

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

**REGIONAL BENCH - COURT NO.I
(E-HEARING)**

Customs Appeal No.70539 of 2019

(Arising out of Order-in-Original No. 08-11-Commissioner-Lucknow-2018-19,
dated -29/03/2019 passed by Commissioner, Customs (Preventive) Lucknow)

M/s SAEL Ltd.

.....Appellant

(A-4, Second Floor,
Green Park Main,
South Delhi 110016)

VERSUS

Commissioner, Customs (Preventive), Lucknow

....Respondent

(5th Floor, Kendriya Bhawan,
Sector-H, Aliganj, Lucknow)

APPEARANCE:

Shri B.L. Narasimhan, Advocate, Shri Atul Gupta, Advocate, Ms. Anjali Gupta,
Advocate, Ms. Jyoti Pal, Advocate for the Appellant
Shri Santosh Kumar, Authorized Representative for the Respondent

WITH

Customs Appeal No.70566 of 2019

(Arising out of Order-In-Original No. 08-11-Commissioner-Lucknow-2018-
19, dated -29/03/2019 passed by Commissioner, Customs (Preventive)
Lucknow)

M/s Lohia Developers India Private Limited

.....Appellant

(Village Bharua Sumerpur,
Tehsil, Hamirpur, U.P.)

VERSUS

Commissioner, Customs (Preventive), Lucknow

....Respondent

(5th Floor, Kendriya Bhawan,
Sector-H, Aliganj, Lucknow)

APPEARANCE:

Shri P. C. Patnaik, Advocate & Shri Manoj Kumar, Srivastava, Advocate
for the Appellant
Shri Santosh Kumar, Authorized Representative for the Respondent

AND

Customs Appeal No.70651 of 2019

(Arising out of Order-In-Original No.08-11-Commissioner-Lucknow-2018-19, dated -29/03/2019 passed by Commissioner, Customs (Preventive) Lucknow)

M/s Prayatna Developers Pvt Ltd**.....Appellant**

(7B, Sambhav House
Judges Bungalow Road, Bodakev,
Ahemdabad, Gujarat 380015)

*VERSUS***Commissioner, Customs (Preventive), Lucknow****....Respondent**

(5th Floor, Kendriya Bhawan,
Sector-H, Aliganj, Lucknow)

APPEARANCE:

Shri Jitendra Motwani, Advocate & Ms. Kirti Bhoite, Advocate for the Appellant

Shri Santosh Kumar, Authorized Representative for the Respondent

CORAM: HON'BLE MR. P.K. CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

FINAL ORDER NO.-70670-70672/2024

DATE OF HEARING : 06.06.2024
DATE OF DECISION : 23.10.2024

P. K. CHOUDHARY:

All the three appeals are arising out of common impugned Order-In-Original No. 08-11-Commissioner-Lucknow-2018-19, dated -29/03/2019 passed by Commissioner, Customs (Preventive) Lucknow. All the three appeals are being decided by this single order since the issue involved in all the three appeals is common.

2.1 The Appellant is engaged in the activity of electricity generation and supply, for which they were in process of setting up of 50 MW Mahoba Solar Project in the state of Uttar Pradesh. For the said purpose, the Appellant imported Solar Modules, i.e. "Poly Crystalline Silicon (C-Si), Solar Photovoltaic Modules" (hereinafter referred as 'Solar Modules' or "the said goods") from Zhejiang Jinko Solar Company Limited, China, under 26 Bills of

Entry, during the period February, 2017 to May, 2017, by declaring them as "Poly Crystalline Silicon (C- Si) Solar Photovoltaic Modules and by classifying them under CTH 85414011 and by claiming benefit of Notification No.24/2005-Cus dated 01.03.2005 (hereinafter referred as Notification No.24/2005') which provides for exemption from Customs Duty, on import.

2.2 At the time of the import, the Appellant had submitted Certificate of Origin in support of their claim that the imported goods were rightly classifiable under CTH 8541. The said certificate also contains a remark classifying the said item under CTH 85414030 of the China HS Code, which covers "Bular Cells"

2.3 Basis the apparent information that the Appellant has wrongly claimed the benefit of Notification 24/2005, the Custom Department subjected the said goods to examination and drew a representative sample from the consignment of BOE No. 8672135 dated 24.02.2017. Pursuant to which, the Appellant on 01.03.2017 made submission to substantiate the classification adopted by them wherein it was stated that they had classified the said goods as per supplier's invoice and as per custom tariff. The Appellant also submitted the Independent Chartered Engineer Certificate i.e. No. Ch.Engg/PDPL/Mar/02/2016-17 dated 02.03.2017 to substantiate their claim (hereinafter referred to as "the said Certificate").

2.4 However, since the Customs Department was reluctant to consider Appellant's submission and the Appellant was in dire need of the said goods they requested the Customs Department to release the same on provisional assessment basis. Accordingly, all the consignments were released provisionally on furnishing of Bond with the condition in the Bond that the report of the sample as drawn under Bill of Entry No. 8672135 dated 24.02.2017 shall be applicable to the entire consignment covered under the 26 Bills of Entry.

2.5 Thereafter, a representative sample was drawn bearing sample no. 49/Imp/T/2016-17 dated 06.03.2017 from the consignment of bill of entry no. 8672135 (hereinafter referred as to "said sample") as all the Solar Panels covered under the 26 Bills of Entry were similar in technical specification and the said sample was forwarded to the Engineering Department of IIT Kanpur (hereinafter referred as to "IIT Kanpur") for testing and seeking opinion as to confirm the functional and technical specification of the impugned Solar PV Module.

2.6 Subsequent to which, the consignments of the Appellant were released on a provisional basis on furnishing of the appropriate bond with the condition that said sample as drawn shall be applicable to the entire consignment covered under 26 Bills of Entry. Thus, assessment with respect to the said Bills of Entry was provisional in nature.

2.7 IIT Kanpur furnished the inconclusive Test Report No. T-ME-2017/12/02 dated 05.12.2017 (hereinafter referred to as "the test report"), wherein it was opined that sample of solar panel is equipped with simple elements (for example-diodes to control the direction of the current) which can supply electric power directly to an external DC load. It was also certified that the panel is not equipped with any type of converter/regulator for controlling the generated power. In addition, there is no storage device integrated with the solar panel.

2.8 Based on the aforesaid inconclusive test report of IIT Kanpur, the Custom Department issued the SCN F. No. V(15) Off./Adj/Cust/53/2017 dated 02.01.2018 asking as to why the said goods imported by Appellant should not be classified under CTH 8501 instead of CTH 8541, the assessment of 26 Bills of Entry should not be finalized by way of classifying the said goods under CTH 8501, proposal of confiscation of the said goods and Customs duty demand of Rs. 12,34,66,642/- along with the

interest and equal penalty. It is noteworthy that the said SCN was issued without even finalization the provisional assessment as mandated under the provisions of Section 18 read with Section 28 of the Customs Act, 1962 ("the Act"). In response to the Impugned SCN, the Appellant filed a detailed reply vide letter dated 14.12.2018.

2.9 However, the Respondent has passed the impugned order dated 29.03.2019 wherein it is ordered as under:

- the said goods are to be classified under CTH 8501;
- confiscation of the said goods under Section 111 (m) and 111 (o) of the Act with an imposition of fine of Rs. 20,00,00,000/- in lieu of confiscation under Section 125(1) of the Act;
- the duty demand of Rs. 12,34,66,642/- was confirmed under Section 28 along with applicable interest under Section 28AA;
- imposed penalty of Rs. 1,50,00,000/- under Section 112(a) of the Act; and
- ordered for finalization and appropriation of the Bonds and the Bank Guarantee submitted by the Appellant at the time of provisional release of the goods,

2.10 Being aggrieved by the impugned order, the Appellants have filed the captioned appeals before this Tribunal.

3. The issue in the present appeals relates to classification of "Poly Crystalline Silicon (C-Si), Solar Photovoltaic Modules" ('Solar Modules') imported by the Appellants. The Appellants in all appeals have classified the Solar Modules under CTH 85414011 whereas the department proposes to classify the same under CTH 8501 of the Customs Tariff Act. Since all the appeals contain a common issue the same are disposed off vide a common order. For the sake of convenience we have recorded the facts of Appeal No C/70651/2019 which has been filed by

M/s Prayatna Developers Pvt. Ltd. assailing Order-in-Original No. 08-11/Commissioner/Lucknow/2018-19 dated 29.03.2019 passed by the Commissioner of Customs (Preventive), Lucknow.

4. During the period February 2017 to May 2017, imported Solar Modules, i.e. "Poly Crystalline Silicon (C-Si), Solar Photovoltaic Modules", vide 26 Bills of Entries under CTH 85414011. The Customs Department subjected the solar modules to examination by drawing samples and released all the consignments on a provisional basis.

5. The samples were sent to IIT Kanpur and their views were sought on the nature of the product. Test Report No. T-ME-2017/12/02 dated 05.12.2017 was issued by IIT Kanpur stating as under:

The sample was scrutinized/inspected and tested at the Phase-Change Thermal Systems Laboratory in the Department of Mechanical Engineering of IIT Kanpur. Field testing also conducted.

It is certified that the sample of solar panel is equipped with simple elements (for example, diodes to control direction of the current) which can supply electric power directly to an external DC load. The supporting field test reports of the panel is enclosed representative to illustrate the typical V-I characteristics of the solar panel:

It is also certified that the panel is not equipped with any type of convertor/regulator for trolling the generated power. In addition, there is no storage device integrated with the solar panel.

6. Basis the said Test Report a Show Cause Notice¹ dated 02.01.2018 was issued to the Appellant proposing to recover Customs duty payable on the solar modules, on the ground that Appellant has misclassified the said goods under CTH 8541 instead of CTH 8501. The proposal made in the said SCN has

¹ SCN

been confirmed by the Commissioner of Customs (Preventive) Lucknow vide the impugned order which is in challenge before us.

7. Learned Advocate Mr. Jitendra Motwani, Advocate and Learned Advocate Mr. B. L. Narasimhan and Learned Advocate Mr. P.C. Patnaik appearing on behalf of the Appellants, made the following submissions:

- (a) The key factor for determination of classification is whether the imported solar modules are equipped with elements, that enable it to supply power directly to the external load. As per HSN explanatory note if the solar module is not equipped with element, which can supply power directly to an external load then the same is classifiable under CTH 8541. On the other hand, if the solar module is equipped with element which can supply power directly to an external load then the same is classifiable under CTH 8501.
- (b) The solar modules/the goods in dispute contain a junction box with bypass diodes and MC4 connectors and after explaining their function it was submitted that neither bypass diodes nor MC4 connectors are capable of supplying power from the module to an external load. The fact that the imported solar modules are not equipped with any elements that can regulate the wattage/voltage of the module or can allow for the storage of power so that the module can function as a generator, has been admitted in paragraph 3 of the IIT Kanpur Test Report, as well, which has been relied heavily by the Department.
- (c) the issue is clarified in favour of CBIC vide letter dated 22.09.2016 and Instruction No. 8/2018 Cus dated 06.04.2018 clarifying that for the solar modules to supply power directly to the external

load, it requires to contain both 'bypass diodes' and 'blocking diodes' or 'blocking diodes', alone. Accordingly, if the modules contain only bypass diodes the same will not be in a position to supply power directly to external load.

- (d) Pursuant to this instruction, the Department attempted to obtain an opinion from IIT Kanpur as to whether the imported goods are equipped with bypass diodes or blocking diodes and in reply to the said query the concerned Department of IIT, Kanpur stated that said test was not possible in their laboratory. As such, the entire case of the Department and the Commissioner is based on the IIT Kanpur Test Report dated 05.12.2017 which is not conclusive in nature as admittedly as IIT Kanpur laboratory was not equipped to conduct the crucial test to determine whether the goods imported had blocking diodes or not and the said determination was crucial for determine the of goods classification in the present matter.
- (e) While the onus is on the Department to justify the classification proposed by them, they failed to do so. On the other hand, to justify the classification of the goods in dispute, the Appellant submitted Country of Origin Certificate along with the Chartered Engineering Certificate which certified that the said goods are equipped with elements that are not capable of supplying, power directly to an external load. This vital submission has not been considered by the Commissioner.
- (f) the document on the basis of which the SCN has been issued viz., IIT Kanpur Test Report is not conclusive as they were not equipped to determine if the imported solar modules were capable of

passing power to external load and when read with circular/instructions issued by CBIC, it will be clear that the impugned order reclassifying the goods under 8501 is bad in law and deserves to be quashed and set aside;

(g) Alternatively, M/s Wardha Solar Maharashtra Pvt Ltd, sister concern of Prayatna Developers, had imported identical Solar Modules and the Department in Nhava Sheva Port had raised the same allegation i.e Solar Modules ought to be classified under CTH 8501, however, the Commissioner of Customs, JNCH, Nhava Sheva after considering the submissions vide Order-in-Original No. 54/2018-19/Commr/NS-V/JNCH dated 23.07.2018 held that solar modules were correctly classified under CTH 8541 and not under CTH 8501 as alleged by the Department. The said decision is accepted by the Department and was placed on record before the Adjudicating authority. It was incumbent on the Commissioner to follow the said decision to maintain uniformity in the decisions. However, he took the contrary stand.

(h) SCN under Section 28 of the Customs Act, 1962 can be issued only after finalization of the provisional assessment and since in the present case the SCN is issued without finalizing the provisional assessment, the same is premature and unsustainable.

8. The Learned Authorized Representative for the Revenue justified the impugned order by reiterating the findings of the Adjudicating Authority.

9. Heard both the sides and perused the appeal records.

10. We find that the issue under dispute relates to classification of solar modules under CTH 8501 vis-a-vis CTH 8541. The Customs Tariffs are based on the Harmonious System of Nomenclature [HSN] and therefore reference is made to the relevant explanatory notes of HSN for CTH 8501 and 8541. The relevant portion of HSN are reproduced below:

"The explanatory notes (HSN) for CTH 8501 clarify that " the heading also covers photovoltaic generators consisting of panels of photocells combined with apparatus, example storage batteries and electronic controls (voltage regulator, inverter, etc) and panels or modules equipped with elements however simple (for eg. Diodes to control the direction of the current), which supply power directly to for eg a motor, an electrolyser.

Similarly, the explanatory notes further clarify that Solar cells whether or not assembled in modules or made up into panels but not equipped with elements however simple, which supply power directly to eg. a motor, an electrolyser, would fall under CTH 8541.

The Explanatory note for the heading 8541 also covers solar cells, whether or not assembled in modules or made up into panels. However, the heading does not cover panels or modules equipped with elements, however simple (for diodes to control the direction of the current), which supply power directly to a motor or electrolyser etc."

11. The issue in dispute has been considered by CBEC and vide letter dated 22.09.2016 and the following has been clarified:

a) If the solar panel/module is equipped with elements and these elements supply the power to an external load i.e. a motor, an electrolyser etc., then the solar panel/module is classifiable under CTH 8501.

b) However, if the solar panel/module is equipped with elements but these elements do not supply the power to an external load i.e. a motor, an electrolyser etc., then the solar panel/module is classifiable under CTH 8541.

c) Solar panel/module without element is classifiable under CTH 8541.

12. The HSN and CBEC clarification has provided for the following distinguishing factor for determining the classification under CTH 8501 vis a vis CTH 8541.

CTH 8501- if the solar module is equipped with elements, elements which supply power to the external load i.e. a motor, an electrolyser etc.,

CTH 8541 – If the solar module is equipped with elements but these elements do not supply the power to an external load i.e. a motor, an electrolyser etc.,

13. Further, upon receiving representations from the trade regarding classification of solar modules/panels, CBEC issued clarification vide Instruction No. 08/2018 Cus dated 06.04.2018, relevant extract of the same is reproduced hereunder:

- a. the solar panels or modules equipped with bypass diodes are classifiable in heading 8541.*
- b. the solar panels or modules equipped with blocking diodes are classifiable in heading 8501.*
- c. the solar panels or modules equipped with blocking diodes and bypass diodes are classifiable in heading 8501.*

14. The classification in the present case is to be decided on the basis of three elements (i) HSN for CTH 8501 and CTH 8541, (ii) CBEC letter dated 22.09.2016 and (iii) CBEC instruction dated 06.04.2018. On a conjoint reading of these documents, we are of the view that the determining factor in the matter is

whether the elements of solar module supply power to an external load or not and whether it is equipped with bypass diodes, blocking diodes or both.

15. The Appellant before us has argued that:

- a. It is the case of the Appellant that solar modules are not equipped with any elements that supply power directly to an external load. The solar modules contain a junction box with **bypass diodes** and MC4 connectors, neither of which are capable of supplying power from the module to an external load. The purpose of the bypass diodes and MC4 connectors are explained in the ensuing paragraphs, from which it will be evident that neither bypass diodes nor MC4 connectors supply power directly to an external load.
- b. The presence of **bypass diodes** in solar modules is essential for the safety and reliability of the said modules in the field. Further, the function of the bypass diodes is solely to prevent the solar cells from overheating due to hot-spot heating. The solar cells will generate and produce electricity which may be supplied to an external load even in the absence of bypass diodes. There is nothing to even suggest that bypass diodes are required for the supply of power from the cell to an external load. Basically, the bypass diodes are required for the safety and reliability of solar modules.
- c. The MC4 Compatible Connectors are single- contact electrical connectors used for connecting solar panels. MC4 stands for "Multi-Contact, 4 millimeter" and is a standard in the renewable energy industry. The MC4 and compatible products are universal in

the solar market today, equipping almost all solar panels produced since about 2011.

d. It is submitted that the solar module is regarded as being equipped with elements that supply power directly to an external load, classifiable under CTH 8501, only where the solar modules are complete, self-contained units that act as generators and are equipped to supply power of a specific wattage/voltage so as to meet the requirements of the external load. It is an admitted position that the imported solar modules are not equipped with any elements that can regulate the wattage/voltage of the module or can allow for the storage of power so that the module can function as a generator. In fact, the said fact has been admitted in Para 3 of the IIT Kanpur test report, detailed submission for which is made in subsequent paragraphs.

16. The fact that the Solar Modules imported by the Appellant did contain bypass diodes has not been disputed by the Adjudicating Authority or before us during the hearing.
17. It is settled law that burden to prove classification is on the revenue and the department has tried to discharge the same burden by placing reliance on the test report provided by IIT Kanpur Test Report which has been reproduced in facts above. As per the said report it is certified that the sample of solar panel is equipped with simple elements (for example, diodes to control direction of the current) which can supply electric power directly to an external DC load. Further the said report clarifies that the supporting field test reports of the panel was to illustrate the typical V-I characteristics of the solar panel and the panel is not equipped with any type of convertor/regulator for troling the generated power. In

addition, there is no storage device integrated with the solar panel.

18. Basis the submissions made by the Learned Advocates for the Appellant and perusing the literature provided during the hearing we find that "typical V-I characteristics of the solar panel" testing is done only for the purpose of determining the efficiency of photovoltaic conversion of the solar module and the maximum power output. The said test does determine whether the solar module is equipped with elements, or whether those elements are capable of supplying power directly to an external load. In fact we note that the said report nowhere specifies whether the solar modules are equipped with 'bypass diodes' or 'blocking diodes' or both. The said determination in terms of the circulars issued by CBIC is condition precedent to determine if the Solar Modules are equipped with elements that can directly supply power to external load or not. Infact from Para E8 and E9 of the order it becomes clear that IIT Kanpur did not have the facility to determine the above. Paragraph E.8 reads as under:

E. 8 Therefore, in view of the said clarification and the plea taken by the party in this respect I observe that the then adjudicating authority, in compliance of principles of natural justice with a bonafide attempt to resolve the issue requested the Department of Mechanical Engineering, IIT Kanpur to elaborate it's Test Report in respect of the impugned goods in light of CBIC'S Instruction No. 8/2018-Cus dated 06.04.2018 especially in respect of the presence of Bypass diodes, Blocking diodes or both Bypass & Blocking diodes in the representative samples of solar panels sent to them. However, the Head of Department of Mechanical Engineering, IIT Kanpur vide letter dated 05.10.2018 intimated that the test in this respect is not possible in their laboratory. In furtherance to the same, I observe that an all out efforts were made to

resolve the issue in transparent manner and it was found out that the Department of Electrical Engineering, IIT Kanpur can give an elaborative report in light of CBIC's Instruction No. 8/2018-Cus dated 06.04.2018, therefore, the Department of Electrical Engineering, IIT Kanpur was also requested vide letter dated 05.09.2018 to provide the same. However, the Department of Electrical Engineering, IIT Kanpur vide letter dated 24.10.2018 intimated the commercial details of the requisite test which are as under:

- i. No. of panels :- 05 panels.*
- ii. Total Testing fee :- Rs. 30 ,000*

E.9 in the context above I observe that despite the department being ready for payment of testing fee the requisite test could not be conducted due to the unavailability of representative panels i.e. 05 panels max as required by the Department of Electrical Engineering, IIT Kanpur. Therefore I am proceeding to decide the issue as per available records.

It is seen from paragraph E.8 and E 9 of the impugned order that Department attempted to obtain an opinion from IIT Kanpur as to whether the imported goods are equipped with bypass diodes or blocking diodes and in reply to the said query the concerned Department of Mechanical Engineering IIT, Kanpur stated that test is not possible in their laboratory. This clearly shows that the test report is not conclusive and cannot be relied upon for determining classification in the present case in as much as the expert agency has admitted that the required test to find out if the solar modules had passing diodes is not possible at the laboratory. Further despite approaching Department of Electrical Engineering, IIT Kanpur the department was informed that the test could not be carried out due to non availability of samples. It can therefore be stated that the imported goods were not

tested on vital parameters as clarified in circular issued by the board and accordingly the contention of the Appellant that the test report of IIT Kanpur cannot be taken as a conclusive document to determine whether the solar modules were capable of transferring power to external load merits acceptance. Without the same classification of impugned goods under CTH 8501 is not possible. Curiously the Adjudicating authority has recorded that the order is being passed basis available records however we are unable to see the records which lead him to confirm the classification suggested by the department inasmuch as the sole document viz. the Test Report of IIT Kanpur was not conclusive to show that the goods were capable of transferring power to external load. No other evidence has been relied upon supporting the case of the department.

19. While the Department argued that the solar modules are classifiable under CTH 8501, they have not provided any evidence to substantiate their claim. We find merit in Appellants submission that if the Department intends to classify the goods under a particular heading or sub-heading different from that claimed by the assessee, the Department has to adduce proper evidence and discharge the burden of proof. This view is fortified by the Hon'ble Supreme Court decision in HPL Chemicals vs. Commissioner of Central Excise, Chandigarh as reported in 2006 (197) ELT 324 (SC).
20. Having held the above, we note that, Paragraph 3 of the Test report records that the imported solar modules are not equipped with any elements that can regulate the wattage/voltage of the module or can allow for the storage of power so that the module can function as a generator. This would go on to show that Solar Modules were not capable of transferring Power to external Load on their

own. The IIT Kanpur test report apart from being inconclusive appears to be contradictory in nature.

21. Further, we note that the Appellant has submitted certificate of the Chartered Engineer M/s. R K Patel & Co. dated 01.03.2017, wherein it is specified that the imported solar modules contains 'bypass diodes'. The last para of the certificate reads as under:

I hereby certify that materials (solar PV module) imported by M/s. Prayatna Developers Pvt Ltd against bill of lading no. GOSUSNH8142222 dated 11.01.2017, GOSUSNH8142223 dated 11.01.2017, GOSUSUNG8489566 dated 12.01.2017 and GOSUNGB489567 dated 12.01.2017 do not supply power directly to an external load.

22. Certificate dated 02.05.2018 issued by PI Photovoltaic Institute (Suzhou) Co Ltd certifies that the imported solar modules only contains 'bypass diodes' and not 'blocking diodes'. Relevant extract of the certificate reads as under:

This is to certify that above mentioned Solar PV modules manufactured and supplied by M/s. Zhejiang jinko Solar. Co., Ltd. to M/s. Prayatna Developers Private Limited was inspected and test witnessed during manufacturing at Manufacturer's work by our inspector.

Three (3) Nos. diodes provided in Junction box are by-pass diodes for protection of Solar PV modules against overheating due to partial shaded condition and not as blocking diode to control the direction of Power.

This certificate issued by the Chartered Engineer has

been brushed aside by the Adjudicating authority without giving any reasons as to why views of an expert are required to be rejected. In the case of IIT Kanpur Test Report they have themselves admitted that they were not equipped to determine if the Sample has bypass diodes or blocking diodes or both. Further we note that the Appellants, right from the start of investigations were of the view that the imported goods only possessed bypass diodes which made it impossible for the module to transfer power on its own to an external load. The said stand of the Appellants has been approved by the CBIC Circular. The CBIC vide Instruction issued under F. No. 528/90/2016 – STO (TU) dated 06.04.2018 has clarified as under

The issue has been examined by the Board with reference to the decisions of World Customs Organizations in the matter and in this regard it is stated that the most common function of a diode is to allow an electric current to pass in one direction (in forward biasing), while blocking it in the opposite direction (in reverse biasing). Depending on its position in the solar module/panel, it is referred as bypass diode or blocking diode.

Bypass diodes: *These are commonly connected in parallel across pairs of solar cells or linear interconnected strands of cells, and prevent damage to solar coils when one or more cells receive much lower solar radiation than the rest of the array as when the sun's rays are temporarily blocked by a tree limb or other article producing shade), under normal conditions with no shading, every cell on the module will generate power and the bypass diode will be inactive as it will remain in reverse bias position. However, if part of the module becomes shaded (e.g. by a leaf or an object),*

the shaded cells will cease to generate power and will consume the energy produced by the active cells. As a result, the shaded cells would overheat and deteriorate. Bypass diode, therefore, protects the shaded cells from overheating, damage by diverting the electrical current around strings with shaded cells and through an external circuit. When part of the module becomes shaded, the bypass diode wired in parallel to the string with shaded cells will conduct current. As a result, the current will flow through the bypass diode and around the shaded string. Therefore, solar modules/panels equipped with such diodes would not meet the terms of the exclusion of the Explanatory Note to heading 85.41 and merits classification under CTH 8541.

Blocking Diode: *On the other hand, blocking diodes are usually attached in a series to the final output of the solar panel or module, and control the aggregate output for example, preventing a reverse power flow from a connected electric accumulator). Therefore, the function of blocking diodes is to prevent a reverse power flow from connected devices. Since the blocking diode blocks the current in the opposite direction, which can be considered as a control of the direction of the current as mentioned in the Explanatory Note to heading 85.01, therefore, solar modules/panels equipped with blocking diode merits classification under CTH 8501.*

4. In view of above, it is clarified that:

a. the solar panels or modules equipped with bypass diodes are classifiable in heading 8541.

b. the solar panels or modules equipped with blocking diodes are classifiable in heading 8501.

c. the solar panels or modules equipped with blocking diodes and bypass diodes are classifiable in heading 8501.

The department while issuing the SCN were bound by the said clarification and once they failed to provide evidence that the Solar Modules in Dispute had blocking diodes, the question of classifying the modules under 8501 did not arise. The Appellant right through had contended that the Modules imported by it had bypass diodes. In support of the said contention reliance was placed on certificate of the Chartered Engineer dated 01.03.2017, Test Report dated 13.09.2016 issued by TUV Rheinland, Shanghai and certificate dated 02.05.2018 issued by PI Photovoltaic Institute (Suzhou) Co Ltd. In such scenario the burden was on the department to show that the imported solar modules has blocking diodes through which power could be transferred/supplied to an external load, which they have failed to do so. The actions of the department to proceed contrary the clarification provided by CBIC is contrary to the law settled by the Hon'ble Supreme Court in Paper Products Limited as reported in 1999 (112) ELT 765 (SC).

23. In view of the aforesaid, while the Department has failed to substantiate its stand of classifying imported solar modules under CTH 8501, the Appellant has submitted evidence in favour of classification under CTH 8541.
24. Also, the contention of the Appellants that the department has accepted classification of similar Solar Modules under 8541, needs to be considered. We note that in relations to imports made by M/s Wardha Solar Maharashtra Pvt Ltd similar issues were raised by jurisdictional Commissionerate and vide Order-in-Original No. 54/2018-19/Commr/NS-V/JNCH dated 23.07.2018, the

Commissioner of Customs, Nhava Sheva has upheld the stand of the assessee by classifying the product under CTH 8541. The said order has been accepted by the department as no appeal was filed against the same. It is a settled law that the Department cannot take contradictory stand on the same issue and bound to maintain uniformity in classification of goods. Hon'ble Supreme Court in *Damodar J Malpani V Collector of Central Excise* as reported in 2002 (9) TMI 114 held that the revenue is required to maintain uniformity in classification failing which different classifications for same goods will be adopted by different Commissioners which cannot be permitted. Similarly, in *CCE Navi Mumbai Vs. Amar Bitumen & Allied Products Pvt Ltd* as reported in 2006 (8) TMI 187, the Hon'ble Supreme Court has held that once the department has accepted a stand it cannot be permitted to take contra stand in other proceedings. In the present case having accepted the classification of similar goods in *Wardha Solar case* (supra) the department cannot be permitted to take a contra stand more so in absence of any evidence in support of the purported different stand. The said stand further appears to be contrary to the clarification issued by CBIC which was binding on the department.

25. We note the arguments of the Appellants that demand under Section 28 cannot be confirmed in absence of finalisation of assessment, and are of the view that the same is settled in their favour in view of various decisions placed before us in compilation filed during the hearing. However, since we have provided detailed findings in favour of the Appellants on merits of the case, we are not going in to the above proposition.
26. We accordingly hold that the Solar Panel imported by the Appellants merit classification under CTH 8541 and as a

result the impugned orders in the captioned Appeals are set aside, and the appeals are allowed with consequential relief, if any, as per law.

(Pronounced in open court on 23 October, 2024)

Sd/-
(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

Sd/-
(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

Nihal