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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066

EXCISE APPEAL BRANCH

Appeal No. E/999 /2005 - EX[DB] & E/1000/2005
E/S/701/2005-EX

Date 16/03/2010

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
M/S BHARAT HEAVY ELECTRICALS LTD.

PIPLANI BHOPAL

M/S BHARAT HEAVY ELECTRICALS LTD. Appellant

Vs

C.C.E BHOPAL STAY ORDER NO.149/2010-EX Respondent

I am directed to transmit herewith a certified copy of **Final order No.** **109-110/ 2010 EX[DB]** dated 15-3-10 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent

C.C.E BHOPAL

HOSHANGABAD ROAD, 48, ADMINISTRATIVE AREA, AREA HILLS, BHOPAL (M.P.) 462011

2. Adv. / Consult

MR.Z. U. ALVI

D-8,BDA COLONY, ADJACENT GARUDA TRAVELS. KOH-E-FIZA BHOPAL-01

3 C.D.R
~~4 J.C.D.R.~~
5 Bar association, CESTAT, New Delhi
6 Director Publications, Customs, Excise. I.P. Estate, New Delhi
7 M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3
8 Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9 Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10 M/s Manupatra Information Solutions Pvt Ltd. Excise & Customs Cases B-37, Sector - 1, Noida - 201301, Gautam Budh Nagar, (UP)
11 M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
12 Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
13 Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-15
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18. HON'BLE PRESIDENT

Assistant Registrar
(Excise Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. I

Excise Appeal No. 999 of 2005 with Stay Application No. 701 of 2005 and Appeal No. 1000 of 2005

[Arising out of the Order-in-Appeal No. 323-324-CE/BPL/2004 dated 28/09/2004 passed by The Commissioner (Appeals), Customs & Central Excise, Bhopal.]

For Approval and signature :

Hon'ble Justice R.M.S. Khandeparkar, President
Hon'ble Shri Rakesh Kumar, Member (Technical)

1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982? :

2. Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? :

3. Whether their Lordships wish to see the fair copy of the order? :

4. Whether order is to be circulated to the Department Authorities? :

M/s Bharat Heavy Electricals Ltd. Appellant

Versus

CCE, Bhopal Respondent

Appearance

Shri Z.U. Alvi, Advocate – for the appellant.

Shri R.K. Verma, Authorized Representative (JDR) – for the Respondent.

CORAM : **Hon'ble Justice R.M.S. Khandeparkar, President**
Hon'ble Shri Rakesh Kumar, Member (Technical)

DATE OF HEARING : 04/02/2010.
DATE OF DECISION : 15/3/2010

Final Order No. 109-110/10-Ex Dated : ___________
STAY-ord No 149/10-Ex.

Per. Rakesh Kumar :-

The appellant manufacture steam Turbines as well as Hydro Turbines and also the product called H.P. Heater Assembly. The dispute in these appeals is about the classification of H.P. Heater Assembly - while according to the Department, it is classifiable under heading 84.19 of the Tariff, according to the appellant the same is classifiable under heading 84.04 as "auxiliary plant for use with the boilers of heading 84.02 or 84.03 (for example economizers, super heaters, suit removers, gas recovers)". While the Assistant Commissioner vide orders-in-original dated 18/3/1999 and 30/04/2003 held that the product in question is classifiable under heading 84.19, the Commissioner (Appeals) vide the impugned orders-in-appeal No. 323/CE/BPL/04 dated 28/09/04 and No. 324/CE/BPL/04 dated 28/09/04 held that when the H.P. Heater Assembly is cleared as part of consignment of complete machinery supplied in CKD/SKD condition, the classification and rate of duty in respect of such goods will be the same as that of the main machinery, but wherever the same are cleared as spares and not as part of consignment of the main equipment, duty will be payable on merits. It is against the orders of the Commissioner (Appeals) that the present appeals have been filed.

2. Heard both the sides.

2.1 Shri Z.U. Alvi, Advocate, the learned Counsel for the appellant pleaded that H.P. Heater Assembly is an important unit of the auxiliary plant, that it is used to increase the thermal efficiency of the thermo dynamic cycle, that the H.P. Heater Assembly is used to heat the water being charged into boiler by using the heat of the exhaust steam from the steam turbine, that the exhaust steam from the steam turbine is passed through the cupro nickel tubes of the H.P. Heater Assembly and when the water being feed into the boiler is passed over these tubes, the same gets heated, as a result of which, for generating steam in the boiler by heating, lesser heat is required, that as per the HSN Explanatory notes to heading 84.04, economizers for pre-heating the boiler feed water by utilising the waste heat of the flue gases or in some types, exhaust steam are specifically covered by this heading, that the heading 84.04 of the Central Excise Tariff is identical to heading 84.04 of the HSN and, therefore, the HSN Explanatory notes to Heading 84.04 would be applicable and hence the H.P. Heater Assembly is correctly classifiable under heading 84.04 and that this product cannot be treated as part of steam turbine.

2.2 Shri R. K. Verma, the learned Departmental Representative defended the impugned order, reiterating the Commissioner (Appeals)'s findings.

3. We have carefully considered the submissions from both the sides and perused the records. There is no dispute about the fact that the product, in question, is used for pre-heating the water being pumped into the boiler by using the exhaust heat from steam turbine and thereby resulting in economy in the energy consumption in boiler. According to the Revenue, this product, if cleared alongwith the steam turbine would be classifiable as part of the steam turbine under heading 84.19 and only if it is cleared as spare part it would be classifiable on merits. We do not agree with the view of the Commissioner (Appeals) as, as per the HSN Explanatory notes to heading 84.04, this heading covers – "economizers for pre-heating the boiler feed water by utilising the waste heat of the flue gases or in some types, exhaust steam. They usually consist of heaters fitted with a system of cast iron or steel tubing, sometimes contained within a separate chamber of sheet metal into which the flue gases or exhaust steam are discharged." The product, in question, is clearly an economizer for pre-heating the boiler feed water by utilising the waste heat of the exhaust steam of steam turbine. Since heading 84.04 of the Central Excise Tariff is identical to the HSN Heading 84.04, the scope of heading 84.04 of Central Excise Tariff would be the same as the scope of heading 84.04 of the HSN. In view of this, we hold that the impugned goods are correctly classifiable under heading 84.04.

The impugned orders are not correct. The same are set aside. The appeals are allowed.

(Pronounced in open court on 15/3/2010)

(Justice R.M.S. Khandeparkar)
President

(Rakesh Kumar)
Member (Technical)

PK