

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S) .8490 OF 2009

COMMISSIONER OF CENTRAL EXCISE

APPELLANT(S)

VERSUS

M/S BHEL

RESPONDENT(S)

O R D E R

1. We have heard the learned counsels for the parties and perused the relevant material.

2. The issue arising in this appeal is whether the essential components/parts of a boiler cleared by the assessee would attract duty under sub-heading 8402.10 of the first schedule of Central Excise Tariff Act, 1985 (For short, 'the Tariff Act') or sub-heading 8402.90 of the said schedule. The relevant entries of the Tariff Act are as follows :

Heading No.	Sub Heading No.	Description of goods	Rate of duty
84.02		Steam or other vapour generating boilers (other than central heating hot water boilers capable also of producing low pressure steam); super-heated water boilers	
	8402.10	All goods other than parts	10%
	8402.90	Parts	15%

3. Both, the adjudicating authority and the Customs, Excise and Service Tax Appellate Tribunal (For short, 'the Tribunal') took the view that though clearances were made and transported as components of boiler, the same were liable to be classified under sub-heading 8402.10 and not under sub-heading 8402.90.

4. In coming to the aforesaid conclusion both the authorities relied on an expert opinion of the Technical Adviser (Boilers), Ministry of Commerce and Industry dated 12.09.2003 the main part of which is as hereunder :-

"Definition of Boiler under Indian Boilers Act, 1923 :

Under the above Act, "Boiler" means any closed vessel exceeding 22.75 ltrs. in capacity which is used expressly for generating steam under pressure and includes (i) any mounting (valves etc.); (ii) other fittings attached to such vessel; which is wholly or partly under pressure when steam is shut off.

Fittings include economizer (if integrated), feed pipe, steam pipe and the valves, since all these are attached to boiler and will work wholly or partly under pressure.

Water at very high pressure is fed to the boiler by feed pump. Heat addition takes place in boiler wherein the water is converted into steam. To increase the efficiency, the steam has to be generated at higher pressure and higher temperature, which is done by the Economisers initially. The steam is further heated by Super Heaters and re-heaters to a high temperature ranging upto 540 deg. C or above depending upon the design parameters. Economisers, Superheater, Re-heaters essentially consists of tube bundles whole sole purpose is to heat the steam further to increase its efficiency.

To monitor the system more effectively, various instruments are used to measure various parameters like pressure, temperature, flow of the media in various sections of the boiler. Control Systems are used to ensure that these parameters are within the limits for safe operation.

Components like E.S.P. Fans, Control Equipment constitutes auxiliary/accessories of Boiler and are not essential constitutes of Boiler, Even without these, a complete boiler will come into existence.

It is thus clear that Boiler will come into existence on manufacture erection of the following:

- i) Drum
- ii) Fittings like:
 - Feed pipe and Steam pipe;
 - Economizer;
 - Super heater and Re-heater.

There are many other items in the boiler feed water lines which are used for increasing the efficiency but may not be essential

- iii) Mountings like valves.

Mountings and fittings attached to drum are under pressure and hence covered under the definition 'Boiler' under the Indian Boilers Act.

Components like Fans, Air pre-heaters, Electro Static precipitators Control Equipment constitute auxiliary/accessories of Boiler and Boiler will come into existence even without these auxiliary/accessories.

The Boiler inspectorate is always involved in the inspection right from the stage of Raw-material section to the dispatch and erection of various Components where Pressure is involved.

It is a fact that the high capacity boilers cannot be transported in one lot to the site, therefore they have to be sent as individual item and sub-assemblies. Therefore, the parts which are essentially needed to construct a complete boiler may be considered under

the term boiler. But the parts which are provided with the boiler to enhance the efficiency such as automation, data requisition, indicators, recorders etc. are used for ease and safe operation of boilers and cannot be considered as boiler parts.

In the light of the above, BHEL may be asked to separate out the list of such parts (i) which are essential for constructing a boiler and (ii) the parts which are used in boilers but not essential as explained above."

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.

8. The appeal, therefore, has to fail. It is accordingly dismissed.

9. No costs.

.....,J.
(RANJAN GOGOI)

.....,J.
(R. BANUMATHI)

NEW DELHI
FEBRUARY 07, 2018

ITEM NO.102

COURT NO.3

SECTION XIV

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 8490/2009

COMMISSIONER OF CENTRAL EXCISE

Appellant(s)

VERSUS

M/S BHEL

Respondent(s)

Date : 07-02-2018 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE RANJAN GOGOI
HON'BLE MRS. JUSTICE R. BANUMATHI

For Appellant(s) Mr. Rupesh Kumar, Adv.
 Mr. S.A. Haseeb, Adv.
 Mr. H.R.Rao, Adv.
 For Mr. B. Krishna Prasad, AOR

For Respondent(s) Mr. S. Muthu Venkataraman, Adv.
 Mr. R. Satish Kumar Adv.
 Mr. Prateek Gupta, Adv.
 Mr. M. Soundarasaran Kumar, Adv.
 Mr. Naresh Kumar, AOR

UPON hearing the counsel the Court made the following
O R D E R

The appeal is dismissed in terms of the signed
order.

Consequently, pending application(s), if any,
shall stand disposed of.

(NEETU KHAJURIA)
COURT MASTER

(TAPAN KUMAR CHAKRABORTY)
BRANCH OFFICER

(Signed order is placed on the file.)