CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Customs Appeal No.20523 of 2014

(Arising out of Order-in-Original No.23/2013-Commr. dated 08.11.2013 passed by the Commissioner of Customs, Bangalore.)

M/s. Rittal India Private Limited
No.23 & 24,
KIADB Industrial Area,
Veerapura, Dodaballapur,
Bangalore - 561 203.

Appellant(s)

VERSUS

Commissioner of Customs,
Central Revenue Building,
P.B.No.5400: Queens Road,
Bangalore – 560 001.

Respondent(s)

WITH

(i) Customs Appeal No.20530 of 2014 (Debabrata Sinha vs. Commissioner of Customs, Bangalore.)

(Arising out of Order-in-Original No.23/2013 dated 08.11.2013 passed by the Commissioner of Customs, Bangalore)

(ii) Customs Appeal No.20531 of 2014 (Sugana Murthy Chari vs. Commissioner of Customs, Bangalore)

(Arising out of Order-in-Original No.23/2013 dated 08.11.2013 passed by the Commissioner of Customs, Bangalore.)

(iii) Customs Appeal No.20634 of 2014 (Suresh Kumar vs. Commissioner of Customs, Bangalore)

(Arising out of Order-in-Original No.23/2013 dated 08.11.2013 passed by the Commissioner of Customs, Bangalore)

(iv) Central Excise Appeal No.21866 of 2014 (Rittal India Private Ltd. vs. Commissioner of Customs, Bangalore.)

(Arising out of Order-in-Appeal No. 10/2014 dated 28.02.2014 passed by the Commissioner of Central Excise, Large Taxpayer Unit (Appeals), Bangalore)

APPEARANCE:

Shri Harish Bindumadhavan, Advocate, for the Appellant

Shri Maneesh Akhoury, Asst. Commissioner (AR) for the Respondent

CORAM: HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MRS R BHAGYA DEVI, MEMBER (TECHNICAL)

Final Order No. 20683 to 20687 /2024

DATE OF HEARING: 17.04.2024
DATE OF DECISION: 23.08.2024

PER : D.M. MISRA

This is an appeal filed against Order-in-Original No.23/2013-Commr. dated 8.11.2013 passed by the Commissioner of Customs, Bangalore and Order-in-Appeal No.10/2014 dated 28.2.2014 passed by the Commissioner of Customs (Appeals), Bangalore.

2. Briefly stated the facts of the case are that the appellant had imported various parts for manufacture of telecom racks by wrongly claiming the benefit of exemption Notification No.21/2002-Cus. dated 1.3.2002 and Notification No.12/2012-Cus. dated 17.03.2012 mis-declaring as parts for manufacture of Base Trans-receiver Station (BTS), whereas they were not manufacturing BTS equipment. On the basis of intelligence, it is alleged that the appellants are manufacturers of telecom racks for which they import radial/centrifugal fan, temperature control module, CS lock tongue, lamp cable, etc., declaring the same as "Parts for BTS rack, Parts for Base-receiver Stations, For BTS, Parts of Telecom Racks", etc., and claimed exemption under Sl. No.242 of Notification No.21/2002-Cus. dated 01.03.2002 as amended and Sl. No.372(ii) under Notification No.12/2012-Cus. dated 17.3.2012 as parts for manufacture of BTS (Sl. No.3(a) of List 22 and List 17 applicable to Sl. No.242 of Notification No.21/2002-Cus. dated 01.03.2002 as amended and Sl. No.372(ii) under Notification No.12/2012-Cus. dated 17.03.2012). Show-cause notice was issued to the appellant on 05.06.2013 for recovery of the customs duty short-paid amounting to Rs.84,41,352/- with interest and proposal for imposing penalty under Section 114A and Section 114AA of the Customs Act, 1962, during the period June 2008 to November 2012. On adjudication, the demand was confirmed with interest

and penalty under Section 114A, 114AA and personal penalty on the employees of the appellant. In appeal No.E/21886/2014, appellant vide application dated 22.3.2013 requested the Deputy Commissioner, LTU, Bangalore to issue Annexure-III certificate, which was rejected vide letter dated 25.7.2013, observing that they have wrongly claimed exemption under Notification No.21/2012-Cus. dated 01.03.2012 and Notification No.12/2012-Cus. dated 17.03.2012. Aggrieved by the said orders, appellant filed appeals before the learned Commissioner/Commissioner (A) who has upheld the orders of the adjudicating authority. Hence, the present appeals.

3. At the outset, the learned advocate for the appellant submitted that appellant is a wholly owned subsidiary of Rittal GmbH & Co. KG, Germany and they are engaged in the business of manufacturing enclosure systems including enclosures for communication systems (commercially known as 'telecom racks' or 'outdoor cabinet'). These 'telecom racks' form an integral part of Base Trans-receivers Stations ('BTS'), which is an equipment used for transmitting and receiving radio signals. A BTS consists of several active and passive components, such as trans-receivers, antennas, air conditioning unit, electrical supply, back-up power supply, etc. All these components are integrated and housed in 'telecom racks' sold by the Appellant. He submits that various parts including radial/centrifugal fans, temperature control module, gore cooling filters, air to air heat exchanger are imported by the Appellant and installed in the telecom racks and sold to Ericsson India Private Limited in terms of the Agreement entered between the Appellant and Ericsson following which Ericsson would then assemble other components in these 'telecom racks' and supply the same to various telecom service providers as a single BTS unit. He submits that BTS are exempt from whole of customs duty in terms of Notification No. 21/2002-Customs dated 01-03-2002 and Notification No. 12/2012-Customs dated 17-03-2012 and the Appellant manufactures telecom rack, which is an integral part of BTS,

exemption was claimed in terms of entry at S. No. 242 and 372(b) of the above notifications, respectively.

3.1 Further, he submits that a BTS consists of two parts – outdoor cabinet/rack fitted with cooling components such as radial fans, gore cooling filters, etc., manufactured by the Appellant) and active components such as Base Band Unit (BBU), radio equipment, transmission equipment, etc., manufactured by Ericsson. It is submitted that only when the above parts are put together, it qualifies as an operational/functional BTS. Without either of the parts, the BTS is incomplete and cannot function efficiently. In support, definition of BTS given in Newton's Telecom Dictionary is relied upon, which reads as:–

> "*The **electronic equipment housed in cabinets** that together with antennas comprises a PCS facility or site. The cabinets include an air conditioning unit, heating unit, electrical supply, telephone hook-up, and back-up power supply*".

A plain reading of the above definition shows that BTS is an electronic equipment housed in cabinets. Therefore, the telecom racks/cabinets manufactured by the Appellant form an integral part of BTS. In other words, without the cabinet/rack along with other necessary items, the station is incomplete as they play a major role in the efficient functioning of BTS.

3.2 Further, reliance was placed on the following case to hold that telecom racks/cabinets form an integral part of BTS without which BTS will not function:

- ***Hutchison Essar South Ltd. v. Commissioner of Customs, Bangalore, 2006 (193) ELT 81 (Tri.-Bang.)***
- ***Commissioner of Customs, Bangalore v. Hutchison Essar South Ltd., 2015 (324) ELT 240 (SC).***
- ***Commissioner of Customs, Bangalore v. Spice Telecom, 2006 (203) ELT 538 (SC)***

3.3 He submits that from technical reports from ITI Ltd., Siddaganga Institute of Technology and Indian Institute of

Technology, Delhi, submitted by the appellant show that telecom racks/cabinets manufactured by the Appellant form an integral part of BTS. In view of the above submissions, appellant claim that the cabinets/telecom racks manufactured by them are parts of BTS and exemption was rightly available to them.

3.4 He further submits that 'part of part' will constitute 'part of whole' and telecom racks/cabinets are nothing but parts of BTS and that they are eligible to avail the exemption Notification. To buttress his claim on this ground, he has relied upon following decisions:

- ***Collector of Central Excise v. Mahendra Engg. Works, 1993 (67) ELT 134 (Tribunal)***
- ***Collector v. Mahendra Engg. Works, 2002 (141) ELT A284***
- ***Commissioner of C. Ex., Calcutta-II v. Bansal Industrial Corporation, 1997-VIL-95-CESTAT-KOL-CE***
- ***Pushpam Forging v. Commissioner of Central Excise, Raigad, 2006 (193) ELT 334 (Tri.-Mumbai)***
- ***M/s. Racily Udyog, Shri Kalyan Das v. Commissioner of Central Excise, Kolkata-III, 2023-VIL-411-CESTAT-KOL-CE***

3.5 He submits that neither the show-cause notice nor the order expressly brings out the omissions or commissions on the part of the functionaries but merely states that penalty is imposed on account of the act of omission or commission. Hence, when there is no intent to evade duty, personal penalties imposed on the appellant are not sustainable and liable to be set aside.

4. The learned Authorised Representative (AR) for the Revenue referring to the Notification No.21/2012-Cus. dated 01.03.2012 and Notification No.12/2012-Cus. dated 17.03.2012 submitted that it is evident that the imported goods are to be used for manufacture of BTS by following the procedure prescribed under Import of Goods at Concessional Rate for Manufacture of Excisable Goods (IGCRME) Rules, 1996 as amended. The appellant asserted that they are manufacturing intermediary goods and parts of BTS and nowhere it is said that

the imported goods are to be used for manufacture of final goods and not the intermediary goods as claimed by the appellant, does not in any way provides them the liberty to construe the Notification as per their convenience. Rather, for strict interpretation of the Notification, it is imperative that the Notification should specify that the imported goods may be used for manufacture of intermediary goods/parts of BTS and in the absence of the same, the benefit of the Notification has been rightly denied in the impugned orders.

4.1 It is his contention that the question to be decided is not as to whether the denial of benefit is correct or otherwise, rather than the question to be decided is whether the benefit of Notification is correct, just and legal or not. The Notification should be strictly interpreted as held by the Hon'ble Supreme Court in the case of **Hari Chand Shri Gopal: 2010 (16) ELT 3 (SC)** and **Dilip Kumar & Co.: 2018 (361) ELT 577 (SC)**.

4.2 Further, he has submitted that the appellant have claimed that they were manufacturing telecom racks which are integral part of BTS. In order to substantiate their claim, they produced letter from their client M/s. Ericsson, Technical Reports from SIT, Tumkur and IIT, Delhi. The letter issued by M/s. Ericsson cannot be taken as having any evidentiary value since the appellants were their suppliers and there is mutual interest involved. On the technical write-up of SIT, Tumkur and IIT, Delhi, the learned AR raising doubt on the said letters submitted that it contains same subject, paragraphs, wordings, lines, coma and full stop but only the letterheads, date and signature vary. Thus, it is a deliberate attempt by the appellant to place on record concocted evidence and misguide the Tribunal. On this ground alone, appeal is liable for dismissal. Further, he submitted that despite the said fact, even on merits, the adjudicating authority has considered the said two technical write-ups and it is evident from both the write-ups that the appellants are manufacturing only semi-finished parts and not parts of BTS. In support, he has referred to the judgment of this Tribunal in the case of M/s. Raydean Industries vs. The Commissioner of Central Goods and Service Tax: 2022-TIOL-355-CESAT-DEL.

4.3 Rebutting the argument of the learned advocate that the demand is barred by limitation, the learned AR for the Revenue has submitted that the Registration Certificate of the appellant is for manufacture of "Parts of Telecom Racks" whereas in Annexure-III, the application is for import of "Parts for Base Trans-receiver Station". Thus, the declaration filed by the appellant for Registration and in Annexure-III applications are different, hence, there is a deliberate attempt on the part of the appellant causing mis-statement and suppression of facts with an intention to avail the benefit of Notification and evade customs duty, therefore, invocation of extended period of demand is correct and justified. Also for the said reasons, liability for confiscation under Section 111(m) and 111(o) and penalty under Section 112, 114A and 114AA on the appellants are justified.

6. The issues involved in the present case for consideration are whether:

(i) the parts imported and used in the manufacture of 'telecom racks' eligible to the benefit of Notification No.21/2002-Cus. dated 01.03.2002 and Notification No.12/2012-Cus. dated 17.03.2012.

(ii) extended period of limitation is applicable.

7. The appellants had imported the following parts claiming exemption under Notification No.21/2002 Cus & 12/2012 Cus during the relevant period:

a. Radial/centrifugal fans
b. Temperature control module
c. CS lock tongue and CS lock middle block
d. CS door stay
e. Alarm cable

f. Lamp cable
g. Ergoform S handle
h. Dirak lock insert
i. Gore cooling filters
j. Air-to-air heat exchanger
k. CS lock bar stay
l. Hinge,
m. cable hex side & cable hex door
n. CS thermal isolation foam
o. Lamp bulb
p. Lamp holder
q. CS OVP grounding screw
r. Screw M5 X 15 SS Torx head
s. KSS edge protection
t. CS BS and M5-2 screw

8. The said parts are used in the manufacture of telecom racks i.e., outdoor compact enclosures/outdoor cabinets, following the procedure laid down under Customs(Import of Goods at concessional rate for Manufacture of Excisable Goods),Rules,1996. The said manufactured 'telecom racks' are supplied to M/s. Ericsson India Pvt. Ltd., who in turn assemble with other components to manufacture 'Base Trans-receiver Station'(BTS) and supply the same to various telecom service providers . The appellant claimed exemption under Sl. No.242 Notification No.21/2002-Cus. dated 01.03.2002 being parts of Goods of sr.239 read with goods in List No.22 appended to the said Notification. The conditions prescribed for serial No. 239 is condition No.47 and for serial No. 242 is condition No.5.

9. The relevant entries of the said Notification is reproduced below:

S. No.	Chapter or Heading or sub-heading	Description of goods	Standard rate	Additional duty rate	Condition No.
239	84, 85 or 90	Goods specified in List 22 required for basic telephone service, cellular mobile telephone service, internet service or closed users' group 64 KBPS domestic data network via INSAT	Nil	-	47

		satellite system service			
242	84, 85 or any other Chapter	Parts of goods specified at S. No. 239, 240 and 241 above	Nil	-	5

List 22 (See S. No. 239 of the Table)

(1) Telephonic or telegraphic apparatus of the following description:

(a) Switching apparatus for cellular mobile telephone service
(b) Base station controllers
(c) ATM Switches
(d) Frame Relay Switches
(e) Ethernet Switches

(2) Apparatus for Carrier Current Line System or Digital Line System of the following description:-

(a) HDSL System
(b) Dense Wave Division Multiplexing (DWDM) System
(c) Routers

(3) Radio communication equipment including VHF, UHF and microwave communication equipment of the following description:-

(a) **Base Transreceivers stations (BTS)**
(b) Satellite communication equipment; the following customer premises equipment, namely:-

(i) Radio with LNA,up converters and down converters
(ii) Satellite modems

(c) BTS ancillary equipment of the following description,-

(i) Cellular repeaters
(ii) Amplifiers
(iii) Wave Guides
(4) Network management stations
(5) Computers for billing and customer services
(6) Short message service hardware/Voice mail service hardware
(7) Automatic call distribution system
(8) Transcoders
(9) Test equipment

Note:- Goods specified against item 1(a) is to be imported only by Cellular Mobile Telephone Service Licensees and Universal Access Service Providers.

Condition No.	Conditions
5.	If the importer follows the procedure set out in the Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 1996.
47.	If imported by a person licensed by the Department of Telecommunications of the Government of India for the purpose of providing basic telephone service, cellular mobile telephone service, value added services via V-SAT system or Internet Service

10. Subsequently, Notification No.12/2012-Cus. dated 17.03.2012 was issued whereunder the appellant claimed the benefit under Sl. No.372(ii) of List 17. The conditions prescribed under the said Notifications are 5 and 52 which reads as follows:

Sl. No.	Chapter or Heading or sub-heading or tariff item	Description of goods	Standard rate	Additional duty rate	Condition No.
372	84, 85 or 90	(i) Goods specified in List 17 required for basic telephone service, cellular mobile telephone service, internet service or closed users"s group 64 KBPS domestic data network via INSAT satellite system service. Notwithstanding anything contained in List 17, the exemption shall not apply to the following goods falling under 8517, namely:- (a) Soft switches and Voice over Internet Protocol (VoIP) equipment namely VoIP phones, media gateways, gateway controllers and session border controllers; (b) Optical Transport equipment; combination of one or more of Packet Optical Transport Product/Switch(POTP/POTS), Optical Transport Network(OTN) products, and IP Radios; (c) Carrier Ethernet Switch, Packet Transport Node (PTN) products, Multiprotocol Label Switching-Transport Profile (MPLS-TP) products; (d) Multiple Input / Multiple Output (MIMO) and Long Term Evolution (LTE) Products.	Nil	-	52
		(ii) Parts, for manufacture of the goods at (i)	Nil	-	5

List 17 (See S. No. 372 of the Table)

(1) Telephonic or telegraphic apparatus of the following description:

(a) Switching apparatus for cellular mobile telephone service
(b) Base station controllers
(c) ATM Switches
(d) Frame Relay Switches
(e) Ethernet Switches

(2) Apparatus for Carrier Current Line System or Digital Line System of the following description:-

(a) HDSL System
(b) Dense Wave Division Multiplexing(DWDM) System
(c) Routers

(3) Radio communication equipment including VHF, UHF and microwave communication equipment of the following description:-

(a) Base Trans-receivers stations (BTS)
(b) Satellite communication equipment; the following customer premises equipment, namely:-

(i) Radio with LNA, up converters and down converters
(ii) Satellite modems
(c) BTS ancillary equipment of the following description,-
(i) Cellular repeaters
(ii) Amplifiers
(iii) Wave Guides

(4) Network management stations
(5) Computers for billing and customer services
(6) Short message service hardware
(7) Automatic call distribution system
(8) Transcoders
(9) Test equipment

Note:- Goods specified against item 1(a) is to be imported only by Cellular Mobile Telephone Service Licencees and Universal Access Service Providers

Condition No.	Conditions
5.	If the importer follows the procedure set out in the Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 1996.
52.	If imported by a person licensed by the Department of Telecommunications of the Government of India for the purpose of providing basic telephone service, cellular mobile telephone service, value added services via V-SAT system or Internet Service

9. The Revenue alleging that the appellants are not using imported parts in the manufacture of the BTS system(sr. no 3(a) of List 22), but used it in the manufacture of outdoor cabinets, which after installation of other systems at the premises of M/s. Ericsson becomes parts of the BTS system. The

appellant had argued that outdoor cabinets Telecom Racks forms an integral part of BTS, thus, imported goods for manufacture of parts of telecom racks are also parts of BTS. It is their contention that part of part will construe part as a whole. In support, they have referred to the judgment of this Tribunal in the case of Collector of *Central Excise v. Mahendra Engg. Works, 1993 (67) ELT 134 (Tribunal)* and *M/s. Racily Udyog, Shri Kalyan Das v. Commissioner of Central Excise, Kolkata-III, 2023-VIL-411-CESTAT-KOL-CE.*

10. The learned Authorised Representative for the Revenue on the other hand heavily relied upon the judgment of the Principal Bench of the Tribunal in the case of **Raydean Industries Ltd.** (supra). Further, he has submitted that the exemption Notification has to be strictly construed in view of the ratio laid down by the Hon'ble Supreme Court in the case of **Hari Chand Shri Gopal** (supra) and **Dilip Kumar and Co.'s** case (supra).

11. We have carefully analysed the arguments advanced by both sides. From the facts, it is clear that the imported parts classified under different Tariff Headings are used in the manufacture of outdoor cabinets which is called as Telecom Racks by the appellant and the outdoor cabinets are ultimately cleared by the appellant to M/s. Ericsson. The outdoor cabinets are enclosures with doors and panels made to specified dimension and fitted with various items such as fans, filters, cables, etc. They provide necessary cooling, cable entry and electrical connection for the complete function of BTS. The enclosures protects the BTS from dust and rain. It is supplied to M/s. Ericsson India Pvt. Ltd. who in turn mount the outdoor BTS inside the outdoor cabinet and integrated sub racks to generate signals as a 'Base Trans receiver Station'.

12. This Tribunal has considered in **Raydean Industries case** (supra), the claim of the appellant that "Module Mounting Structures" whether could be considered as part of 'Solar Power

Generating System’. Sl. No.332 of the Notification No.12/2012-Cus. dated 17.03.2012 allowed Non-conventional Energy Device specified in List 8. The appellant claimed the parts as ‘Solar Power Generating System’ where a specific mention about the parts consumed within the factory and production of such parts for manufacture of the goods specified at Sl. No.1 to 20 has been prescribed. After analysing the entries, this Tribunal observed as:

> “14. It is not possible to accept this contention of the learned counsel of the appellant. What has been exempted from payment of central excise duty under serial no. 332 of the notification dated17.03.2012 is 'non-conventional energy devices or systems' specified in List 8. At serial number (10) of List 8, 'solar power generating system' is mentioned. Serial number (21) of List 8 mentions 'parts consumed within the factory of production of such parts for the manufacture of goods specified at serial numbers 1 to 20'. Only such parts are exempted from payment of central excise duty which within the factory of production of such parts for the manufacture of goods specified at serial numbers 1 to 20 and not parts of water pumping station. It needs to be noted that entry number (10) of List 8 mentions 'solar power generating system' and not 'module mounting structures'.
>
> **...........**
>
> 18. It is, therefore, not possible to accept the contention of learned counsel for the appellant that the module mounting structures' should be granted exemption from payment of excise duty in terms of the notification dated 17.03.2012 and not the 'solar power generating system'.
>
> **............**
>
> 21. An exemption notification has to be strictly construed, as was observed by the Supreme Court in *Commnr. of Customs (import), Mumbai versus M/s. Dilip Kumar and Ors. 2016 (5) TMI 185 – Supreme Court = 2018-TIOL-302-SC-CUS-CBand in Larsen & Toubro Ltd. versus Commissioner of Central Excise, Hyderabad 2015 (324) E.L.T. 646 (S.C.) = 2015-TIOL-236-SC-CX.*

> 22. The distinction sought to be drawn by the learned counsel for the appellant between 'devices' and 'systems' is not of relevance to the present case because both non-conventional energy devices or systems specified in List 8 are covered by the description of excisable goods."

13. Applying the principle laid down by the Tribunal in the aforesaid case to the facts and circumstances of the present case, we find the Appellant claimed exemption on the imported parts listed above under Sl. No.242 of the Notification 21/2002 Cus./ sr. no. 372 of Notification No. 12/2012cus which allows exemption to imported parts of 'specified goods' at List 22/17 referred in Sl. No.239/372 of the respective Notifications as the case may be, viz.

> "3) Radio communication equipment including VHF, UHF and microwave communication equipment of the following description:-
>
> (a) **Base Transreceivers stations (BTS)"**

In the instant case the use of imported parts were in the manufacture of Outdoor cabinets, which were cleared to M/s Ericson, who further uses the same in the manufacture and clears it to licensed Telecom service provider to be used as BTS. Needless to mention the principle strict interpretation has to be applied in extending the benefit of an exemption Notification as laid down by the Hon'ble Supreme Court in the case of **Dilip Kumar and Co.'s** case (supra).

14. Applying the said test, we are of the view that appellants are not eligible to the benefit of exemption Notification No.21/2002-Cus. dated 01.03.2002 as amended and Notification No.12/2012-Cus. dated 17.3.2012 for the imported parts, classifiable under various subheading of the Tariff Act, which in turn used in the manufacture of outdoor cabinets/Telecom Racks, which subsequently used by M/s Ericson in the

manufacture of BTS to Telecom service provider classifying the same BTS system.

15. The reference made by the learned advocate to the judgments of the Tribunal in ***Hutchison Essar South Ltd.*** *case* (supra) is not relevant to the facts of the present case in as much as the question involved in the said case was admissibility of exemption to antenna and also to installation materials imported be entitled to the benefit of Notification No.21/2002-Cus. dated 01.03.2002 against Sl. No.239 as part of all radio communication equipment used for cellular module telephone. This Tribunal held that "antenna and installation material (cables)" are entitled for the benefit of the Notification against Sl. No.3 of List 22 of Sl. No.239 of the said Notification No.21/2002-Cus. dated 01.03.2002. Also, the judgment cited by the learned advocate in support of their contention that parts of the parts are admissible to the benefit of the said Notification **L.G. Electronics India Pt. Ltd. Vs. Commissioner of Customs, Mumbai,** not applicable to the present case as the issue involved for determination in the said appeal was parts and components of the mobile handsets imported separately in SKD conditions whether would be eligible to exemption under Notification No.21/2002-Cus. dated 01.03.2002 as parts, components and accessories of mobile handsets including cellular phones. Similarly in the judgment of the Tribunal in the case of **Mahendra Engineering Works** (supra) where stampings and laminations used in the manufacture of electric motors or rotors which is used as parts and components in the manufacture of power-driven pumps under Notification No.236/1986 also not applicable to the facts of the present case. Similarly, the judgment of the Tribunal in the case of **M/s. Racily Udyog, Shri Kalyan Das**'s case, whether battery is considered as a part of the Solar Power Generating System, is not applicable to the present case as the Solar power batteries are directly used in the Solar Power Generating System and not

undergone further manufacture to be used in the Solar Power Generating System.

16. On the issue of limitation, we find that the appellant has been importing the said materials declaring the description of the goods correctly mentioned as above classifying the same under respective Tariff Heading. For example, in the Bill of Entry dated 24.07.2012: imported item was "Radial Fan"; Bill of Entry dated 14.04.2012: CS Door Stay (Steel); Bill of Entry dated 16.4.2012; Temperature Control Module and subsequently obtained necessary permission under Annexure-III to manufacture outdoor cabinets/Telecom Racks from the department indicating relevant Notification number and its declaration as "to use the said imported air filter elements for the manufacture of parts of Telecom Racks" and necessary endorsement and counter signature obtained in the said application from the Central Excise authorities. Therefore, no facts was suppressed from the knowledge of the department about import of the said parts and its use in the manufacture of outdoor cabinets/Telecom Racks by the Appellant which had been cleared to M/s Ericson as part of BTS system.; therefore, invoking extended period of limitation in confirming the demand cannot be sustained. Consequently, imposition of penalty on the appellant and personal penalty on individuals also not warranted and accordingly are set aside.

17. Since it is held that the appellants are not eligible to avail the benefit of Notification No. 21/2002 Cus. & 12/2012 Cus. with regard to the imported goods used in the manufacture of outdoor cabinet, the application by the appellant in compliance with Condition 5 of the said Notifications read with Import of Goods at Concessional Rate for Manufacture of Excisable Goods (IGCRME) Rules, 1996 has been rightly denied by the lower authorities.

18. In the result, the denial of the benefit of the Notification No.21/2002 Cus. & 12/2012 Cus. is upheld; the demand for the extended period is set aside and the demand with interest be restricted to the normal period. Consequently, the Appeal No. C/20523/2014 and E/21866/2014 are disposed of on above terms and appeal Nos. C/20530, 20531, 20634/2014 are allowed.

(Order pronounced in Open Court on 23.08.2024.)

(D.M. MISRA)
MEMBER (JUDICIAL)

(R BHAGYA DEVI)
MEMBER (TECHNICAL)

RV