pvt. Ltd. ... Appellant
Unit-I, No.18, Ayodhya Colony,
Velacherry,
Chennai 600 042.

Versus

The Commissioner of GST & Central Excise .... Respondent
Chennai Outer Commissionerate
No.2054, I Block, II Avenue,
12th Main Road, Anna Nagar,
Chennai 600 040.

(6) EXCISE APPEAL No.42250 OF 2013

(Arising out of Order-in-Original No.16-19/2013 (CE) dated 05.07.2013 passed by Commissioner of Central Excise, Chennai III Commissionerate, 26/1, Mahatma Gandhi Road, Nungambakkam, Chennai 600 034)

M/s.Thermodyne Technologies Pvt. Ltd. ... Appellant
Unit-I, No.18, Ayodhya Colony,
Velacherry,
Chennai 600 042.

Versus

The Commissioner of GST & Central Excise .... Respondent
Chennai Outer Commissionerate
No.2054, I Block, II Avenue,
12th Main Road, Anna Nagar,
Chennai 600 040.

(7) EXCISE APPEAL No.42251 OF 2013

(Arising out of Order-in-Original No.16-19/2013 (CE) dated 05.07.2013 passed by Commissioner of Central Excise, Chennai III Commissionerate, 26/1, Mahatma Gandhi Road, Nungambakkam, Chennai 600 034)

M/s.Thermodyne Technologies Pvt. Ltd. ... Appellant
Unit-III, No.18, Ayodhya Colony,
Velacherry,
Chennai 600 042.

Versus

The Commissioner of GST & Central Excise .... Respondent
Chennai Outer Commissionerate
No.2054, I Block, II Avenue,
12th Main Road, Anna Nagar,
Chennai 600 040.

(8) EXCISE APPEAL No.42252 OF 2013

(Arising out of Order-in-Original No.16-19/2013 (CE) dated 05.07.2013 passed by Commissioner of Central Excise, Chennai III Commissionerate, 26/1, Mahatma Gandhi Road, Nungambakkam, Chennai 600 034)

M/s.Thermodyne Technologies Pvt. Ltd. ... Appellant
Unit-V, No.18, Ayodhya Colony,
Velacherry,
Chennai 600 042.

Versus

The Commissioner of GST & Central Excise .... Respondent
Chennai Outer Commissionerate
No.2054, I Block, II Avenue,
12th Main Road, Anna Nagar,
Chennai 600 040.

APPEARANCE :

Mr. M.N. Bharathi, Advocate
For the Assessee

Mr. Rudra Pratap Singh, Additional Commissioner (A.R)
For the Department

CORAM :

Hon'ble Ms. SULEKHA BEEVI C.S., Member (Judicial)
Hon'ble Mr. VASA SESHAGIRI RAO, Member (Technical)

DATE OF HEARING : 07.07.2023
DATE OF DECISION :17.07.2023

FINAL ORDER Nos.40562-40569/2023

ORDER : Per Ms. SULEKHA BEEVI, C.S.

The issue involved in all these appeals being the same and connected, they were heard together and disposed of by this common order. The parties are hereafter referred to as 'assessee' and 'department' for the sake of convenience.

2. Brief facts are that, the assessee-company, viz. M/s.Thermodyne Technologies P. Ltd. is having different units in and around, Ranipet Tamil Nadu. Each unit was registered with the Central Excise Department separately for the manufacture of excisable goods. The different units are engaged in the manufacture of various types of boilers and boiler components falling under Chapter 84 of First Schedule of Central Excise Tariff Act, 1985.

3. In the course of verification of the ER-1 returns filed by units, it was noticed by the department that assessee has claimed to have been manufacturing Agro Waste Fired Boilers and clearing the same without payment of duty by claiming exemption vide Sl.No.84 of Notification No.6/2006-CE dated 1.3.2006 upto 16.03.2006 and vide Sl.No.332 of Notification No.12/2012-CE dated 17.03.2006 from 17.03.2012 onwards. On verification of the invoices under which the alleged boilers were cleared, it was seen that each unit was clearing parts of Boilers and not the Boiler itself. The units had not manufactured the entire Water Tube Boiler / Agro Waste Fired Boiler in their factory and only certain parts of such Boilers were cleared

without payment of duty availing the above exemption notification. The parts manufactured by each unit did not constitute a full boiler. Further, it appeared that appellant had not consumed the parts of Agro Waste Fired Boilers in the manufacture of entire boiler and had only cleared to their customer for which the exemption is not eligible. The units had classified the parts of boiler as Boiler itself under CETSH 84021200, instead of CETSH 84029020 (for parts).

4. On such verifications and facts, the department entertained the view that the assessee units had intentionally suppressed facts of manufacture and removal of parts and components of Boilers, by mentioning the goods cleared in their monthly ER-1 return and invoices as "Agro Waste Fired Boilers". Show cause notices were issued separately to each unit (5 units) proposing to deny the exemption of the notification to demand duty with interest on the parts of boilers cleared by them. Penalties were also proposed. After due process of law, the original authority confirmed duty demand on merits for the normal period and set aside the duty demand for the extended period. The assessee has thus filed appeals E/42249/2013, E/42250/2013, E/42251/2013 & E/42252/2013 aggrieved by the confirmation of demand, interest and penalties for normal period. The department has filed appeals E/42207/2023, E/42208/2013, E/42209/2013 & E/42211/2013 against that part of the order which set aside the demand for the extended period. The assessee has also filed cross objections in the appeals filed by the department.

5. The Ld. Counsel Sri M.N. Bharathi appeared and argued for the assessee. The Assessee company purchased one unit which was already functioning at 14, SIDCO, Industrial Estate, Ranipet, for manufacture of boilers and got registered with Central Excise Department on 18.02.2003. This unit started manufacture of different types of boilers depending on the orders received. To cater to the volume of orders received by assessee company and hence, it was found necessary to take more areas. The Industrial Estate provided ready-built factory sheds with fixed dimensional area. As there was no scope to identify a large vacant area and then build a factory in the same industrial estate, and as the available power capacity could not be enhanced to meet the additional requirement, assessee-company had to hire the sheds offered by SIDCO in the Industrial Estate. Accordingly, one more shed was taken at 29, SIDCO Industrial Estate Ranipet which was falling within the jurisdiction of the same Superintendent of Central Excise, Range-IV, Ranipet. This unit also got registered with Central Excise department informing the department the intention of assessee-company to have a new premises for manufacturing excisable goods. Since even with the addition of this shed, there was space constraint, assessee company had to take another premises at 4/3, Musiri Road, Thenkadapanthangal Village, Walajapet 632 513 within the jurisdiction of Superintendent of Central Excise, Ranipet, Range I, Ranipet. This unit, which is Unit V was also registered (by merger of unit IV & Unit V) with the Central Excise on 08.10.2009. One another Unit, which is Unit II was functioning within the jurisdiction of

Superintendent of Central Excise, Range IV and operations in this unit was stopped in March 2009. Thus, 3 out of 4 units are within the jurisdiction of the Superintendent of Central Excise, Range IV, while one falls within the jurisdiction of the Superintendent of Central Excise, Range I, but all within the jurisdiction of the same Assistant Commissioner of Central Excise, Ranipet Division, Ranipet. These details would show that the assessee company had taken new premises for manufacture after informing the department and taking registration as required under law. Further all units fall within the jurisdiction of the same Asst. Commissioner of Central Excise, Ranipet Division.

6. It is emphasized by the Ld. Counsel that though all units have taken registration separately, the Central Excise registration certificate is in the name of one company (the assessee company) which is, Thermodyne Technologies Pvt. Ltd. The assessee company receives purchase order from the customer for supply of boiler on turnkey basis. The units individually do not receive any purchase orders. Each unit has to do the manufacture of parts / components as instructed by the assessee company. The sale proceeds is received by the assessee company only. The manufacturer of the boiler is the assessee company and registration is taken for the different premises only as per requirement of Rule 9 of Central Excise Rules. The supply and clearance from each unit is made by quoting the same purchase order by all units. The manufacture and clearance from different units/premises is only due to constraints of space and logistics. The assessee has availed the exemption from payment of excise duty in

terms of notification 6/2006 and later notification 12/2012. The Trade Notice No.40/92 dt. 6.06.1992 supports the contention of the assessee that exemption is eligible, if parts of boilers are removed for assembling at customer's site.

7. The Assistant Commissioner of Central Excise visited one of the units in September, 2012 and observed that the said unit was clearing only parts of boilers and not full boilers and hence the exemption under the notifications are not available to the goods cleared from the said unit of the assessee. Pursuant to this visit, the Superintendent of Central Excise, Range IV, Ranipet issued three letters OC No.240, 241 and 242, all dated 26.12.2012 asking the assessee to give the details of clearances of the goods made from all different units. Likewise, the Superintendent of Central Excise, Range I, Ranipet issued the assessee unit a letter OC NO.562 dated 26.12.2012 asking for similar details in respect of Unit V for the last one year period. The assessee then approached the Commissioner of Central Excise, Chennai III Commissionerate and vide letter dated 3.1.2013 explained the legal position. However, the assessee were asked to furnish details of all the clearances along with invoices for the last 5 years. The assessee furnished all details. Based on the details furnished, and the copies of the invoices submitted by assessee, these show cause notices have been issued to the different units. The facts being identical and the manufacturer being one and the same, namely, M/s.Thermodyne Technologies P. Ltd., the assessee filed common reply to all the notices.

8. In the impugned order, the adjudicating authority has held that the assessee units had cleared only parts of boilers and not complete boiler and therefore is not eligible for the exemption from payment of duty, under the notification. However, it was held that there is no misstatement or suppression of facts and thereby restricted the confirmation of demand to the normal period.

9. The Ld. Counsel explained that it is the assessee company and not the units which receives orders for supply and erection of Agro waste fired boilers/ Water tube boilers from their customers. These boilers are classifiable under chapter heading 8402 12 00 of the Schedule to Central Excise Tariff Act, 1985. On receipt of each such order from the customers, in the Head Office at No.18, Ayodhya Colony, Velachery, Chennai 600042, the design and drawings are prepared. Each part/component/assembly/sub-assembly is assigned a specific part number. A delivery schedule is prepared specifying the part numbers and a copy is given to the customer. Each unit of the company is capable of manufacturing the pressure parts and components/parts/assembly/sub-assembly of the boiler. Accordingly, the unit which has spare time/capacity is assigned manufacture of any of the above and once they are ready, they are despatched to the customers. The customers check/monitor the receipt with reference to the delivery schedule and make payment to the company. In other words, the company receives orders on a turn key basis for manufacture, supply and additionally erection of boilers. The company receives the payment for the same. The units of the company execute the orders as per the directions of the company.

Section 6 of the Central Excise Act, 1944 read with the relevant rules requires every person carrying out manufacturing activity to be registered. Thus each unit was registered with the Central Excise Department to comply with law. Otherwise, there was no need to register each unit separately. In such circumstances, the manufacturer is the assessee company itself and the clearances have been made by the assessee company. The learned adjudicating authority has not appreciated this fact but has considered the clearances made from individual units and dealt with the issue unit-wise, instead of analysing whether the clearances are for the company or not. In view of this approach, the Commissioner has treated the clearances in an isolated manner and erred in holding that the units have cleared only parts and not complete boilers. On the other hand, the clearances from each unit have to be treated as made from the assessee company. Since the clearances so made when assembled at the site of the customer constitute a full boiler, the company has rightly availed the exemption under notification 6/2006-CE dated 1.3.2006, as amended, and 12/2012 CE dated 17.3.2012.

10. The size of a typical industrial boiler is huge. It is practically impossible for any manufacturer to manufacture the entire boiler under one roof. Boiler manufacturers would mostly manufacture the pressure parts and certain parts and buy the other parts from others. Such bought out items may be supplied along with the items manufactured or may be ordered to be delivered at the site of the customers. Even while manufacturing the boilers, they are

manufactured in different phases part by part over period of time and dispatched to the site of customers on completion of each part. This is because all the parts cannot be manufactured at a time. Their storage and transport will pose problems. Recognizing the difficulty, the HSN Notes very clearly states in Part V under Section XVI "For convenience of transport many machines and apparatus are transported in an unassembled state. Although in effect the goods are then a collection of parts, they are classified as being the machine in question and not in any separate heading for parts. The same applies to an incomplete machine having the features of the complete machine presented unassembled. However unassembled components in excess of the number required for a complete machine or for an incomplete machine having the characteristics of a complete machine are classified in their own heading".

11. It is submitted that, on the very same allegation an earlier SCN dt. 27.6.2003 was issued for the period January 2003 to March 2003. The assessee herein had given detailed reply stating the reason as to why parts have to be cleared separately to the customer's premises and later assembled at the site. The original authority after verification of purchase order, invoices held that the purchase order, is for the supply of complete equipment, and commission of the said equipment, and that the assessee though has raised invoices for clearance of parts has cleared the same in CKD / SKD condition only for the purpose of transportation. The duty demand proposed in the SCN was then dropped (OIO NO.19.2004 dt. 27.2.2004). Against this order, the department filed appeal before

the Tribunal and, vide decision of Tribunal reported in *Commissioner of Central Excise, Trichy Vs BHEL* 2009 (247) ELT 263 (Tri.-Chennai) the appeal of department was dismissed. The department filed further appeal before the Hon'ble Apex Court and vide judgment reported in 2018 (10) GSTL 3 (SC), the Hon'ble Apex Court dismissed the department appeal affirming the order passed by the Tribunal. The issue therefore stands settled in favour of the assessee. The adjudicating authority has declined to follow the said decision observing that at the relevant time the assessee company had only one unit and at present they are having more than one unit. The Ld. Counsel submitted that though there was only one unit the practice adopted was to clear the parts from the unit to the customer's site and assemble and commission the boiler at the customer's site. Even though the number of units have increased now, so as to meet the order requirement, the practice followed is the same. The Trade notice which was relied by the adjudicating authority at the relevant time is still applicable.

12. In the case of *CCE, Pune I vs Thermax Bobcock and Wilcox Ltd* - 2005 (182) E.L.T. 336 (Tri.-Mumbai), the Mumbai Bench also held that the different parts cleared in different lots shall be deemed to be a boiler. " Essential parts of boiler are cleared from the factory as it is not possible to clear a complete boiler in one go. Even when one considers that some of the parts removed from the factory are of auxiliary nature, one has to agree that an incomplete boiler in unassembled form is cleared. That the boiler in an unassembled form is removed in several lots on different dates itself does not mean that

parts but not the whole are cleared from the factory, in view of the fact, that the respondent has a contract to deliver a boiler. Parts removed in several consignments will have to be deemed to be a boiler in complete form". It is argued by the Ld. Counsel that the adjudicating authority ought to have followed the ratio of these judgments and held that the goods (parts) removed are only boilers, particularly so when the assessee is executing an order for supply of Agro Waste fired boilers/water tube boilers. The exemption availed by assessee ought to have been held as correct and the proceedings dropped.

13. The Ld. Counsel adverted to Rule 2 (a) of the General Rules for Interpretation of the First Schedule to the Central Excise Tariff Act, 1985. According to this any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished article has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or failing to be classified as complete or finished by virtue of this rule), presented as unassembled or disassembled. This submission made by the assessee was rejected by the lower authority holding that no evidence was produced as to how these parts possessed the essential character of the complete boiler. It is a settled law that the burden is on the department and not on the assessee. The adjudicating authority has not given any legally sustainable reasons to reject the above claim of the appellant. On the same footing, the adjudicating authority has rejected the claim put

forward in terms of Note 2(b) of Section XVI. The Ld. Counsel argued that since these goods are manufactured in terms of a design and drawing specifically for making a complete boiler, applying the above rule and section Note 2(b), the adjudicating authority ought to have held these as boilers and are eligible for exemption.

14. The Ld. Counsel submitted that the classification is not relevant to avail the exemption. As per Sl.No.332 of Notfn 12/2012, goods falling under any chapter heading if satisfies the description of goods in column three of the table is eligible for exemption. As per Sl.No.84 of Notification 6/2006 also if the goods fall under any chapter would be eligible for exemption.

15. What is relevant is to examine whether the goods are Non-conventional Devices/systems producing energy. The word 'device' is not defined in the notification or in the Act/Rules. Hence one has to go by the ordinary meaning. The word 'device' means a contrivance, invention, thing adapted for a purpose (Oxford English Dictionary). All the different parts/components/boiler/pressure parts etc are nothing but devices designed for production of energy from non conventional sources. The impugned order does not say that the goods cleared are not devices. This plea of the assessee has been vaguely rejected by putting the onus on the assessee. The company received orders for supply of a complete Agro Waste Fired Boilers. On receipt of such order, the design and drawings were prepared which are customer specific and thereafter, manufacture took place. Proof from some customers confirming receipt of Agro Waste Fired Boilers was submitted by the assessee. The learned adjudicating authority

ought to have accepted these evidences instead of brushing aside the submissions made by assessee by merely saying that the assessee has not let in any evidence. Each part is a device producing energy and hence eligible for the exemption.

16. It is argued that the adjudicating authority has also failed to take note of the practice in this Industry. Usually, boiler is manufactured as different parts and cleared as and when each part is manufactured, but describing them as 'boiler' only. Reliance was placed on the following judgments: (a) Commissioner of Central Excise, Trichy Vs. BHEL (b) Commissioner of Central Excise, Pune I Vs. Thermax Babcock Wilcox Ltd and a few other cases. It is submitted that adjudicating authority has chosen not to refer and rely on these decisions.

17. Again, based on representation from Trade, CBEC had issued clarification as Trade Notice 40/92 dated 15.06. 1992 by Collector (as per the designation of Commissioner, then) of Central Excise, Madras. A perusal of this clarification would make the context very clear. The trade represented their difficulty that boiler manufacturers manufacture only certain parts and outsource the remaining and the field officers were denying the exemption under notification 205/1988 dated 25.05.1988 (forerunner to notification 6/2006-CE dated 1.3.2006). In this context it was clarified that the exemption should not be denied so long as it is proved that by different supplies the manufacturer has in fact supplied a full boiler. In the assessee's own

case, such a verification was undertaken by the Additional Commissioner before he dropped the proceedings in his order C.No. V/15/84/8/2004 CX.Adj.III dated 11.03.2004. The adjudicating authority ought to have followed the instructions of the Trade Notice. Instead he has rejected the assessee's contention stating that only if the goods were cleared in CKD/SKD condition, the exemption will be available. Since the ground realities are different, the Board has issued the clarification as above. When the trade notice permits exemption benefit when the goods are sent directly to site, the same benefits should also be allowed when the goods are manufactured and cleared from assessee units located at different places but within the same Central Excise Division. The real purport of the clarification has not been taken note while rejecting the plea of the assessee. It is a settled law that Board's clarifications are binding on the departmental officers as held in *UCO Bank Vs CIT, W.Bengal* - 1999 (111) E.L.T. 673 (S.C.); *UOI Vs. Madras Steel Re-rollers Association* - 2012 (278) E.L.T. 584 (S.C.); *CCEx, Vadodara Vs. Adarsh Re-rolling Mills* - 2002 (143) E.L.T. 533 (Tri.-LB). The Commissioner ought to have followed the instructions of the Board and dropped the proceedings.

18. The goods cleared from different units are nothing but energy producing devices and they form a complete Agro waste fired boilers/Water Tube Boilers and rightly covered under Sl.No. (16) of the List 5 or List 8 of the relevant notifications referred supra. Accordingly, the assessee is entitled for the exemption under the above notifications.

19. The Ld. Counsel argued that it is common knowledge that the Government of India has been emphasizing and taking steps to augment the power production. In that direction, the usage of non-conventional sources are encouraged. This is to achieve twin objectives of (i) putting the agro-waste to productive purposes and (ii) prevent pollution of the environment. Accordingly the exemption is given to agro-waste fired boilers, when the agro waste is used for producing power. This exemption is in vogue for more than two decades. By giving a narrow interpretation, the beneficial notification has been denied. It may not be out of place to mention that such an interpretation will defeat the purpose for which the Government granted the exemption and the notification will be rendered a nullity, in so for as this particular entry is concerned.

20. The practice followed in this industry is to manufacture the boilers in different lots, clear and assemble at the site of the customers. The assessee has also followed the same and all along, the department has not questioned the correctness. The units have been visited by a number of officers from time to time; the audit parties have periodically conducted audit in all the units. In response to queries from the department, the procedure followed has been informed. In fact, in the impugned order, adjudicating authority has held that there is no suppression. Having said so, in fact if the authorities wanted the assessee to change the practice, it can be only prospective, provided it is legally sustainable. Accordingly, confirmation of duty even for the one year period is not warranted. Suddenly, a contra view cannot be taken by the department, when

there is no change in the legal provisions. The assessee has manufactured pressure parts/essential parts, including boilers and supplied along with the balance parts manufactured by the other units of the company. These were assembled at the site of the customers to make a complete Agro Waste Fired boilers/ Water Tube Boilers. The customers have confirmed receipt of the same. The Inspector of Boilers, a statutory authority has certified these as boilers. The impugned order has erred in holding them as parts of boilers. These have been rightly classified under chapter heading 8402 12 00 as boilers and the order holding them as parts of boilers and classifying them under 8402 90 20 is not correct.

21. In regard to the appeals filed by the department, the Ld. Counsel submitted that as the units were continuously visited by audit team, including CERA, the allegation of suppression of facts mentioned in the notice is without factual basis. The adjudicating authority has rightly held that the extended period is not invocable. The Ld. Counsel prayed that the assessee appeals may be allowed and the cross objections filed in departmental appeals may be considered.

22. The Ld. A.R Shri Rudra Pratap Singh appeared and argued for the department. It is submitted that the onus to prove the eligibility of exemption is on the assessee and not on the department. Para 14 of the impugned order was adverted to by the Ld. A.R to argue that as per the invoices, the goods cleared were parts intended for erection of boilers. It is for the assessee to prove and substantiate by evidence. The assessee has failed to produce evidence as to how the

goods cleared would constitute a complete boiler from a particular manufacturing unit.

22.1 In regard to OIO dt. 11.03.2004 decided in the assessee's own case, the Ld. A.R submitted that the said decision was rendered when the assessee had only one manufacturing unit. In the Trade Notice No.40/92 dt. 15.6.1992, the goods are eligible for exemption only if cleared in SKD / CKD condition for the purpose of convenience of transportation. In the present case, the parts are removed from different units to the customers premises. Such parts cleared from individual units cannot be considered as clearances in SKD / CKD conditions. The Trade Notice is of no support to the assessee.

22.2. The grounds in the appeals filed by department was reiterated in regard to the issue on limitation. The Ld. AR prayed that the department appeals may be allowed and the assessee appeals may be dismissed.

23. Heard both sides.

24. The two issues that arise for consideration are (i) whether the assessee is eligible for exemption of the Notification 6/2006-CE dt. 1.3.2006 – amended Notification 12/2012-CE dt. 17.03.2012 ? (ii) whether the extended period is invocable?

25. To analyse the issue as to whether the assessee is eligible for the benefit of exemption under Notification No.6/2006-CE and

subsequent notification 12/2012 it would be convenient to extract the relevant part of these notifications which read as under :

TABLE

S. No.	Chapter or heading or sub-heading or tariff item of the First Schedule	Description of excisable goods	Rate	Condi-tion No.
1	**2**	**3**	**4**	**5**
84	Any Chapter	Non-conventional Devices /systems Specified in List 5	Nil	….

LIST 5

(See S. No. 85 of the Table)

(1) Flat plate solar Collector (2) Black continuously plated solar selective coating sheets (in cut length or in coil) and fins and tubes (3) Concentrating and pipe type solar collector (4) Solar cooker (5) Solar water heater and system (6) Solar air heating system (7) Solar low pressure steam system (8) Solar stills and desalination system (9) Solar pump based on solar thermal and solar photovoltaic conversion (10) Solar power generating system (11) Solar photovoltaic module and panel for water pumping and other applications (12) Solar crop drier and system (13) Wind operated electricity generator, its components and parts thereof including rotor and wind turbine controller (14) Water pumping wind mill, wind aero-generator and battery charger (15) Bio-gas plant and bio-gas engine (16) **Agricultural, forestry, agro-industrial, industrial, municipal and urban waste conversion device producing energy** (17) Equipment for utilising ocean waves energy (18) Solar lantern (19) Ocean thermal energy conversion system (20) Solar photovoltaic cell (21) **Parts consumed within the factory of production of such parts for the manufacture of goods specified at S. Nos. 1 to 20 above.**

TABLE

S. No.	Chapter or heading or sub-heading or tariff item of the First Schedule	Description of excisable goods	Rate	Condition No.
1	**2**	**3**	**4**	**5**
332	Any Chapter	Non-conventional Devices /systems Specified in List 8	Nil	….

LIST 8

(See S. No. 332)

(1) Flat plate solar Collector (2) Black continuously plated solar selective coating sheets (in cut length or in coil) and fins and tubes (3) Concentrating and pipe type solar collector (4) Solar cooker (5) Solar water heater and system (6) Solar air heating system (7) Solar low pressure steam system (8) Solar stills and desalination system (9) Solar pump based on solar thermal and solar photovoltaic conversion (10) Solar power generating system (11) Solar photovoltaic module and panel for water pumping and other applications (12) Solar crop drier and system (13) Wind operated electricity generator, its components and parts thereof including rotor and wind turbine controller (14) Water pumping wind mill, wind aero-generator and battery charger (15) Bio-gas plant and bio-gas engine (16) **Agricultural, forestry, agro-industrial, industrial, municipal and urban waste conversion device producing energy** (17) Equipment for utilising ocean waves energy (18) Solar lantern (19) Ocean thermal energy conversion system (20) Solar photovoltaic cell (21) **Parts consumed within the factory of production of such parts for the manufacture of goods specified at S. Nos. 1 to 20."**

26. From the above notification, Sl.No.16 of List 8 refers to Agricultural forestry, Agro-industrial, Industrial, Municipal and Urban waste conversion device producing energy. Again, Sl.No.21 refers to "parts consumed within the factory of production of such parts for the manufacture of goods specified at S.Nos. 1 to 20 above". It can be

seen from Notification 6/2006 as well as Notfn 12/2012 that these notifications provide the exemption from payment of excise duty on the agricultural, forestry, agro-industrial, industrial municipal and urban waste conversion device producing energy and also for parts if such parts are consumed within the factory.

27. The records of this case bring out that during the disputed period assessee company has obtained purchase order for agro waste fired boiler. The department does not have a case that assesse company manufactured or cleared any boiler that does not fit into the items referred to in the notifications. In the monthly E.R-1 returns filed by the assessee unit as well as in the invoices, the item mentioned is 'agro waste fired boilers'. The only allegation of the department is that each assessee unit has cleared parts of a boiler and does not constitute a complete boiler for which the exemption is not applicable. The discussions made by the adjudicating authority in this regard is as below :

> "The noticees did not produce any evidence as to how those removals had constituted a complete boiler from a particular manufacturing unit. The other contentions of the notice that the purchase orders from the buyers were for supply of the fully finished boiler and the boilers were erected at the site of the customers and their reliance on various case law in support of their contentions are irrelevant as the exemption is available only with reference to clearance from the particular registered premises. Therefore, I am of the considered view that the goods cleared from the respective units of the noticees were only parts of the boiler and the parts were not consumed within the factory of production and accordingly I hold that the impugned goods were not eligible for exemption under the Notification No.06/2006-CE dated 01.03.206 or 12/2012-CE dated 17.03.2012."

28. In the present case, a sample purchase order is furnished by the assessee. This document shows that the purchase order is for supply of Agro Waste (Palm fibre) Fired Reciprocating Grate Boiler – Agricultural Waste Conversion Device Producing Energy. The said purchase order is issued by M/s.Ruchi Soya Industries Ltd. The prices quoted are for supply of the entire boiler and erection and commission. It is no where mentioned in the purchase order that the payment is to be made for separate parts. It is stated in the purchase order that the equipment supply shall be completed in 8 months to suit commissioning within 9 months from the date of the purchase order along with 10% advance amount. The assessee company (not individual units) is liable to pay liquidated damages for the delay in supply and commissioning. All these go to show that the purchase order is for a complete boiler. The assessee has started different units only to meet volumes of orders. After receiving the purchase order, the assessee company directs each unit to manufacture separate parts and thereafter these are transported to the customer's site from where the parts are put together and assembled to a complete boiler. The units have cleared parts under invoices. On perusal of a sample invoice it is seen that the name and address of the factory is shown as assessee company i.e., M/s.Thermodyne Technologies Pvt. Ltd. The consignee name is shown as M/s.Ruchi Soya Industries Ltd., Unit II. The invoice which is for clearance of parts corresponds to the purchase order. At the coloum of description of the goods, it is mentioned as "1x30 TPH AGRO WASTE (PALM FIBRE FIRED RECIPROCATING GRATE BOILER". The two parts cleared

as per this invoice is Economiser Block-I and Economiser Block-II. It is also stated in the invoices that the assessee is availing the exemption as per Notification 12/2012. It needs to be mentioned that the purchase order and invoice above (relating to M/s.Ruchi Soya Industries Ltd.) is referred by the adjudicating authority to consider the issue of cum duty price benefit This is seen discussed in end part of para 15 of the impugned order. In the SCN No.16/2013 dt. 21.3.2013 for illustrative purpose two invoices have been referred. These invoices are as under:

Sl.No.	Invoice No.& Date	Classified as	Classified under CETSH	Actual goods cleared	CETSH to be adopted
1.	075/22.03.12	Agrowaste Fired Travelling Grate Boiler (45 TPH)	8402 12 00	1 Auxiliary Piping 2. Feed Delivery Piping 3.Main Steam Piping 4. ERDS Piping 5. Dearotor Piping 6. Misc. Piping 7. Dasing & Sampling Piping 8. Feed Suction Piping 9.NIBR Piping	8402 90 20
2.	177/31.03.09	Palm Waste Fired Boiler 45 TPH	8402 12 00	Main Steam Piping	8402 90 20

29. On the basis of the above invoices, it is alleged that the asssessee has classified parts of boiler as boiler itself under CETSH 8402 12 00 instead of 8402 90 20. It is pertinent to mention that classification is not relevant for availing the exemption and if the goods fall under the description in column 3 of the notification, the exemption would be available. From the above invoices, it can be seen that the assessee is mentioning the type of boiler for which the

part is cleared. In the invoice above, which is of the year 3/2009 the Boiler is Palm waste Fired Boiler 45TPH, whereas the invoice dt. 3/2012 is 'Agrowaste Fired Travelling Grate Boiler – 45TPH. Each boiler is customer specific. The parts are specific to each boiler. There is no case for the department that these parts have been cleared to third parties. The appellant has furnished all purchase orders and invoices, when called for on the basis of which the SCN has been issued. It would have been easy for the department to verify whether the boiler supplied confirms to the description as in the purchase order and the invoices. Instead the documents available before the department have been brushed aside to conclude that assessee has not produced any evidence.

30. The very same issue came up for consideration in the assessee's own case for the earlier period for which the SCN was issued then denying the benefit in terms of Notification No.6/2006. The assessee had then contended that the boiler being huge product cannot be cleared as such from a factory. The unit was clearing parts along with bought out items and the boiler was erected and commissioned at the customer's premises. The then adjudicating authority called for a report from the jurisdictional range officer of Amristar as to whether Agro Residue Rice Husk Fired Boiler was installed in Oswal Cotton Wind Mils, Punjab and Narindera Paper Products, Amristar & Haryana Amristar. On the basis of such report as well as after perusal of the purchase order and invoices it was then held by the adjudicating authority that the scope of the purchase order is for supplying the complete equipment and commissioning of

the equipment that therefore the assessee-company had supplied agro waste fired boiler and the exemption was eligible.

31. Ld.counsel for assessee has explained that on receipt of the purchase order the assessee company provides the design and drawing for each order of boiler. Each unit is capable of manufacturing any part. The boiler being of huge size, it is not practically possible to manufacture the same inside the factory and transport into the customer's premises. The parts which are manufactured by different units are dispatched to the customer's site and erected as per the design and drawing. Though boilers were cleared in piecemeal manner but purchase order is for a complete equipment and it takes shapes only at the site of the customer. Further it has also to be noted that there is no order placed for separate parts of the boilers. As per Trade Notice No.40/92 dated 16.6.92 it has been explained as under :

> "TRADE NOTICE No.40/92 Dated : 16.6.92
>
> Sub : Benefit of exemption under Sl.No.15 of the table annexed to Notification No.205/88-CE dated 25.5.88 – Regarding.
>
> ----
>
> It has been represented by some sections of the trade manufacturers of Fluidised Bed Combustion Boilers (FBCB) that they have been denied the benefit of exemption under Sl.No.15 of the table annexed to Notification No.205/88 (earlier Notification No.120/81-CE dated 15.5.81) in as much as –
>
> (a) Only assemblies/components are being cleared by them for erection of FBCD at site.
> (b) The FBCBs can also work on other fuels though designed for fuels like agricultural or municipal waste.
>
> 2. It has been further represented that FBCBs are generally cleared in unassembled or disassembled condition by following any or all of the procedure as indicated below :
>
> (a) Supply pressure parts like boiler, drum, shell, furnace, economizer, superheater, fluidized bed combustion system

comprising of in bed tubes, air box fluidizing air nozzle, fuel feed nozzle, feed line etc. from the factory of the manufacturer.

(b) Suppl standard bought out items like pumps, fans, motors, valves, cables etc. direct to site from Vendors or receive the same at the stores and send it along with the manufactured components to site.

(c) Structurals which act as support for mounting pressure parts and ducting which act as an enclosure to convey the flue gas from one heat recovery area to he other manufactured by sub-contractors and despatched along with the factory manufactured components to site or direct to the sub-contractors to send these items to site directly or fabricated at site.

(d) Carry out civil work necessary to hold the structures and erect these components one by one, provide electric and water connection.

3. The above issue has been examined by the Board and in order to maintain uniformity in the classification of excisable god and the levy of duty on boiler designed for agricultural or municipal waste as also conventional fuel, it is clarified that -

(a) Benefit of Notification No.205/88-CE dated 25.5.88 (earlier Notification NO.120/81-CE dated 15.5.81) will be available to such goods, even when these are cleared in CKD, SKD conditions, provide that evidence is produced that goods cleared form part of a complete device, and the evidence is also produced for suppl of such a device to the buyer"

(b) The said goods is designed for converting agricultural and municipal waste for producing energy though conventional fuel can be used.

4. The above may be brought to the notice of all the constituent members of your trade associations.

(Issued from file C.No.IV/16/314/92-CX.II)"

32. The issue of having to clear parts of boiler has been examined by the Board and in order to maintain uniformity in the classification of excisable goods and the levy of duty on boiler designed for agricultural or municipal waste as also conventional fuel it is clarified by the Board that benefit of notification No.205/88-CE dated 25.5.1988 (subsequent notification 6/2006) will be available for such goods even when these goods are cleared in CKD / SKD condition provided that evidence is produced that goods cleared as parts form

a complete device and that evidence is also produced for supply of such complete device to the buyer. The adjudicating authority has declined to rely and apply this Trade Notice by observing that the parts are not cleared in a complete knocked down (CKD) or semi knocked down (SKD) condition. The Trade had represented their difficulty of field staff denying the exemption for clearance of parts of boilers. Para 2 (a) (b) (c) of Trade Notice would show that parts were cleared to the customer site. Merely because the Trade Notice uses the words CKD/SKD condition, it does not mean that the entire boiler has to be made under one roof and then knocked down and transported to the site of the customers. The difficulty represented by the trade and the intention of issuing the Trade notice has to be understood.

33. The trade notice has been referred to and relied by the adjudicating authority in the earlier case of the assessee and the demand was set aside holding that purchase order is for a complete boiler and the parts cleared from the unit is in an CKD/SKD condition. In the present case, the adjudicating authority has refused to follow the trade notice and has held that parts are not cleared in CKD/SKD condition. In fact, the department had raised the very same ground when they filed appeal before the Tribunal. The relevant part of the Final order dt. 31.3.2009 passed by the Tribunal (2009 (247) ELT 263 (Tri.-Chennai) reads as under :

> "**3.** The Revenue is in appeal against the above order. The following grounds are taken in the appeal. Boilers emerged only at site on assembly, erection etc. along with components received from other units of BHEL, imports and those sourced through vendors of BHEL. A functional boiler could not be erected with

the components supplied by the assessee. The supply was made against orders received by the corporate office of BHEL at Delhi and components for the boilers were contributed by various divisions of BHEL. As per the invoices the goods cleared were classified by the assessees as boiler in CKD/SKD condition. No expert had opined that the clearances of BHEL constituted a boiler. For a machine to be described as cleared in SKD/CKD form, the components and parts of the machine had to be cleared as a set. In the instant case, components which could not be assembled into a complete boiler had been cleared. The components cleared could also not be described as an incomplete machine with the characteristics of a boiler in unassembled form. The Revenue also relied on the case law *Wesman Engineering Co. Ltd.* v. *CCE, Calcutta-III* [2002 (150) E.L.T. 644 (Tri.-Kolkata)] which held that clearances of component parts could not be equated with clearance of a full furnace in knocked down condition. In *Spaceage Engineering Projects Ltd.* v. *CCE* [1995 (78) E.L.T. 544 (Tri.)], the Tribunal held that idlers, pulleys and structurals cleared by the appellants could not themselves be called collection of parts of the conveyor system, stackers/reclaimers. Those parts could not be said to be assembly of parts of such advanced stage as to be considered as having the essential features of the complete conveyor, stackers/reclaimers at the time of clearance."

34. After considering the rival contentions, the Tribunal analysed and held the issue as under :

"**6.** We also find that in the *Thermax Babcock & Wilcox Ltd.* (supra) case which dealt with an identical dispute, the Tribunal held as follows :

> "But we still hold that this variance in opinions expressed, does not alter the fact that the parts of boilers as cleared by the respondents, do constitute an incomplete boiler in an unassembled form. The facts as come out clearly indicate that the essential parts of boilers are cleared from the factory as it is not possible to clear a complete boiler in one go. Even when one considers that some of the parts removed from the factory are of auxiliary nature, one has to agree that an incomplete boiler in unassembled form is cleared. That the boiler in unassembled form is removed in several lots on different dates itself does not mean that parts but not the whole are cleared from the factory in view of the fact that the respondent has a contract to erect and commission a boiler and has been disclosing this fact to the Department"

Both sides to the dispute submitted that the above decision dealt with a case of identical facts and *Thermax Babcock & Wilcox Ltd.* was a competitor to BHEL as a boiler manufacturer. This decision of the Tribunal in *Thermax Babcock & Wilcox Ltd*. case was upheld by the Apex Court as reported in 2007 (217) E.L.T. A186 (S.C.). In the circumstances, we do not find any reason to interfere with the order of the Commissioner of Central Excise."

35. The matter was taken by the department to the Apex Cour, and vide judgment reported in *CCE Vs BHEL* the decision of the Tribunal was affirmed. [2018 (10) GSTL 3 (SC)]

> **"5.** That apart, relying on the HSN note Part V under Section XVI, as extracted below, the aforesaid two authorities concluded that such components which are essential to classify the boiler as a machine, even if transported as components, must be understood to have been transported as a complete machine. Therefore, levy of duty should be under sub-heading 8402.10 and not sub-heading 8402.90 as claimed by the Revenue.
>
> > *HSN note Part V under Section XVI :*
> >
> > "For convenience of transport many machines and apparatus are transported in an unassembled state. Although in effect the goods are then a collection of parts, they are classified as being the machine in question and not in any separate heading for parts. The same applies to an incomplete machine having the features of the complete machine (see Part IV), presented unassembled (see also in this connection the General Explanatory Notes to Chapters 84 and 85). However unassembled components in excess of the numbered required for a complete machine or for an incomplete machine having the characteristics of a complete machine, are classified in their own appropriate heading."
>
> **6.** Insofar as the particular assessment is concerned, from the report of the expert as extracted above, it is clear that the said expert had suggested that the respondent-assessee should be asked to file separate list of the parts which are essential for the boiler and other parts which are used in the boilers but which are not essential parts thereof.
>
> **7.** We do not know as to whether the aforesaid exercise has been carried out by the Revenue in the present assessment year. Be that as it may, in the face of the opinion of the expert and the HSN note, details of which have been extracted above, we are of the view that the Primary Authority as well as the First Appellate Authority was perfectly justified in coming to the conclusion that the components of the boilers cleared as parts but essential to put into operation the boilers, would be classifiable under sub-heading 8402.10 and not as claimed by Revenue under sub-heading 8402.90. We, therefore, do not find any infirmity in the order assailed before us so as to justify taking of a view different from what has been recorded by the First Authority as well as the Appellate Authority."

36. In the case of *CCE Pune I Vs Thermax Bobcock & Wilcox Ltd.* - 2005 (182) ELT 336 (Tri.-Mumbai) the issue was the classification of pressure parts of boiler removed in several consignments whether to

be regarded as a boiler in complete form and whether classifiable as boiler under 8402.10 or under 8402.90 as parts. The Tribunal held that fact that boiler in unassembled form is removed in several lots on different dates itself does not mean that parts only and not the whole boiler is cleared from factory for the reason that, the assessee has a contract to erect and commission a boiler. It was held that the parts are to be classified as complete machine under 8402.10, by upholding the application of Rule 2(a) of Interpretative Rules.

37. It would be convenient to look into the issue of limitation also along with the issue on merits. In the impugned order the demand on limitation has been set aside on the ground that there is no suppression of facts with intent to evade payment of duty. This means the invoices, purchase orders etc. has been properly accounted for by each unit. All documents have been furnished to the department. Further, the audit team had visited these units calling for details and documents. Verification and scrutiny was done during the department audit and CERA. It can be safely inferred from such facts that all the documents in the nature of purchase order and invoices issued by units were available for scrutiny by the officers of the department for the purpose of looking into the fact whether the parts cleared from unit is for the purpose of a complete boiler or not. There is no evidence furnished by the department to show that assessee unit have cleared parts to any other third party buyer. An order placed for boiler is customer specific. The Design and drawing are being customer specific, the parts manufactured are also to

constitute a boiler for which the order has been placed. When all the documents are available to the department, the adjudicating authority has brushed aside the plea put forward by the assessee that parts cleared by different units constitute a complete boiler as per the purchase order of the assessee-company. No expert opinion has been called for by the department to find out whether there is any deviation or variation in the activity of manufacture and clearances carried out by the assessee from their earlier case.

38. When the activity of manufacture and clearance is the same, the decision in the assessee's own case for the earlier period ought to have been relied by the adjudicating authority to hold that the parts cleared constitute a complete boiler. It needs to be stated that though the assessee units are situated in different premises, they have taken separate Central Excise registration only as required under Rule 9 of Central Excise Rules, 2002. The necessity for such registration is to make it known to the department that the assessee company is carrying out manufacturing activity in various premises. In the peculiar facts of this case, the situation of clearance being the same as before, we do not find reasons to deny the exemption. There is no material to hold that there is difference in the activity of manufacture and clearance carried out by the assessee company, from that of their earlier case (January 2003 to March 2003 - OIO No.19/2004 dt. 27.02.2004.) We therefore hold that the assessee is eligible for exemption from payment of duty in terms of the notification.

39. In regard to the issue of limitation, we find that the adjudicating authority has taken note of the fact that the earlier decision was in favour of the assessee and also that there was CERA and departmental audit conducted. There is no positive act of suppression of facts established by the department. We therefore hold that the demand set aside on the ground of limitation requires no interference. As already discussed there are no grounds to confirm the demand for the normal period and requires to be set aside, which we hereby do.

40. In the result, the appeals filed by the assessee are allowed with consequential relief, if any. The appeals filed by the department are dismissed. The cross objections filed by respondent are disposed of accordingly.

(Pronounced in court on 17.07.2023)

Sd/-
(VASA SESHAGIRI RAO)
Member (Technical)

Sd/-
(SULEKHA BEEVI C.S.)
Member (Judicial)

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