

**IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI
COURT No. I**

APPEAL Nos. E/519,520/2006

(Arising out of Order-in-Original No. 22/CEX/2005 dated 31.10.2005 passed by Commissioner of Central Excise, Pune-I)

**Thermax Babcock & Wilcox Ltd.
Thermax Ltd.**

Appellant

Vs.

Commissioner of Central Excise, Pune-I

Respondent

Appearance:

Shri Rajesh Ostwal, Advocate, for appellant

Shri Sanjay Hasija, Superintendent (AR), for respondent

CORAM:

Hon'ble Dr. D.M. Misra, Member (Judicial)

Hon'ble Mr. Sanjiv Srivastava, Member (Technical)

Date of Hearing: 27.11.2018

Date of Decision: 27.11.2018

ORDER No. A/**88009-88010/2018**

Per: Dr. D.M. Misra

These two appeals are filed against order-in-original No. 22/CEX/2005 dated 31.10.2005 passed by Commissioner of Central Excise, Pune-I.

2. Various issues were raised in the said appeals before this Tribunal and vide order No. M/94303-94304/16/EB dated 2.12.2016, this Tribunal had

decided almost all issues in favour of the appellant on merit, but observing conflicting views of different Benches of this Tribunal on the issue relating to liability to discharge duty by M/s. Thermax Ltd. as a job worker, referred it to the Larger Bench for resolution. The following question for reference was framed by the Tribunal:-

“In the facts and circumstances of the present case, when the principal manufacturer (Babcock) clears the final product without payment of duty by availing exemption under a notification, whether the job-worker M/s. Thermax, who manufactures intermediate parts of boiler on the inputs sent by Babcock under Rule 4(5)(a) and returns the same to the principal manufacturer M/s. Babcock, is liable for payment of duty when Notification No.214/86-CE is not available on the manufactured goods as the said job-worker’s (Thermax) end.”

The Larger Bench of this Tribunal, after considering all aspects of the case, held that the job worker M/s. Thermax Ltd. who received the goods for job work from their principal M/s. Thermax Babcock & Wilcox Ltd. is required to discharge duty on the same. It is observed as:-

“8. As per above discussion, we hold that the Jobworker M/s. Thermax being manufacturer of excisable goods is liable to pay duty on the intermediate goods manufactured by him on jobwork basis which supplied to their principal M/s. Thermax Babcock. The question

referred to this larger bench is answered accordingly. Registry is directed to place the appeals before the referral bench for appropriate orders.”

Consequent to the said order, the matter is listed before this Bench for disposal.

3. Learned Advocate, Shri Rajesh Ostwal for the appellant, submits that in view of the observation of the Larger Bench of the Tribunal, no doubt the appellant is required on merit to discharge duty of Rs.27,49,952/- for the period September 2001 to June 2002, however, since the show cause notice was issued on 18.7.2003 for recovery of the said amount pertaining to the period September 2001 to June 2002, therefore, the demand is barred by limitation. It is his contention that whether M/s. Thermax Ltd., the appellant, is required to discharge duty on the raw materials received under Rule 4(5)(a) of the Cenvat Credit Rules, 2002 from their principal, was in dispute; the appellant was under the *bona fide* belief that since the materials were received under statutory annexures and challans under the said provision, therefore, they were not required to discharge duty on its return after processing to the principal manufacturer. He submits that views on the subject are divided resulting into reference to the Larger Bench of this Tribunal. It is his contention that once the issue is referred to Larger Bench of the Tribunal for

resolution, allegation of suppression of facts and misdeclaration cannot be sustained. In support he referred to the judgment of the Tribunal in the case of *ONGC – Final Order No. A/85900-85905/17/EB dated 16.2.2017*.

4. Learned AR for the Revenue reiterates the findings of the learned Commissioner.

5. Heard both sides and perused the records.

6. We find that the issue in relation to appeal No. E/519/2006 has already been considered and decided in favour of the appellant by this Tribunal vide order dated 2.12.2016. The only issue on which the matter was referred to the Larger Bench relates to liability to discharge duty by the appellant, M/s. Thermax Ltd. (appeal No. E/520/2006) when the goods were received and cleared by following job-work procedure laid down under Rule 4(5)(a) of the Cenvat Credit Rules, 2002. The learned Advocate fairly admits that on merit, the issue has been decided against the appellant. However, he has vehemently argued that in absence of suppression and misdeclaration, larger period of limitation cannot be invoked. We find force in the contention of the learned Advocate for the appellant. Firstly, all the movements of inputs/raw materials from

the principal manufacturer to the appellant's factory were in accordance with Rule 4(5)(a) of the Cenvat Credit Rules, 2002; also, the issue of liability to discharge duty on the processed goods by the job worker when the raw materials were received under Rule 4(5)(a) of the Cenvat Credit Rules, 2002, marred with conflicting views of this Tribunal resulting into the present reference to Larger Bench. Thus, extended period of limitation in our opinion cannot be invoked in the present case.

7. In the result, the impugned order is set aside and the appeals are allowed with consequential relief, if any, as per law.

(Pronounced in court)

(Sanjiv Srivastava)
Member (Technical)

(Dr. D.M. Misra)
Member (Judicial)