

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH: KOLKATA**

REGIONAL BENCH – COURT NO. 2

Excise Appeal No. 75136 of 2017

(Arising out of Order-in-Appeal No. 51/HAL/2016 dated 25.10.2016 passed by the Commissioner of Central Excise (Appeal-I), Kolkata, 169, A.J.C. Bose Road, Bamboo Villa, 4th Floor, Kolkata – 700 014)

M/s. Tube Bend (Calcutta) Private Limited : **Appellant**

Vill: Jangalpur, P.O.: Argori, NH-6,
District: Howrah, PIN – 711 302

VERSUS

Commissioner of Central Excise : **Respondent**

Haldia Commissionerate,
25, Princep Street, 3rd Floor,
Kolkata – 700 072

APPEARANCE:

Shri Arvind Baheti, Chartered Accountant, for the Appellant

Shri S.K. Dikshit, Authorized Representative, for the Respondent

CORAM:

HON'BLE SHRI R. MURALIDHAR, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 77759 / 2025

DATE OF HEARING / DECISION: 21.11.2025

ORDER: [PER SHRI K. ANPAZHAKAN]

The present appeal has been filed challenging the Order-in-Appeal No. 51/HAL/2016 dated 25.10.2016 passed by the Commissioner of Central Excise (Appeal-I), Kolkata, 169, A.J.C. Bose Road, Bamboo Villa, 4th Floor, Kolkata – 700 014 whereby the Id. appellate authority has upheld the demands confirmed vide the Order-in-Original No. 47/Addl. Commr/CE/Haldia/Adjn/2011 dated 01.12.2011.

2. The facts of the case are that M/s. Tube Bend Calcutta Pvt. Ltd. (herein after referred to as the "appellant") is a company primarily engaged in the manufacture of pipe fittings falling under Chapter 73 of the Central Excise Tariff Act, 1985. During the period from September 2009 to March 2010 (herein after referred to as the "relevant period"), the Appellant supplied various steel pipe fittings namely tube bend, tea, reducer, elbow, etc. to several Mega Power Projects including the Vallur Thermal Project, Indira Gandhi Super Thermal Project, Jhajjar, Durgapur Steel Thermal Power station, among others. These supplies were made pursuant to purchase orders issued by M/s Bharat Heavy Electricals Limited, Piping Centre, Chennai, a Government of India PSU, which had secured the respective contracts through International Competitive Bidding (ICB). The appellant's clearances were supported by the project authority certificates furnished by BHEL, issued on the basis of certificates-cum-declarations from the Joint Secretary, Ministry of Power, Government of India, declaring the respective projects as "Mega Power Projects." On this basis, the appellant claimed exemption from central excise duty by availing the benefit of Notification No. 6/2006-CE dated 01.03.2006 (Sl. No. 91).

2.1. The appellant thereafter received a Notice to Show Cause dated 01.10.2010 issued vide C. No. vCH.73(15)97/CE/Hal/Adjn/10/21633. The SCN alleged that the appellant had wrongly availed the said exemption on the ground that the goods cleared, attracted 10% Basic Customs Duty during the relevant period as the Appellant did not satisfy the conditions of Notification No. 6/2006-CE.

2.2. The appellant duly submitted its reply to the SCN explaining that the pipe fittings were supplied for Mega Power Projects awarded under International Competitive Bidding and was therefore covered by Sl. No. 400 of Notification No. 21/2002-Cus dated 01.03.2002, which exempts goods required for such projects from both BCD and CVD.

2.3. The Ld. Additional Commissioner, through Order-in-Original No. 47/Additional Commissioner/CE/Haldia/Adjn/2011 dated 01.12.2011, has considered the eligibility of the appellant to the benefit of Notification No. 06/2006-CE dated 01.03.2006 by examining the classification of the goods under Heading 9801 of the Customs Tariff Act for the purpose of availing the benefit of Notification No. 21/2002-Cus. dated 01.03.2002 and held that the Appellant was not eligible for the benefit of the said notification. Accordingly, vide the said order, the Id. Additional Commissioner has confirmed the demand of Rs.15,16,883/- (inclusive of cesses) against the appellant, along with interest thereon, and imposed a penalty of Rs.5,00,000/- on them in terms of Rule 5 of the Central Excise Rules, 2002.

2.4. Aggrieved by the confirmation of the demands, the appellant approached the Ld. Commissioner of Central Excise (Appeal-I), Kolkata, who passed the impugned order dated 25.10.2016 rejecting the appeal filed by the appellant.

2.5. Against the said order, the appellant is before this Tribunal.

3. The Ld. Chartered Accountant appearing on behalf of the appellant submitted that the issue involved herein is no longer res integra and the same stands settled by the Tribunal in the cases of *Vrinda Engineers Pvt. Ltd. v. Commissioner of Central Excise, Haldia* [2023 (8) TMI 894 – CESTAT, Kolkata] and *Om Metals SPML JV Unit 2 v. Commissioner of C.Ex. and S.T., Raipur* [2013 (298) E.L.T. 79 (Tri. – Del.)]; he also referred to the decision of the Tribunal, Delhi in the case of *Paramount Communication Ltd. v. Commissioner of C.Ex., Jaipur* [2016 (344) E.L.T. 1091 (Tri.-Del.)], which stands affirmed by the Hon'ble Rajasthan High Court as reported in *2018 (360) E.L.T. A324 (Raj.)*. Accordingly, stating that the factual matrix of the instant case being similar to those in the cases cited supra, he prayed that the appeal be allowed.

3.1. Without prejudice to the above, the Ld. Counsel for the appellant has also tendered a written submission dated 21.11.2025 making various submissions on the merits of the issue; various case-laws have also been cited by the respondent in support of the said contentions.

4. On the other hand, the Ld. Authorized Representative of the Revenue has reiterated the findings in the impugned order and justified the impugned demands and prayed for rejection of the instant appeal.

5. Heard both sides and perused the records as well as the submissions made by both the sides.

6. We find that the issue involved in the present appeal pertains to alleged irregular availment of the benefit of central excise exemption Notification No. 06/2006-CE dated 01.03.2006 (Sl. No. 91), in respect of domestic clearance of goods falling under chapter 73 (Pipe fittings) to Mega Power Projects under an international competitive bidding on the premise/contention that(a) the underlying goods are not generally exempted from duties of customs; and (b) the underlying goods does not fall under Chapter 9801 so as to be covered by Customs Notification No. 21/2002 dated 01.03.2002 (Sl. No. 400).

7. Before deciding the issue, it is necessary to examine Notification No. 6/2006 (Sl. No. 91), which prescribes the following two conditions for availing the exemption:

- (i) that the goods must be supplied against International Competitive Bidding (ICB), and
- (ii) that such goods, when imported, are exempt from customs duty.

7.1. In this regard, we observe that the appellant's supplies were undisputedly made against ICB, and that the appellant has already placed on record the relevant project certificates issued to M/s BHEL and documentary evidence establishing the end-use. We find that neither the Show Cause Notice nor the Order-in-Original has alleged that the goods were diverted or not utilised for the intended Mega Power Project. Thus, we observe that the only question for determination to avail the benefit of the above said exemption by the appellant is, whether the

requirement under Condition No. 19 of Sl. No. 91 stands satisfied. This condition mandates that the goods, if imported, must be exempt from both Basic Customs Duty and the additional duty under Section 3 of the Customs Tariff Act. The appellant in this regard has consistently submitted that this requirement is fulfilled because Sl. No. 400 of Notification No. 21/2002-Cus exempts goods required for setting up Mega Power Projects from both BCD and CVD and accordingly, the corresponding domestic supplies would qualify for exemption under Notification No. 6/2006-CE.

7.2. However, the Ld. adjudicating authority concluded in the impugned order that the appellant could claim the benefit only if its goods themselves fell under Heading 9801. Goods covered under this Chapter Heading include:

"All items of machinery, including prime movers, instruments, apparatus and appliances, control gear and transmission equipment, auxiliary equipment (including those required for research and development, testing, and quality control), as well as all components (whether finished or not) or raw materials for the manufacture of the aforesaid items and their components, required for the initial setting up of a unit or the substantial expansion of an existing unit, of a specified:

- I. Industrial plant*
- II. Irrigation project*
- III. Power project, other than a solar power plant or solar power project*
- IV. Mining project*
- V. Project for exploration for oil or other minerals, and*
- VI. Such other projects, other than solar power projects, as may be notified by the Central*

Government in the Official Gazette with regard to the economic development of the country;

and spare parts, other raw materials (including semi-finished materials) or consumable stores not exceeding 10% of the value of the goods specified above, provided that such spare parts, raw materials or consumables are essential for the maintenance of the plant or project mentioned in (1) to (6) above."

7.3. Relying on the description of Heading 9801, the Ld. adjudicating authority held that only "machinery" falling under Chapters 84 and 85 would qualify, and that the appellant's products, falling under Chapter 73, were outside its ambit.

8. We find that the authorities below have adopted an unduly narrow interpretation of Heading 9801. The heading is intentionally expansive and covers not only "machinery" but also instruments, apparatus, appliances, control gear, transmission equipment, auxiliary equipment, and all components or raw materials required for the initial setting up of a power project. The pipe fittings supplied by the appellant constitute essential components for the installation of Mega Power Projects, as demonstrated by the detailed particulars of supplies placed on record before us. Thus, we observe that the authorities below have erred in adopting a narrow interpretation that restricted Chapter 9801 to goods falling only under Chapters 84 and 85. Accordingly, we are of the considered view that all these goods imported by the Appellant fall squarely within the ambit of Heading 9801, notwithstanding their classification under Chapter 73.

9. We also take note of the fact that the pipe fittings manufactured and supplied by it, namely tube bends, tees, reducers, elbows, and similar items form an integral part of the interconnected steam piping system, which is critical machinery in thermal power plants. These pipes facilitate the transport of steam, water, and fuel throughout the plant, ensuring the proper functioning of turbines and other equipment. Without these pipes, the machinery and systems of the plant cannot operate, making them indispensable for the initial setup and functioning of the power project. A Technical Write Up from M/s. BHEL, has also been placed on record, along with photographs of the relevant items and their usage in the thermal power projects, presented through pictorial representation, which fortifies our view.

10. Further, as has been rightly pointed out by the counsel representing the appellant, we find that the instant issue before us is no longer *res integra*. This Tribunal, in the case of *Vrinda Engineers Pvt. Ltd. v. Commissioner of Central Excise, Haldia [2023 (8) TMI 894 - CESTAT, Kolkata]* has already examined an identical issue, observing as follows: -

"15. We further note that the Learned Commissioner has also noted that goods must be unconditionally exempted under Notification No. 21/2002-Cus. (Project Imports) when imported into India. We are of the view that the Learned Commissioner has attempted to examine the fulfilment of a condition which is not appearing in the subject excise Notification. We observe that the only condition is that goods are cleared under International Competitive Bidding for use in the specified Mega Power Projects which are exempted from customs duty. The supply of subject goods in the instant case for Mega Power Project under International Competitive Bidding is on record and not in dispute. The Appellant is legally entitled to exemption from payment of Central Excise duty and thus the duty demand is not sustainable."

10.1. A similar issue also came up for consideration before the Tribunal in the case of *Om Metals SPML JV Unit 2 v. Commissioner of C.Ex. and S.T., Raipur [2013 (298) E.L.T. 79 (Tri. – Del.)]*. The relevant portion of the said Order reads as given below: -

"We find that goods in question are classifiable under Chapter 73 of the Tariff. Under Central Excise Tariff there is no Heading 98.01 and which exists in Customs Tariff only. Since the goods manufactured in India can not be classified under 98.01 of the Central Excise Tariff, denial of the exemption on the ground of non-fulfilment of condition of Project Import Regulation is not sustainable particularly when condition No. 86 of the Notification No. 21/2002, dated 1-3-2002 is fulfilled by them. Similar submissions were made by Revenue for denying the benefit of Notification 6/2006, dated 1-3-2006 on the ground of non-fulfilment of conditions of the Project Import Regulation in case of Sarita Steels and Industries Ltd. reported in [2011 \(264\) E.L.T. 313](#) and Tribunal in that case allowed the exemption under Notification 6/2006, dated 1-3-2006 to the assessee. We therefore hold that appellants are eligible for exemption under Notification 6/2006, dated 1-3-2006 and accordingly set aside the impugned order and allow the appeal."

10.2. In *Paramount Communication Ltd. v. Commissioner of C.Ex., Jaipur [2016 (344) E.L.T. 1091 (Tri.-Del.)]*, the Tribunal has held as under: -

"8. The appellants submitted the certificates issued by the Joint Secretary, Government of India, Ministry of Power and these certificates were examined by the Commissioner and in Para 16.4 of the order he held that certificates are not in dispute and Condition No. 86 stands satisfied. The Commissioner has denied the exemption under Notification No. 6/2006-C.E., dated 1-3-2006 on the ground that S. No. 400 of the Notification No. 21/2002, dated 1-3-2006 applies to goods classifiable under Heading 98.01 of the Customs Tariff and for availing the benefit of Notification 21/2002 for goods of Heading 98.01 requirements of Project Import Regulation, 1986 are to be satisfied and he denied the benefit of Notification to

their goods, wire and cables classifiable under Chapter 85 of the Tariff, for non-fulfilment of Project Import Regulation, 1986.

9. *We find that goods in question are classifiable under Chapter 85 of the Tariff. Under Central Excise Tariff there is no Heading 98.01 which exists in Customs Tariff only. Since the goods manufactured in India cannot be classified under Heading 98.01 of the Central Excise Tariff, denial of the exemption on the ground of non-fulfilment of condition of Project Import Regulation is not sustainable particularly when Condition No. 86 of the Notification No. 21/2002, dated 1-3-2002 is fulfilled by them. Similar submissions were made by Revenue for denying the benefit of Notification 6/2006-C.E., dated 1-3-2006 on the ground of non-fulfilment of conditions of the Project Import Regulation in case of Sarita Steels and Industries Ltd. reported in [2011 \(264\) E.L.T. 313](#) and Tribunal in that case allowed the exemption under Notification 6/2006-C.E., dated 1-3-2006 to the assessee. Reference can be made to another decision of the Tribunal in the case of Om Metals SPML JV Unit 2 v. CCE, Jaipur as reported in [[2013 \(298\) E.L.T. 79](#) (Tri.-Del.)]. We, therefore, hold that appellants are eligible for exemption under Notification 6/2006-C.E., dated 1-3-2006 and accordingly set aside the impugned order and allow the appeal."*

The above decision in *Paramount Communication Ltd. (supra)* has been affirmed by the Hon'ble Rajasthan High Court as reported in *2018 (360) E.L.T. A324 (Raj.)*

11. Thus, in view of the above discussion and respectfully applying the ratio laid down in the decisions cited supra, we hold that the appellant is fully entitled to the exemption under Notification No. 06/2006-C.E. dated 01.03.2006, as they satisfy all statutory conditions required for availing the exemption. Accordingly, we do not find any justification in the demands raised and confirmed against the appellant and hence, the same are set aside.

12. In the result, the impugned order is set aside and the appeal is allowed, with consequential relief, if any, as per law.

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

Sd/-

(R. MURALIDHAR)
MEMBER (JUDICIAL)

Sd/-

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd