

(2015) 05 SC CK 0045

In the Supreme Court Of India

Case No : Civil Appeal Nos. 3042-3043 of 2005.

**Thermax Babcock and Wilcox Ltd. - Appellant @HASH Commissioner of
Central Excise, Pune**

Date of Decision : 08-05-2015

Acts Referred:

Citation : (2015) 320 ELT 32 : (2015) 14 SCC 760

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

Bench : Division Bench

Advocate : S/Shri V. Lakshmikumar, M.P. Devanath, Vivek Sharma, Ms. L. Charanaya, Aditya Bhattacharya, R. Ramachandran, Hemant Bajaj, Anandh K. and Rajesh Kumar, Advocates, for the Appellant; S/Shri K. Radhakrishnan, Sr. Advocate, Rupesh Kumar, Ms. Shweta Garg, Ms. Bharathi Raju, Deepak, B. Krishna Prasad, R. Satish Kumar, M. Soundarasarankumar, Prateek Gupta and Naresh Kumar, Advocate, for the Respondent

Final Decision : Allowed

Judgement

1. There were two issues before the Tribunal. First pertains to the classification of pressure and non-pressure parts cleared from the factory. This issue has been decided in favour of the assessee/appellant and the Department has not filed any appeal against the same.
2. Second issue was in respect of value of bought out items viz, whether the value thereof should be added to the assessable value of the boilers. It is contended that the assessee had removed boilers in unassembled form at the factory site according to the excise authorities.
3. The Tribunal has decided this issue in favour of the Revenue accepting its plea that without these parts a boiler cannot function.
4. It is this part of the Tribunal's order which is assailed in the present appeal.
5. At the outset Mr. Lakshmikumar, learned counsel pointed out that though in the show cause notice such bought out parts were mentioned in annexure D thereto, while computing the demands which were raised in the show cause

notice, no excise is demanded on the above item. If that be so, there is no need to go into the issue raised by the appellant in this appeal as the decision of this appeal either way would not affect the appellant if the duty itself is not demanded thereupon.

6. Thus, while dismissing this appeal, we clarify that if there was no such amount demanded in the show cause notice, the direction contained in para 10 and 11(b) of the impugned order of the Tribunal to the jurisdictional officer to determine and recover the duty from the appellant shall have to go. However, it is only if the Officer is satisfied that no demand was made in respect of aforesaid items while computing the demand.

7. The appeals are dismissed in the above terms.