

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
CHENNAI**

REGIONAL BENCH - COURT No. III

**Excise Appeal No. 41845 of 2016**

(Arising out of Order-in-Appeal No.137/2016 (CXA-I) dated 30.06.2016 passed by Commissioner of Central Excise (Appeals-I), 26/1, Mahatma Gandhi Marg, Nungambakkam, Chennai 600 034.)

**M/s.Keld Ellentoft India Private Ltd. .... Appellant**  
Raheja Complex, 1<sup>st</sup> Floor,  
No.68 (Old No.834) Anna Salai,  
Chennai 600 002.

*VERSUS*

**The Commissioner of GST &  
Central Excise, ... Respondent**  
Chennai North Commissionerate,  
26/1, Mahatma Gandhi Road,  
Nungambakkam,  
Chennai 600 034.

**APPEARANCE :**

Ms. Nikita. A, Advocate for the Appellant  
Shri N. Satyanarayana, Authorized Representative  
for the Respondent

**CORAM :**

**HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)  
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)**

**FINAL ORDER No.41395/2025**

**DATE OF HEARING : 20.08.2025  
DATE OF DECISION : 27.11.2025**

**Per: Shri P. Dinesha**

Brief and relevant facts are that Appellant is a manufacturer of Non-metallic Expansion Joints and Industrial Dampers falling under Chapter 84 of the Central Excise Act, 1985. Apart from clearing their goods on payment of duty, they also cleared goods for Mega Power Projects without payment of duty in terms of Notification No.06/2006-CE dated 01.03.2006. The Department found that during the period from March 2010 to September 2011, the Appellant cleared excisable goods to M/s.Bharat Heavy Electricals Ltd., Hyderabad/Ranipet, Main Contractor under International Competitive Bidding (ICB, for short) for Mega Power Projects without payment of duty availing exemption under the aforesaid Notification. As per the ICB, the Appellant is the sub-contractor for the Project viz. Gas Turbine Generator Package for PPCL, Bawana (1500 MW) (Consignee: M/s.Pragati Power Corporation Ltd.) and another project viz. Combined Cycle Gas Turbine Mega Power Project (726.26 MW) (Consignee: M/s. ONGC Tripura Power Company Ltd.). In terms of the Certificate from the Project Authority, supplies to Mega Power Project are exempted from duty vide the No.06/2006-CE dated 01.03.2006 read

with Sl.No.400 of Notification No.21/2002-Cus. dated 01.03.2002.

2. A Show Cause Notice dated 10.07.2013 was issued to the Appellant on the allegation that both the aforesaid Projects neither a Thermal Power Plant nor a Hydel Power Plant so as to qualify for the exemption under the Notifications (*supra*) and that in terms of Foreign Trade Policy 2009-14, the sub-contractor has to supply the goods only to the main contractor and not directly to the designated projects / agencies. Hence, denying the benefit of the Notification No.06/2006-CE dt. 01.03.2006, duty of Rs.10,29,595/- was proposed to be demanded under proviso to Section 11A of the Central Excise Act, 1944 along with appropriate interest. Alleging suppression of facts, penalty provisions were proposed under Section 11AC *ibid*. After due process, the Adjudicating Authority vide Order-in-Original No.11/2015 dated 30.09.2015 dropped the proceedings in respect of PPCL Bawana (1500 MW) project and granted exemption, however denied exemption in respect of the ONGC Tripura (726.6 MW) project. He ordered recovery of Rs.96,849/- being the duty due but not paid for the period September 2011 with interest under extended provisions of Section 11A *ibid* and imposed equal penalty

under Section 11AC *ibid.* Aggrieved by the order of the Adjudicating Authority, an Appeal was filed by the Appellant before the First Appellate Authority who *vide* impugned Order-in-Appeal No.137/2016 dated 30.06.2016 upheld the OIO. Hence this Appeal before this forum.

3. Heard Ms. Nikta, Ld. Advocate for the Appellant and Shri N. Satyanarayana, Ld. Assistant Commissioner for the Respondent.

4. The short issue that arises for our consideration in this Appeal is, "whether the Appellant is eligible to avail exemption Notification No.06/2006-CE dated 01.03.2006 read with Notification No.21/2002-Cus. dated 01.03.2002 in respect of 'Combined Cycle Gas Turbine Mega Power Project for ONGC Tripura Power Company Ltd.'?"

5. The facts as narrated are not disputed by either of the parties; the only palpable reason given by the authorities below is that the Tripura Power Plant could not be considered as a Mega Thermal Power Plant since the capacity was only 726.6 MW. In this regard, both the authorities below have failed in ignoring the spirit of Notification No. 118/2003-IPC dated 14.12.2009 issued by the Minister of Power, Govt. of India. We have carefully considered the above Notification which is termed as

'Revised Mega Power Project Policy'. It is very much clear from clause (i) (b) that a Thermal Plant of capacity of 700 Mega Watt or more shall be eligible for the benefit of Mega Power Policy. The same reads as under:

No.A-118/2003-IPC  
Government of India  
Ministry of Power

Shram Shaki Bhavan, New Delhi

OFFICE MEMORANDUM

Subject : Revised mega power project policy.

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Policy guidelines for setting up of mega power projects were last revised and issued vide this Ministry's letter of even number dated 2<sup>nd</sup> August, 2006. The Government of India has modified the Mega Power Policy to smoothen the procedures further. The modified Mega Power Policy is as follows :

- (i) The power projects with the following threshold capacity shall be eligible for the benefit of mega power policy;
  - (a) A thermal power plant of capacity 1000 MW or more or
  - (b) A thermal power plant of capacity of 700 MW or more located in the States of J&K, Sikkim, Arunachal Pradesh, Assam, Meghalaya, Manipur, Mizoram, Nagaland and Tirupura or**
  - (c) ... ..
  - (d) ... ..
  - (e) ... ..
- (ii) Mandatory condition of Inter-State sale of power for setting mega power status has been removed.
- (iii) Goods required for setting up a mega power project, would qualify for the fiscal benefits after it is certified by an officer not below the rank of a joint Secretary to the

Govt.of India in the Ministry of Power that (i) the power purchasing States have constituted the Regulatory Commissions with full powers to fix tariffs and (ii) power purchasing states shall undertake to carry out distribution reforms as laid down by Ministry of Power.

- (iv) Mega Power Projects would be required to tie up power supply to the distribution companies/utilities through long term PPA(s) in accordance with the National Electricity Policy 2005 and Tariff Policy 2006, as amended from time to time, of Government of India.
- (v) There shall be no further requirement of ICB for procurement of equipment for mega projects if the requisite quantum of power has been tied up or the project has been awarded through tariff based competitive bidding as the requirements of ICB for the purpose of availing deemed export benefits under chapter 8 of the Foreign Trade Policy would be presumed to have been satisfied. In all other cases, ICB for equipments shall be mandatory.
- (vi) The present dispensation of 15% price preference available to the domestic bidders in case of cost plus projects of PSUs would continue. However, the price preference will not apply to tariff based competitively bid project/s of PSUs.

This issues with the approval of Secretary (Power).

SD/-  
(Puneet K Goel)  
Director (IPC)"

6. In fact, the Appellant has also placed on record a certificate issued by the Ministry of Power certifying the capacity of the power project in dispute, which clearly indicates the capacity of the project in question is 726 MW which fact also remains undisputed by the authorities below.

7. We have carefully considered findings of the Commissioner (Appeals), whose order is impugned here, in this Appeal and a perusal of the same *prima facie* indicates that the officer has considered the issue by ignoring the spirit of Notification/circular dated 14.12.2009 *supra*. It is very unfortunate that without discussing about the circular issued by the Ministry of Power (*supra*), the First Appellate Authority has only held that '*the benefit of Notfn. No. 21/2002-Cus cannot be extended for the simple reason that the threshold capacity therein for Thermal Power Plant has been mentioned as 1000 MW or more as certified by an officer not below the rank of Joint Secretary to the Government of India, Ministry of Power*'. We are afraid this observation of the lower Appellate Authority is contrary to his observation just above these lines in the OIA wherein he himself acknowledges the capacity of Tripura Project. When the capacity is clearly satisfied, we fail to understand the difficulty of the officer in giving proper reasons for not accepting the subsequent Circular, which only drives us to hold that the order has not been passed with an open mind. This is sufficient for us hold that the impugned order suffers from serious legal infirmity and hence, the same is required to be set aside, which we hereby do.

8. We may add here, that when an Assessee relies on a Circular issued by the Government entitling such an Assessee of certain benefits, the same is to be understood in the context of the intention of Government of India to encourage an entrepreneur to participate in Government projects aimed at Public Welfare; when a subsequent Circular has clarified the capacity to be eligible for the benefit, and when there is a certificate issued by a Competent Authority viz., Joint Secretary to Government of India as to the capacity of the Power Project, according to us, nothing else remains and the officer of the rank of Commissioner(Appeals) cannot sit in judgement over the character of such certificate.

9. In the result, we allow the Appeal with consequential benefits, if any, as per law.

(Order pronounced in open court on 27.11.2025)

sd/-

**(VASA SESHAGIRI RAO)**  
Member (Technical)

sd/-

**(P. DINESHA)**  
Member (Judicial)