(2016) 04 SC CK 0127

In the Supreme Court Of India

Case No : Civil Appeal No. 4278 of 2008

Swetha Engineering Ltd. APPELLANT

Vs

Commissioner of Central Excise, Chennai RESPONDENT

Date of Decision : 11-04-2016

Acts Referred:
Constitution of India, 1950 — Article 133

Citation : (2016) 335 ELT 193

Hon'ble Judges : A.K. Sikri and Rohinton Fali Nariman, JJ.

Bench : Division Bench

Advocate : S/Shri G. Umapathy, Biju Thankappen and T. Harish Kumar, Advocates, for the Appellant; S/Shri A.K. Panda, Ms. V. Mohana, Senior Advocates, Ms. Shweta Garg, Ms. Sushma Manchanda, Arijit Prasad, Ms. Alka Agarwal and B. Krishna Prasad, Advocates, for the Respondent

Final Decision : Allowed

Judgement

1. Appellant/Assesee herein is the manufacturer of machinery and parts for marketing pulp and paper, steel fabricated structures.

2. On a scrutiny of the sales for the year 1997-98, it was noticed that the said company had dispatched steel fabricated, structures for mounting the boilers and their accessories to M/s. Gujarat Torrent Energy Corporation Ltd. on behalf of M/s. Deutshe Babcock Balcke Durr Limited, Chennai and M/s. HPL Co. Gen. Ltd., Midnapore on behalf of M/s. Mitsui Babcock Energy (I) Pvt. Ltd., Chennai. The assessee had treated these fabricated structures as a part of boiler and classified them under Chapter Heading 8402.90 attracting 13% E.D. whereas they appeared to be classifiable as steel structures falling under Chapter 7308 attracting 15% E.D. Hence three show cause notices were issued on 5-11-1997, 16-4-1998 and on 13-7-1998 directing the assessee to show cause as to why differential duty of Rs. 6,89,156.65/- should not be demanded from it u/s 11A of the Central Excise Act, 1944.

3. The assessee has filed its reply contending that it has rightly classified them

under Central Excise Tariff sub-heading 8402.90 in its 173B declaration filed on 3-3-1997 and again in declaration dated 2-4-1997, describing them as "Boiler Structure/Steel Structure for Boilers" as described by the customer in their purchase order. It further stated that whatever it has manufactured against the purchase order is only boiler component falling under the Indian Boilers Act and rules framed thereunder. It further stated that it has got the license/certificate from the boiler inspector since the said items cannot be manufactured without said license/certificate.

4. Issue arose as to whether the steel fabricated structures manufactured by the assessee in its factory and subsequently cleared in unassembled condition to the customer''s site and erected there would merit classification as parts of boilers under chapter sub-heading 8402.90 of the Central Excise Tariff Act, 1985.

5. The Commissioner vide his order dated 31-7-1988 confirmed the demand in the show cause notice and the order has been upheld by the CESTAT as well, which is under appeal before this Court.

6. It is not necessary to go into the merits of the controversy in view of the clarification issued by the Department itself vide its order dated 2nd April, 2012. It is inter alia stated as under :

"Accordingly it is clarified that those structural components which are to be used essentially as part of Boiler System would be classifiable as parts of Boiler only under Heading 8402 of the Tariff. It is further clarified that since these structural components are nothing but the parts and accessories of the Boiler, they would be covered by the definition of inputs under Rule 2(k)(iii) of the CENVAT Credit rules, 2004 (i.e. all goods for generation of electricity and steam). Further these structural components shall not be hit by the exclusion clause to the said definition of inputs, as these are not used for laying of foundation or making of structures for support of capital goods, but are essentially the part of said Boilers."

7. The Department itself has come out with the clarification that those structural components which are to be used as parts of Boiler System would be classifiable as parts of Boiler only under Heading 8402 of the Tariff. This clarification, thus, vindicates the stand which was taken by the assessee throughout by rightly classifying the parts of the boilers under Chapter sub-heading 8402.90 of the Central Excise Tariff Act, 1985.

8. In view of the foregoing, this appeal is allowed by setting aside the impugned order passed by the CESTAT as also the order of the Commissioner (Appeals). There shall, however, be no order as to costs.

