CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL BANGALORE

REGIONAL BENCH - COURT NO. 2

Central Excise Appeal No. 20356 of 2014

(Arising out of Order-in-Appeal No. 580-581/2013-CE dated 31.10.2013 passed by the Commissioner of Central Excise (Appeals-1), Bangalore.)

Fibertek Communications Pvt Ltd
15/130, 3rd Floor, 1st Cross,
8th Main, BTM 1st Stage,
Bangalore, Karnataka – 560029 **........Appellant**

VERSUS

Commissioner of Central Excise,
Customs & Service Tax,
Bangalore - I
P.B. NO. 5400, CR Buildings,
Bangalore, Karnataka – 560001. **...........Respondent**

WITH

Central Excise Appeal No. 20356 of 2014

(Arising out of Order-in-Appeal No. 580-581/2013-CE dated 31.10.2013 passed by the Commissioner of Central Excise (Appeals-1), Bangalore.)

Fibertek Communications Pvt Ltd
15/130, 3rd Floor, 1st Cross,
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Bangalore, Karnataka – 560029 **........Appellant**

VERSUS

Commissioner of Central Excise,
Customs & Service Tax,
Bangalore - I
P.B. NO. 5400, CR Buildings,
Bangalore, Karnataka – 560001. **...........Respondent**

AND

Central Excise Appeal No. 20358 of 2014

(Arising out of Order-in-Appeal No. 546/2013-CE dated 24.10.2013 passed by the Commissioner of Central Excise (Appeals-1), Bangalore.)

Fibertek Communications Pvt Ltd

15/130, 3rd Floor, 1st Cross,
8th Main, BTM 1st Stage,
Bangalore, Karnataka – 560029 **........Appellant**

VERSUS

Commissioner of Central Excise,
Customs & Service Tax, Bangalore - I
P.B. NO. 5400, CR Buildings,
Bangalore, Karnataka – 560001. **...........Respondent**

Appearance:

Ms. Gomati, Advocate for the Appellant
Mr. Vikalp Jain, Authorised Representative (AR) for the Respondent

CORAM:
HON'BLE MR. P.A. AUGUSTIAN, MEMBER (JUDICIAL)
HON'BLE MR. PULLELA NAGESWARA RAO, MEMBER (TECHNICAL)

<u>Final Order Nos. 22206 - 22208 /2025</u>

Date of Hearing: 18.09.2025
Date of Decision: 18.09.2025

PER: P. A. AUGUSTIAN

The issue in the present appeals is whether the Appellant being a sub-contractor of M/s. BHEL who supplied goods for Mega Project is eligible for claiming the benefit of Exemption Notification No. 6/2006-CE dated 01.03.2006.

2. The brief facts are the Appellant is engaged in the manufacture of fibre-optic networks /integrated systems and related accessories falling under Chapter 84M /85 of Central Excise Tariff Act, 1985. Appellant supplies finished products to various Mega projects, 100% EOUS, EHTP units, etc. Between 2010-2012, the Appellant was an approved subcontractor with BHEL, supplying products to various Mega Power Projects (Koderma, Pragati, Parbati, Durgapur etc.) and availed exemption as per Notification No. 06/2006-CE dated 01.03.2006, which exempted all supplies to Mega power projects made against

International Competitive Bidding (ICB). Alleging that the Appellant is not eligible for the exemption, proceedings were initiated and a show cause notice was issued on 06.04.2011 and thereafter Adjudication authority as per order dated 14.03.2012 partially dropped the demand and not allowed the demand pertaining to transaction with M/s. BHEL. Appellant has filed an appeal against said order before the Commissioner (Appeals) and Commissioner (Appeals) as per the impugned order dated 25.05.2012 confirmed the demand. Similarly for the period of 2011, show cause notice was issued on 07.02.2012 and demand was confirmed vide order dated 22.05.2012 and in appeal, Appellate authority also confirmed the demand. Subsequently for the period after 2012, another show cause notice was issued on 14.09.2012 and Adjudication authority confirmed the demand vide order on 27.12.2012. In Appeal, Appellate authority as per the impugned order dated 26.02.2013 confirmed the demand along with interest and imposed penalty. Aggrieved by the said orders, present appeals are filed.

3. When the appeals came up for hearing, Learned Counsel for the Appellant submits that when the goods imported are for setting up a Mega Power project, it is completely exempted from payment of customs duty in terms of Sl. No. 400 of Notification No. 21/2002-Cus dated 01.03.2002. Learned Counsel also draws our attention to said Notification. Learned Counsel further submits that the dispute involved in the present case is regarding eligibility of the Appellant to claim the benefit of Notification No. 6/2006-CE and as per the said notification, at Sl. No. 91 any goods under any chapter when goods are supplied against International competitive bidding, condition No. 19 is applicable and as per Condition No.19 "if the goods are exempted from the duties of customs leviable under first schedule to the Customs Tariff Act, 1975 (51 of 1975) and the additional duty leviable under Section 3 of the said Customs Tariff Act when imported into India." Further as per Customs Notification, Condition No.86 is applicable for such exemption and as per said condition indicate that an officer not below the Rank of Joint Secretary to the Government of India, Ministry of Power must certifies

that import are for Mega Power Project. In this regard, Appellant had produced certificate issued by Joint Secretary to Government of India certifying that the project concerned are all Mega Power Projects. Thus the Appellant has availed the exemption correctly and impugned order is unsustainable.

4. Learned Counsel also draws our attention to the certificate issued by the Joint Secretary dated 20.03.2012 and the certificate issued by the NHPC dated 20.03.2012. Learned Counsel also draws our attention to the excise invoice issued on 30.03.2012, where it is specifically stated that while supplying the goods to NHPC, the benefit of Notifications were specifically mentioned in the invoice. Learned Counsel further submits that the issue is no more *res integra* and considered by this Tribunal in the matter of **M/s Saritha Steels & Industries Ltd Vs. CC, Vishakhapatnam (2011 (264) E.L.T 313 (Tri. Bang)** where it is held that:-

> *"10. As has been stated by us earlier, it is undisputed that the mega power project which was sought to be executed by BHEL has complied with the conditions of getting a certificate from an officer not below the rank of Jt. Secretary, Govt, of India in the Ministry of Power. After being awarded a contract for setting up a mega power project, for the execution of the same, BHEL appointed M/s. Jindal Power Ltd. as sub-contractor. M/s. Jindal Power Ltd. in tum had procured angles, beams, channels etc from the appellant for execution of such mega power project. We find that the SSIL. has not participated in the international competitive bidding, but had cleared the said goods to M/s. Jindal Power Ltd. for execution of mega power project. This being undisputed fact, we find that the decision of this Bench in the case of CST Ltd. (supra) squarely covers the issue. We may reproduce the said ratio which reads as under :-*
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>> *6. The learned Advocate brought to our notice the relevant conditions of the exemption Notification. In terms of Notification No. 48/2004, against Sl. No. 301, "all goods*

supplied against International Competitive Bidding, falling under any Chapter are exempted subject to condition 64 of the Notification. Condition 64 reads as follows:-

> *"64. If the goods are exempted from the duties of customs leviable under the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) and the additional duty leviable under Section 3 of the said Customs Tariff Act when imported into India,"*

It is not in dispute that the goods imported for supply to Mega Projects are entitled to whole duty exemption under Customs Tariff Act. The next thing to be examined is whether the goods supplied are against International Competitive Bidding. The appellants are a sub-contractor of M/s. BHEL, M/s, BHEL is executing the Mega Project for Kahalgaon Super Thermal Power Project by International Bidding. The appellants have submitted ail the relevant records. The appellants are also found in the list of sub-contractors. Since the goods are supplied by the appellants to BHEL, who are executing the project by International Competitive Bidding, it is very clear that the goods cleared by the appellants should be considered as "goods supplied against International Competitive Bidding". There is absolutely no need that the appellants themselves should have been the bidder in International Competitive Bidding. In huge projects, the main contractor does not do everything. There is always a system of sub-contractors. If we take a view that the goods cleared by sub-contractors are not entitled for exemption on the ground they are not the bidders, the very purpose of the Notification would be defeated because the main contractor will be having hundreds of sub-contractors in Mega Projects. In our view, inasmuch as the appellants had supplied the goods to M/s. BHEL, who are the bidders of International Competitive

> *Bidding, the condition of the Notification is satisfied and there is no justification for denying the exemption notification to the appellant. The Tribunal, in the case of Automatic Electric Ltd. v. CCE, Mumbai-2004 (178) E.LT. 524 (Tri.-Mumbai), has held that the benefit of exemption under Notification 108/95-C.E. is available to a sub-contractor when M/s. BHEL is the main contractor of an approved project. The fact that there was a contract between the main contractor and the sub-contractor will ensure that supplies made eventually reach the project site. The ratio of the above case is clearly applicable to the present case. In these circumstances, we set aside the impugned order and allow the appeals with conseguential relief, if any.*

It can be seen that in the said case of CST Ltd., an identical issue was raised and again in respect of the very same executor of mega power project i.e. BHEL. We find that the ratio as reproduced hereinabove squarely covers the issue in favour of the assessee,

11. As regards submissions made by Id. SDR, we find that the wordings of the Notification No. 21/2002-Cus. categorically indicates that the "goods" which are required for execution of mega power project are exempted. It is undisputed in the case before us that channels, beams, angles are goods required for execution of mega power project. In view of this, the decision of the Hon'ble Supreme Court cited by the Id. SDR will not carry Revenue's case any further.

12. In view of the foregoing reasons, we hold that the impugned order is not in consonance with law and is unsustainable and is liable to be set aside and we do so. The impugned order is set aside and all the appeals are allowed with consequential relief, if any .Learned AR reiterated the finding in the impugned order."

5. Learned Authorized Representative (AR) reiterated the findings in the impugned order and submits since the Appellant had not participated in the bidding, it could not have supplied against ICB, and therefore exemption had been wrongly claimed by the Appellant. Thus, contravened of Rules 4, 6, and 8 of the Central Excise Rules, 2002, by clearing goods paying nil duty.

6. Heard both sides and perused the records.

7. Considering the evidence adduced by the appellant regarding execution of the Mega Project and the relied exemption Notifications and following the ratio of the decisions of this Tribunal in the matter of **M/s. Saritha Steels (supra)**, impugned orders are unsustainable. Accordingly, the impugned orders are aet aside and appeals are allowed with consequential relief, if any. in accordance with law.

(Operative portion of the order was pronounced in open court on conclusion of hearing.)

(P. A. Augustian)
Member (Judicial)

(Pullela Nageswara Rao)
Member (Technical)

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