

## CHAPTER VI: MINISTRY OF HEAVY INDUSTRIES AND PUBLIC ENTERPRISES

### Bharat Heavy Electricals Limited

#### 6.1 Avoidable payment of customs duty and safeguard duty

**Bharat Heavy Electricals Limited, Trichy unit did not obtain the amendments to the advance authorisation for import of seamless carbon steel tubes in time and consequently made avoidable payment of customs duty (including safeguard duty) amounting to ₹5.71 crore.**

Bharat Heavy Electricals Limited (BHEL), New Delhi was awarded (March 2012/ March 2013) the contracts for supply, installation, testing and commissioning of Super Thermal Power Plants at Mouda (Maharashtra), Nabinagar (Bihar) and Gadarwara (Madhya Pradesh) by NTPC Limited. The capacities of the three power plants were 1320 MW (Mouda), 1980 MW (Nabinagar) and 1600 MW (Gadarwara). BHEL, Trichy unit finalised (June/July 2014) procurement orders for import of seamless Carbon Steel (CS) tubes for 7187 metric tonne (MT) required for construction of boilers for the three projects.

The supplies for setting up of any mega thermal power project were exempted from customs duty as per the notification (March/September 2012) of the Ministry of Finance, Department of Revenue, subject to the plant capacity being 1000 MW or more. Advance authorisation for the import of material was required to be obtained from the Directorate General of Foreign Trade (DGFT) for availing the duty exemption on the import of such supplies. BHEL, Trichy unit was eligible for exemption from customs duty (including safeguard duty) on import of CS tubes since the power plant capacity of all three projects exceeded 1000 MW. Advance authorisation from DGFT was required for availing the facility.

Audit observed that in the case of Gadarwara project, the unit obtained (December 2013) advance authorisation for import of 1536.58 MT of CS tubes. Subsequently, the unit applied (July 2014) for modification in the advance authorisation for importing an additional quantity of 3318.26 MT on the ground that the procurement through indigenous sources did not materialize on account of inadequate capacity and price levels in domestic industry. DGFT granted approval for amendment in advance authorisation in November 2014. Thus, the unit was able to avoid the payment of customs duty on import of additional CS Tubes.

However, in the case of the other two projects, Audit observed that:

- (i) In respect of Nabinagar project, the unit obtained (July 2013) advance authorisation for import of 1412 MT of CS pipes but did not obtain the advance authorisation for import of CS tubes. Subsequently, 3515 MT of CS tubes were imported (September 2014) on which the unit had to pay customs duty of ₹2.96 crore as no exemption was available due to absence of advance authorisation.

- (ii) In respect of Mouda Project, advance authorisation had been obtained (December 2012) for import of 3390 MT of CS tubes. Subsequently, an additional quantity of 1530 MT of CS tubes were also imported (November 2014) for which the unit had to pay customs duty amounting to ₹2.75 crore.

Thus, while the unit applied for the amendment in advance authorisation for import of CS tubes in respect of Gadarwara project and was able to avail the exemption of customs duty on such imports, it failed to take similar action in respect of Nabinagar and Mouda projects. Consequently, the unit made an avoidable payment of customs duty (including safeguard duty) amounting to ₹5.71 crore on import of 5045 MT of CS tubes for these two projects.

The Management stated (August 2017) that during the subject period of procurement, production at the Seamless Steel Tubes Plant (SSTP) of BHEL was not fully geared up and hence the procurement was necessitated. The import rates were found to be competitive even after considering customs duty on merit basis including safeguard duty. The import prices were also lower than SSTP's transfer price. Further, the Foreign Exchange section of the unit had suggested import of CS tubes by paying merit duty as the lead time for rectification in advance authorisation was long.

The contention of the Management that inadequate production from SSTP necessitated import of CS tubes is not acceptable since the SSTP had not been commissioned at the time of applying for advance authorisation for Mouda and Nabinagar units by the unit. The unit did not also have any production plan from SSTP unit on the basis of which it could decide on the quantity of CS tubes to be imported. The competitiveness of import rates even after considering customs duty could not be accepted as a justification for non-inclusion of the required quantity of CS tubes in the application for advance authorisation, since obtaining of advance authorisation would have resulted in additional savings on account of exemption of customs duty. Further, as the unit was aware of the constraints relating to the import procedure, it should have taken timely action for obtaining amendments in advance authorisation for import of CS tubes for Mouda and Nabinagar projects, as was done in case of Gadarwara project.

The matter was referred to the Ministry in September 2017; their reply was awaited (February 2018).

#### **Hindustan Paper Corporation Limited**

### **6.2 Diversion of funds in violation of Government orders**

**Hindustan Paper Corporation Limited diverted funds sanctioned by Government of India towards revival plan of its subsidiary company vitiating the objectives of the revival scheme.**

Nagaland Pulp and Paper Company Limited (NPPCL) was incorporated on 14 September 1971 as a joint venture company of the Government of Nagaland and Hindustan Paper Corporation Limited (HPCL), a wholly owned Central Public Sector Enterprise under the administrative control of the Department of Heavy Industry. NPPCL started its commercial production on 1 July 1982. Subsequently, the company started making losses

and was referred to Board of Industrial and Financial Reconstruction (BIFR) in April 1992. BIFR declared NPPCL to be a sick industrial company in August 1998 and ordered its winding up in March 2002. The Departmental Standing Committee on Industry took the initiative of reviving the company in April 2002 and a proposal for revival of NPPCL was approved in November 2006 with a capital outlay of ₹552.44 crore<sup>1</sup>. The revival plan was subsequently revised envisaging an investment of ₹679 crore in two phases (phase 1: ₹489 crore; phase 2: ₹190 crore). For implementation of the first phase, it was decided in June 2013<sup>2</sup> that Government of India (GoI) would infuse ₹309.38 crore (₹202.38 crore as equity and ₹107 crore as grants-in-aid); ₹156.50 crore would be raised by the company from banks/ financial institutions with Government guarantee and the balance ₹23.12 crore would be infused by Government of Nagaland.

The approved revival plan of NPPCL was communicated to HPCL (July 2013) with the specific stipulation that HPCL has to ensure proper utilisation of funds released by GoI towards implementation of the revival plan of NPPCL and that an escrow account mechanism should be followed for the purpose. Subsequently (September 2013), GoI released ₹100 crore to HPCL as equity in NPPCL for implementation of the revival plan of NPPCL. The release order reiterated that Chairman and Managing Director (CMD), HPCL would be personally responsible for proper utilisation of these funds and specifically instructed that no funds should be diverted under any circumstances and that the CMD, HPCL would be held responsible for any diversion or misappropriation of funds. It was also specified that the utilisation certificate would be furnished within one year from the date of issue of the sanction.

Audit examination revealed that HPCL made available only ₹47.63 crore to NPPCL (by March 2016) out of GoI release of ₹100 crore. The balance ₹52.37 crore was diverted to meet exigencies in HPCL. Audit noticed that HPCL had not established an escrow account to ensure proper utilisation of GoI release of ₹100 crore, violating the specific stipulation of GoI. The CMD, HPCL who was personally responsible for proper utilisation of the funds and accountable for diversion or misappropriation, allowed the diversion of funds meant for NPPCL to HPCL. Audit also noticed that HPCL has not submitted any utilisation certificate to GoI yet (November 2017), though it was required to furnish utilisation certificate within one year (by September 2014) of release of GoI funds.

Meanwhile, NPPCL floated tenders for 14 major packages that had been identified for revival of its plant (October 2013 to April 2014) and placed work orders for seven of these packages (July 2014 to March 2015). Owing to non-release of funds by HPCL, NPPCL could not clear the outstanding dues of the contractors. NPPCL reported (February 2016) that as it had not been able to clear contractors' dues, the working contractors demobilised and did not make fresh commitment for their bought out items which brought the project activities to a halt. So far, only two of these packages for survey and soil investigation and dismantling and demolition works have been completed. The works of the balance five packages for paper machine refurbishment, captive power house, switchyard, civil and structural works and re-causticising plant have been suspended for which NPPCL had identified un-paid liabilities of ₹6.29 crore. NPPCL Board was informed (March 2017) that since August 2015, all outstanding activities on these packages were at a standstill.

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<sup>1</sup> *Approval of Cabinet Committee of Economic Affairs dated 23<sup>rd</sup> November 2006*

<sup>2</sup> *Approval of Cabinet Committee of Economic Affairs dated 4<sup>th</sup> June 2013*

This is likely to lead to obsolescence of plants, equipment and inventories in respect of these five abandoned packages.

The Management of HPC while accepting the audit observation stated (January/February 2017) that a portion of the funds released by GoI for revival of NPPCL had been diverted for their own exigencies. The Management stated that no action had been initiated for fixing responsibility in this regard and fund utilisation certificate has also not been sent to GoI. It was also asserted that the work was kept on hold as the cost of project had increased substantially and required approval of the revised cost from the Ministry.

Reply of the Management needs to be viewed against the following:

- Funds were diverted by HPCL despite the fact that the GoI sanction order had categorically cautioned against it. Though, the sanction order specifically stated that accountability for diversion and misappropriation of GoI fund rests with the CMD, HPCL, responsibility for the diversion had not been fixed.
- The funds released by GoI were meant for revival of NPPCL. Diversion of these funds by HPCL led to accumulation of outstanding dues of NPPCL towards contractors implementing the revival work and consequent suspension of work. The purpose for which GoI funds were sanctioned, thus, was not achieved.

The Ministry, while accepting the diversion of funds, stated (April 2017) that the Committee constituted to examine all aspects relating to diversion of funds and prima facie fixing the responsibility had submitted its report and the action on the report was being taken.

Thus, HPCL diverted ₹52.37 crore out of ₹100 crore released by GoI for revival of its subsidiary, NPPCL, which besides being improper, adversely affected implementation of the revival plan of NPPCL.