CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. IV

EXCISE APPEAL No. 52948/2019

(Arising out of Order in Appeal No. 278 (CRM)/CE/JPR/2019 dated 14.10.2019 passed by the Commissioner (Appeals), Central Excise & Central Goods & Service Tax, Jaipur)

M/s. KEC International Limited **...Appellant**
14-15, Benar Road, Industrial Area,
Jhotwara, Jaipur – 302012.

Versus

Commissioner of
Central Excise & CGST, Jaipur-I **....Respondent**

APPEARANCE:
Mr. Mehul Jiwani, Chartered Accountant for the appellant
Mr. Sanjay Kumar Singh, Authorized Representative for the Respondent

CORAM : HON'BLE MR.P.V. SUBBA RAO, MEMBER (TECHNICAL)
HON'BLE DR.RACHNA GUPTA, MEMBER (JUDICIAL)

Date of Hearing/ Decision: **19/07/2022**

FINAL ORDER No. 50682/2022

DR.RACHNA GUPTA

The appellant herein is engaged in manufacture of Galvanized TL Tower & Parts, Steel Scrap, Zinc Dross etc. During the course of audit of their records, Department observed that appellants have cleared Galvanised Solar Structures during the period from October, 2016 to June, 2017 to various solar power generating Companies by claiming exemption under Notification No.15/2010 dated 27.02.2010 as amended vide Notification No.26/2012 dated 08.05.2012 alleging that the mounting structures cleared by the appellant do not fall under any of the category mentioned in the Notification dated 27.02.2010 that a show cause notice No.1159 dated 28.09.2018 was served upon the appellant demanding the Central Excise Duty amounting to Rs.1,11,61,424/- not being paid by them due to incorrect availment of the exemption Notification of 27.02.2010. The demand of interest and imposition of penalty was also proposed vide the said Show Cause Notice. The proposal was confirmed vide Order-in-Original bearing No.12/2018 - 19 dated 07.02.2019. The order has been upheld by Commissioner (Appeals) vide Order in Appeal No.278/2019 dated 14.10.2019. Being aggrieved, the appellant is before this Tribunal.

2. We have heard Mr. Mehul Jiwani, Chartered Accountant for the appellant and Mr. Sanjay Kumar Singh, Authorized Representative for the Respondent.

3. Learned Counsel for the appellant submitted that the supplies of module mounting structure was made against the purchase orders by the buyers who categorically mentioned that the goods are exempted goods by MNRE Certificates. The purchase order clearly reflects that the purchases are for solar power projects. The MNRE Certificate also certifies the said purpose. Not only this, the appellant had given a prior intimation to the Assistant Commissioner, about the clearances of the impugned goods without payment of duty. The copy of the MNRE Certificate was also annexed with the said intimation. They submitted that earlier

also a Show Cause Notice was issued to the appellants with the same allegations as the one in the present case. The said Show Cause Notice has been adjudicated vide Order-in-Appeal No. 236/2019 dated 02.09.2019 in favour of the appellants. Commissioner (Appeals) despite appreciating the findings of the said decision has wrongly relied upon the decision of Apex Court in the case of **M/s. Saraswati Sugar Mills Ltd. vs. Commissioner of Central Excise, Delhi-III reported as 2011 (270) ELT 0465 (SC)**. It is further submitted that even this Tribunal has considered the identical issue and decided the same in favour of the appellant vide its Final Order No.50404/2022 dated 10.05.2022. The order accordingly, is prayed to be set aside.

4. Per contra, learned D.R. has emphasized the correctness in the order under challenge. Impressing upon no infirmity therein the appeal in hand is prayed to be dismissed.

5. Having heard the rival contentions and having given careful consideration to the facts and records of the case we are of the opinion that the sole issue involved herein is :

"Whether the Galvanized Structure cleared by the appellant to solar power generating companies is a product covered under and is entitled to the benefit of exemption Notification No.15/2010-CE dated 27.02.2010 as amended vide Notification No.26/2012 dated 08.05.2012."

For this purpose foremost the Notifications need to be looked into which reads as follows:-

"Notification No.15/2010-CE dated 27.2.2010:

Solar power generation project or facility — Exemption to specified goods required therefor

In exercise of the powers conferred by sub-section (1) of section 5A of the Central Excise Act, 1944 (1 of 1944), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts all items of machinery, including prime movers, instruments, apparatus and appliances, control gear and transmission equipment and auxiliary equipment (including those required for testing and quality control) and **components**, required for initial setting up of a solar power generation project or facility, from the whole of the duty of excise leviable thereon which is specified in the First schedule to the Central Excise Tariff Act, 1985 (5 of 1986), subject to the following conditions, namely :-

(1) before the clearance of the goods from the factory, the manufacturer produces to the Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be, a certificate, from an officer not below the rank of a Deputy Secretary to the Government of India in the Ministry of New and Renewable Energy recommending the grant of this exemption and the said officer certifies that the goods are required for initial setting up of a solar power generation project or facility; and

(2) the manufacturer of such goods furnishes an undertaking to the Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be, having jurisdiction, to the effect that-

(a) the said goods shall be used only in the said project or facility and not for any other use; and

> (b) in the event of failure to observe conditions above, the manufacturer shall pay the duty which would have been leviable at the time of clearance of goods, but for this exemption.".

Notification No.26/2012-CE dated 8.5.2012:

Exemption to machinery items, etc. for initial setting up of solar power generation project or facility —

Amendment to Notification No. 15/2010-C.E.

In exercise of the powers conferred by sub-section (1) of section 5A of the Central Excise Act, 1944 (1 of 1944), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby makes the following amendments in the notification of the Government of India, in the Ministry of Finance (Department of Revenue), No. 15/2010-Central Excise, dated the 27th February, 2010, published in the Gazette of India, Extraordinary vide number G.S.R. 117(E), dated the 27th February, 2010, namely :-

In the said Notification, for conditions (1) and (2), the following shall be substituted, namely: -

(1) an officer not below the rank of a Deputy Secretary to the Government of India, in the Ministry of New and Renewable Energy recommends the grant of this exemption, indicating the quantity, description and specification thereof and certifies that the goods are required for initial setting up of a solar power generation project or facility; and

(2) the Chief Executive Officer of the project furnishes an undertaking to the Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be, having jurisdiction over the factory of the manufacturer, to the effect that-

(i) the said goods will be used only in the said project and not for any other use; and

(ii) in the event of non-compliance of sub-clause (i), the Project Developer of such project shall pay the duty which would have been leviable at the time of clearance of goods, but for this exemption.";

6. The bare perusal of these Notifications clarifies that it exhaustively covers all items which are required for the initial set up of a solar power generation project. The goods manufactured and cleared by appellant is admittedly module mounting structure for solar panels. No doubt, this word specifically is not mentioned in the Notification, but from the submissions of the appellants and the data provided about the solar roof top system, it is observed that these structures are meant to hold the power generating solar panels at a particular angle. This angle is important to ensure that for a maximum time in a day the sun rays are perpendicular to these panels. In absence of these structures, the solar panels would be laid on the ground that is at Zero Degree angle which will give the least output as the sunrays shall be perpendicular to the solar panel only at one point of time during the entire day i.e. at 12 P.M. Since viability of power plant depends upon the power output and the output directly depends on the angle at which the structure holds the panel, hence, these structures are the integral component of the solar power generation plant.

7. Ministry of New and Renewable Energy in a letter No.24/40/2012 -13 dated 27.02.2013 as was sent to the

Department of Revenue, with reference to the correspondence, has clarified that module mounting structures form such essential part of solar power plant that they were the '**components'** of the plant and hence were covered in the Notifications issued in this regard. The word component is no where been defined in the excise law. The dictionary meaning thereof has to be looked into. Cambridge dictionary define **component** as a part that combines with other parts to form something bigger, a bigger system, process or machine. Merriam Webster Dictionary defines **component** as something integral part or element of a larger whole especially a part of machine or vehicle. Since the goods in questions are not denied to be the parts of solar power plant, and have been certified by the competent authority as essential components required for initial setting up of a solar panel plant.

8. The Larger Bench of this Tribunal in the case of Jindal Strips Ltd vs. Collector of Customs, Bombay reported in 1997 (94) ELT 234 (Tribunal) has also defined the meaning of **Component** as :

> *"The common parlance meaning of the expression `component' is one of the parts or elements of which anything is made up or into which it may be resolved or a constituents. The meaning in common parlance has to be looked into since the notification itself does not contain any definition of the expression.*

It has also created a distinction between Component and spare in the following words:

> *A spare is a replacement part, to replace a damaged or worn out component; nevertheless it is a component part. `Component' is*

the genus and `spare' is a species that is, component which is used for replacement. If all that is available is the use of the expression `component' or `component part', the usage must be understood in its normal connotation, in the absence of any specific qualification or restriction. There are no qualifying or restrictive words used in Notification No. 77/90-Cus. The amplitude and significance of the word `component' cannot be cut down in the absence of clear words indicative of any intention to restrict its meaning and operation. The word `Component' indicates the nature of the article and not the user of the article while the word `spare' indicates the use to which the article is put and not the nature of the article. The nature of the spare is that it is a component and its use is as replacement. `Component' means an essential or integral part of the whole. Its user is in different contexts in the initial manufacture or as spare.

Thus, Component indicates the nature of the article and not the user of the article while the word "spare" indicates the use to which the article is put and not the nature of the article.

9. In view of above observations about meaning of '**Component**', we are of the opinion that the solar mounting structures are covered under Notification No.15/2010 dated 27.02.2010 as amended vide Notification No.26/2012 dated 08.05.2012.

10. We further observe that the said Notification is a conditional notification. One of the important condition is that an officer not below the rank of Secretary to the Government of India in the Ministry of New and Renewable Energy recommends the grant of this exemption indicating the quantity, description and specification thereof and certifies that the goods are required for initial setting

up of a solar power generation project or the facility. The said Certificate (MNRE Certificate) was provided by the appellant to the Department even prior making the impugned clearances. We observe that Department has not disputed the competence of the authority issuing the said certificate. Accordingly, it is clear that the condition of the notification for availing exemption from duty also stands complied with by the appellants.

11. Appellant has brought to the notice that similar allegations were earlier leveled against the appellant vide Show Cause Notice for the prior period denying the exemption of the impugned Notification for the same goods earlier cleared by the appellant during the period December, 2015 to September, 2015. The said Show Cause Notice has been decided by this Tribunal in favour of the appellant itself vide Final Order No.50404/2022 dated 10.05.2022 arising out of Order-in-Appeal No.236/2019 dated 02.09.2019. The said decision has relied upon several case laws in para 27 of the said judgment to hold that the impugned goods are nothing but the components for the solar panel and as such, are eligible for the exemption of the impugned Notification while observing as follows:

> "It is clear that experts in the field consider the Module Mounting Structure as an integral and essential component of the solar power systems and the Ministry implementing the projects also considers the same as components of the solar power plants and hence were covered by the notifications. Even by common understanding, a component is an essential part of the system without which the system would not function. Therefore, it is not

open to the department to deny the benefit of exemption notification. This view get support from the decision of this Tribunal in Lotus Power Gear Pvt. Ltd. reported as **2009 (248) ELT 919**"

12. We further observe that the Department also has adjudicated the identical issue however with respect to another manufacturer namely M/s. Pennar Industries Ltd. vide an order No.76/2013 and 59/2014 -Hyderabad-I dated 20.10.2014 wherein it is observed as follows:-

"7. The point of dispute between the department and the appellant is that the aforesaid items whether could be called as 'components' required for initial setting up of a solar power generation project or facility. On a plain reading of the aforesaid notification, it is clear that all items of machinery are exempted which included prime movers, instruments, apparatus and appliances, control gear and transmission equipment and auxiliary equipment (including those required for testing and quality control) and components. The items in dispute are claimed by the appellants as 'components'; since they are used in solar power generation or solar energy production project as evident from the purchase orders and excise duty exemption certificate, without mounting structures supplied by the appellant's solar plant cannot be completed. Thus the mounting structures is an integral part of the entire plant".

13. We observe that the Commissioner (Appeals) has taken note of above mentioned findings of previous departmental order, in the impugned order under challenge, however he has still taken a contrary view relying upon two decisions i.e. **M/s. Saraswati Sugar Mills (supra) and decision in the case of M/s. Bharti Airtel Ltd. vs. Commissioner of Central Excise, Pune**

reported in 2014(35) STR 865 but we are of the opinion that both these decisions are not at all applicable to the facts of the present case. In **Saraswati Sugar Mills** the goods in question were iron and steel structures which were not an essential requirement for the sugar manufacturing unit and in **Bharti Airtel (supra)** the goods were the towers fastened to the earth on which the antennas were to be installed, hence were not considered to be an accessory or the integral part of the antenna.

14. Present is altogether a different case of renewable energy production and of the components to be used by such production unit which are too integral part to the output of energy production unit (solar power plant). It being an environment friendly production unit the Government has announced the exemption under the impugned Notifications. The Officer of MNRE has been held to be a competent authority in the field of new and renewable energy. The certificate issued by such authority is already there in support of the goods in question certifying that goods provided by KEC to Vcause Renewable Energy Pvt. Ltd. are module mounting structures to be utilized in setting up of solar power generation project hence are eligible to exemption under Notification No.15/2010 dated 27.02.2010 as amended by Notification No.26/2012 dated 08.05.2012. The Department of Revenue cannot deny the efficacy of the opinion rendered by the said competent authority. Hence, we hold that the allegations in the Show Cause Notice ignoring the said certifications are not

sustainable. The findings confirming the proposal of said Show Cause Notice are also therefore liable to be set aside.

15. This Tribunal in the case of **Ganges International Pvt. Ltd. vs. Commissioner of Central Excise, Raipur reported in 2014 (308) E.L.T. 106 (Tri. – Del.) reported in 2014 (308) ELT 106 (Tri. – Del.)** held as follows:-

> *"Even if the General Fabrication Structures, Auto Welded Beams and Boxes cleared by the appellant are meant to be used as Supporting Structure for some machinery, the same would have to be treated as component parts of that machinery as the description of goods against Sl. No. 91B of Notification No. 6/2006-C.E., Sl. No. 338 of Notification No. 12/2012-C.E. covers all components whether finished or not and raw materials for the manufacture of the items of machinery, prime movers, instruments, apparatus, appliances, control gear, transmission equipments etc. In view of this, the impugned order denying exemption to the goods supplied to Prayagraj Super Thermal Mega Power Project is also not sustainable."*

This decision has been relied upon again in the case of **Atmasco (P) Ltd. vs. Commissioner of C.Ex. & Cus., Raipur reported in 2016 (334) ELT 122 (Tri. – Del.)**.

16. We further observe that as per the impugned Notification, the duty liability, if any, shall be on the promoter and not on the manufacturer. It is apparent from the amended Notification No.26/2012 dated 08.05.2012 as reproduced above, that in case of non-compliance of condition under the Notification, it is the project developer who shall be liable to pay the duty which was not paid on account of exemption at the time of clearance and that too only in

case when the project developer fails to use the goods for solar power project. The Commissioner, Hyderabad in the order dated 20.10.2014 in the case of M/s. Pennar Industries in para 25.2 thereof has also observed that:

"Since as per the condition of Notification, duty shall be payable by the project developer and not by the manufacturer that the demand of duty on the manufacturer is liable to be dropped."

17. In view of these discussions, we hold that Commissioner (Appeals) has wrongly confirmed the duty demand upon appellant as manufacturer, for such goods which are exempted from duty.

18. Coming to the point of imposition of the penalty, we observe that penalty has been confirmed under Section11 AC of Central Excise Act, 1944. Penalty under the said section can be levied if and only if there is an intent to evade the payment of duty. In the present case, it is apparent that appellant had intimated the Assistant Commissioner regarding the clearance of impugned excisable goods without payment of duty of the goods being the components required for solar power project eligible for exemption under Notification. The intimation was sent vide letter dated 31.12.2015 i.e. even prior the clearance of the goods. The question of evasion of duty does not at all arises that too with the *malafide* intent. We hold that even penalty has wrongly been imposed by Commissioner (Appeals) on the appellants.

19. As a result of entire above discussion, it is held that Commissioner (Appeals) has failed to appreciate the settled

position of law with respect to the issue involved. Several decisions of this Tribunal and even by the Department with respect to identical issue despite being quoted in the order have wrongly been differentiated. The case law relied upon to differentiate is already held to not to be applicable to the facts of the present case. We are of the firm opinion that Commissioner (Appeals) has committed an indiscipline as far as judicial protocol is concerned. Hon'ble High Court of Kerala in the case of **XL Health Corporation India Pvt. Ltd. vs. Union of India & Others in W.P. No.37514/2017** decided on 22.10.2018 held as under:-

> "*The* Adjudicating Authorities throwing to the winds the principles of judicial discipline by not following the biding order passed by higher forum reflects total callous, negligent and disrespectful behaviour. The Court held that same cannot be tolerated. If this kind of lack of judicial discipline which if goes unpunished will lead to more litigation and chaos and such public servants are actually threat to the society.

20. With these observations, we hereby set aside the order under challenge. Consequent thereto the appeal stands allowed.

[Pronounced in the open Court]

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)

(DR.RACHNA GUPTA)
MEMBER (JUDICIAL)

Anita