

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL  
EASTERN ZONAL BENCH : KOLKATA  
REGIONAL BENCH – COURT NO. 1  
Excise Appeal No. 70433 of 2013  
SP-70438 OF 2013**

(Arising out of Order-in-Original No.13/Commr/CE/Kol-III/2012-13 dated 30.01.2013 passed by Commissioner, Central Excise, Kolkata III Commissionerate)

**M/s. WPIL Ltd.**

**: Appellant**

**VERSUS**

**Commissioner of Central Excise, Kolkata.**

**: Respondent**

**APPEARANCE:**

Shri N.K.Chowdhury, Advocate for the Appellant

Shri P.K.Ghosh, Authorized Representative for the Respondent

**CORAM:**

**HON'BLE SHRIASHOK JINDAL, MEMBER (JUDICIAL)**

**HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)**

**FINAL ORDER NO. 75940/ 2024**

DATE OF HEARING :07.05.2024

DATE OF DECISION:07.05.2024

**Order : [Per Shri Ashok Jindal]**

The appellant is in appeal against the impugned order wherein the benefit of exemption notification number 6/2006-CE dated 1.3.2006. has been denied by the appellant.

2. The facts of the case are that the appellant were engaged in manufacture and clearance of Centrifugal Pumps and spares thereof and clearing the same to different Mega Power Projects availing the benefit of exemption Notification No. 6/2006-CE dated 1.3.2006. Serial No. 91 of the said notification exempts the goods of any chapter if supplied against international competitive bidding subject to Condition No. 19 which provides that the exemption is available if the goods are exempted from duties of Customs leviable under the First Schedule to the Customs Tariff Act, 1975 and the additional duty leviable under Section 3 of the said Customs Tariff

Act when imported into India. The appellant supplied the goods to different power projects against international competitive biddings by the clearing the goods without payment of duty. The appellant supplied the goods on the strength of Project Authority's Certificate which also contains the name of the appellant, Certificate of Joint Secretary certifying the Mega Power Status and other things and before clearance of the goods intimated the department the appellant raised the invoices also showing nil rate of duty.

2. The appellant was issued a Show Cause Notice dated 30.12.2011 for the period of September, 2010 to September, 2011 but denying the benefit of the said notification. Thereafter, the matter was adjudicated and benefit of exemption notification was denied. Against the said order, the appellant is before us.

3. Appellants submits that in their own case for the earlier period, the issue has been settled that the goods manufactured by the appellant was classified under chapter 84139120 of Central Excise Tariff Act, 1985 and are entitled to exemption under notification number 6/2006-CE dated 1.3.2006 in their own case. Therefore, impugned order is to be set aside.

4. Heard the Ld. Authorized Representative and perused the record.

5. We find that the appellant have been issued a Show Cause Notice to deny the benefit of notification No. 6/2006 dated 1.3.2006. As the goods cleared by the appellants are classified under Central Excise Tariff Sub-heading Nos. 8413 and 8431 whereas the above mentioned Customs Notification exempted the goods falling under Customs Sub-heading No. 9801.

6. We find that said issue came up before this Tribunal in the appellant's own case for the earlier period wherein this Tribunal observed as under :-

*7. From the Impugned order, we observe that the adjudicating authority has made certain observation regarding the grounds under which the Appellants were ineligible for the exemption and the same were affirmed by the appellate*

*authority also. It was their observation that the goods cleared were classifiable under Central Excise Tariff Sub-heading Nos. 8413 & 8431 whereas the above mentioned Customs Notification exempted goods under Customs Sub-heading No.9801. Further, goods have been supplied to M/s. IVRCL Infrastructure & Projects Ltd. and there was no evidence that goods have been used in the power project set up by M/s. Jindal Power Ltd. The goods were supplied against specific purchase order of M/s. IVRCL Infrastructure & Projects Ltd. and not against international competitive bidding.*

*8. The appellant submits that M/s. Jindal Power Ltd. invited International competitive bidding. M/s. IVRCL Infrastructure & Projects Ltd. obtained the Order and Letter of Intent was issued by M/s. Jindal Power Ltd. to M/s IVRCI Infrastructure & Projects Ltd. The appellant was one of the suppliers, which is clearly evident from the Project Authority's Certificate forwarded to the Appellant vide letter dated 21.11.2006 by M/s IVRCI Infrastructure & Projects Ltd. The supply of goods to M/s IVRCI Infrastructure & Projects Ltd. was at the site of M/s. Jindal Power Ltd., which is amounting to supply of the goods to the Raigarh Thermal Power Project being set up by M/s. Jindal Power Ltd. Therefore, the supply of goods by the appellant to M/s IVRCI Infrastructure & Projects Ltd. amounts to supply of goods to M/s Mega Power Project. In the invoice, the said fact has been clearly mentioned. We observe that the above facts clearly indicates that the goods were supplied to Power Projects approved against international competitive bidding, as required for availing the benefit of the Notification 6/2006-Ce 01.03.2006.*

*9. The Appellant further submits that goods supplied by the appellant may fall under any Chapter heading, but if required for the mega power project, the same would be covered by Sub-heading No.9801 in terms of Notification No. 21/2002-CUS dated 1.3.2002. Thus, they*

*contended that there is no dispute that the Appellant is eligible for the benefit of the exemption Notification No. 6/2006-CE dated 1.3.2006.*

*10. The Appellant stated that similar type of cases came up for consideration earlier before the Tribunals and it has been consistently held by the Tribunals In the similar set of facts and circumstances that the Appellants were eligible for the benefit of exemption Notification No. 6/2006-CE dated 1.3.2006. They relied upon the following decisions in support of their contention:*

*i) Sarita Steels & Industries Ltd. 2011 (264) ELT 313 (Tri.-Bang.)*

*ii) Cords Cable Industries Pvt. Ltd. 2016 (342) ELT 264 (Tri.-Del.)*

*iii) Paramount Communication Ltd. 016 (344) ELT 091 (Tri.-Del.)*

*(iv) Commissioner v. Paramount Communication Ltd. 2018 (360) ELT A324(Raj.)*

*11. We observe that the decisions cited above are squarely applicable in the case of the Appellant as the facts and circumstances in the above mentioned cases are similar to that of the Appellant.*

*12. In the case of Sarita Steels & Industries Ltd, reported in 2011 (264) E.LT.313 (Tri.-Bang.), it has been held as under:*

*6. The issue involved in this case is whether the appellant company is eligible for benefit of Notification No. 6/2006-C.E. for the clearances made to a mega power project or not.*

*7. It is undisputed that the appellant herein had supplied angles, channel is, beams etc. to BHEL for the purpose of executing a mega power project. It is also undisputed that the clearance of the products without payment of duty by*

availing the benefit of exemption granted under Notification No. 6/2006-CE., was done so, after a certificate issued by Jt. Secretary Ministry of Power, Government of India to BHEI and consequent sub-contract given by BHEI. It is also undisputed that the appellant had produced certificate of the receipt of excisable goods at the sites of mega power project duly signed by authorized duly signed by the authorized representative of M/s. Jindal Power Ltd., who were sub-contractor of BHEL for execution of such mega power project. On the perusal of the entire Order-in-Original, we find that the adjudicating authority has sought to deny the benefit of exemption Notification No. 6/2006 only on two ground ie. SSIL has not participated in the international competitive bidding and goods falling under chapter 72 of the Central Excise Tariff Act cannot be considered as goods which can be relatable to chapter 98.01 to get the benefit of customs Notification No. 21/2002 and nor the appellant nor BHEL, registered for ay project imports to get the benefit of customs Notification No. 21/2002 and nor the appellant no BHEL registered for any project imports.

8. At the outset, we would find that the entries in the Notification No. 6/2006 reads as under :-

| SL. | Chapter or heading | Description of goods                                         | Rate | Condition |
|-----|--------------------|--------------------------------------------------------------|------|-----------|
| 91  | Any chapter        | All goods supplied against International Competitive Bidding | NIL  | 19        |

And the condition attached thereto is read as under:-

|               |                                                                                               |
|---------------|-----------------------------------------------------------------------------------------------|
| Condition 19. | If the goods are exempted from the duties of Customs leviable under the First Schedule to the |
|---------------|-----------------------------------------------------------------------------------------------|

|  |                                                                                                                                                        |
|--|--------------------------------------------------------------------------------------------------------------------------------------------------------|
|  | <i>Customs Tarrif Act, 1965 (51 of 1976) ad the additional duty leviabale upper Section 3 of the said Customs Tariff Act when imported into India.</i> |
|  |                                                                                                                                                        |

9. It can be seen from the above reproduced entry No. 91 of Notification No. 6/2006 that goods of any chapter if supplied against international competitive bidding, exemption is available subject to the condition as reproduced above. The condition No. 19 requires all the goods re to be exempted under the Customs Tariff Act when imported into India. On perusal of the relevant entries in the Customs Tariff Act, we find that at entry No.400, the following is indicated in notification No.21/2002-Cus. 40098.1 Goods required for setting up of any Mega Power Project, so certified by an officer no below the rank of a Joint Secretary to the Government of India in the Ministry of Power, that is to Say

a) an inter-State thermal power plant of a capacity of 700MW or more, located in the States of Jammu and Kashmir, Sikkim, Arunachal Pradesh, Assam, Meghalaya, Manipur, Mizoram, Nagaland and Tripura;

or

b) an inter-State thermal power plant of capacity or 1000MW or more, located in the States other the those specified in clause (a) above; or

c) an inter-State hydel power plant of a capacity of 350MW or more, located in the States of Jammu and Kashmir, Sikkim, Arunachal Pradesh, Assam, Meghalaya, Manipur, Mizoram, Nagaland and Tripura;

or

*d) an inter-state hydel power plant of a capacity of 500MW or more, located in states other than those specified in clause (c) above.*

*10.As has been stated by us earlier, it is undisputed that 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 turn 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 m 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:*

*"6,,, The learned Advocate brought to our notice the relevant conditions of the exemption Notification. In 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 all 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-contractor does not do everything. There is 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, 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.L.T. 524 Tri.-Mumbai), has held that the benefit of exemption under Notification 108/59-C.E. is available to a sub-contractor when M/s. BHEL is the main of an approved project. 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 consequential 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 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.*

7. As the issue has already been settled in the appellants own case for the earlier period wherein it has been held that appellants is entitled for benefit of notification no. 6/2006-CE dated 1.3.2006. Therefore, we hold that appellant is entitled for benefit of the said notification. Accordingly, we do not find any merit in the impugned order. The same is set aside.

8. In result appeal is allowed with consequential relief, if any.

(Operative part of the order was pronounced in open court)

**(K. ANPAZHAKAN)**  
MEMBER (TECHNICAL)

**(ASHOK JINDAL)**  
MEMBER (JUDICIAL)