# CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL HYDERABAD

REGIONAL BENCH - COURT NO. – I

**Excise Appeal No. 21672 of 2014**
(Arising out of **Order-in-Appeal** No.09/2014(H-I)CE dated 28.01.2014 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals I & III), Hyderabad)

**Commissioner of Central Tax .. APPELLANT**
**Medchal - GST**
Kendriya Shulk Bhavan,
L.B. Stadium Road,
Basheerbagh, Hyderabad,
Telangana – 500 004.

*VERSUS*

**M/s Seven Energies Ltd., .. RESPONDENT**
No. 15A, Phase-II,
Patancheru, Medak,
Telangana – 502 319.

**APPEARANCE:**
Shri M. Anukathir Surya, Authorized Representative for the Appellant.
Shri K. Vijaya Bhaskar, Authorized Representative for the Respondent.

**CORAM: HON'BLE Mr. P.V. SUBBA RAO, MEMBER (TECHNICAL)**
**HON'BLE Mr. ANGAD PRASAD, MEMBER (JUDICIAL)**

**FINAL ORDER No. A/30335/2025**

Date of Hearing:01.09.2025
Date of Decision:01.09.2025

**[ORDER PER: P.V. SUBBA RAO]**

Revenue has filed this appeal assailing the order dated 28.01.2014 passed by the Commissioner (Appeals)[1], whereby, he set aside the order dated30.10.2013 passed by the Assistant Commissioner and allowed refund to the appellant. The Assistant Commissioner had, in his order, rejected the refund to the appellant on the following two grounds:

a) Appellant had procured module mounting structures, solar inverters and solar junction boxes which do not fall within the ambit of the description of goods covered by exemption notification no. 15/2010-CE dated 27.02.2010. Therefore, the exemption is not applicable to the goods.

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[1] Impugned order

b) The condition stipulated in the notification no. 15/2010-CE dated 27.02.2010 requires a certificate from the Ministry of New and Renewable Energy (MNRE) to be submitted before the clearance of the goods whereas the assesse had submitted this after their clearance.

2. The Commissioner (Appeals), in his order, held that the letter dated 18.10.2013 of the MNRE confirmed the usage of the module mounting structures supplied by the assesse to MAHAGENCO for solar power generation project. There is also no dispute that they were used for initial setting up of solar power generation project and therefore they were entitled to the benefit of exemption.

3. On the question of the certificate being produced after the goods had been cleared, the Commissioner (Appeals) held that the settled legal position is that the substantive benefit of a notification cannot be denied for procedural infirmities. Although there was a delay in obtaining the certificate, it is not a case of an absolute absence of a valid certificate from MNRE. For these reasons, the Commissioner (Appeals) allowed the refund to the appellant.

4. We have heard Learned Counsel for the Respondent Shri K. Vijaya Bhaskar, Promoter for the respondent Learned AR for the Revenue and perused the records.

5. Learned AR for the Revenue submitted as follows:

a) The exemption Notification 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. The exemption has been claimed by the respondent for the solar mounting structures which do not fall within the above description.

b) The notification specifically required that a certificate from the MNRE must be submitted before clearance of the goods and in this case the assesse submitted the certificate after the clearance of the goods.

c) As per the judgment of the Larger Bench of Supreme Court in the case of Commissioner of Customs (Import), Mumbai Vs Dilip Kumar and Company and others [2018 (7) TMI 1826 (SC-LB)], any exemption notification must be construed strictly and any ambiguity must be ruled against the assessee and in favour of the Revenue. He specifically drew attention to paragraph 52 of the judgment which reads as follows:

> **52.** To sum up, we answer the reference holding as under -
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> (1) Exemption notification should be interpreted strictly; the burden of proving applicability would be on the assessee to show that his case comes within the parameters of the exemption clause or exemption notification.
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> (2) When there is ambiguity in exemption notification which is subject to strict interpretation, the benefit of such ambiguity cannot be claimed by the subject/assessee and it must be interpreted in favour of the revenue.
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> (3) The ratio in *Sun Export* case (supra) is not correct and all the decisions which took similar view as in *Sun Export* case (supra) stands overruled.

d) In view of the above, that the appeal may be allowed and the impugned order is set aside. He also relied on the following case laws:

i) M/s AEG Power Solutions (India) Pvt ltd., Vs The Commissioner of Central Excise, Bangaluru-II [2024 (4) TMI 818 (CESTAT-Bang)]

ii) M/s Raydean Industries Vs Commissioner, Central goods & Service Tax, Jaipur [2022 (4) TMI 1155 (CESTAT-New Delhi)]

iii) The Commissioner of Customs Vs Solgen Energy Pvt Ltd., [2024 (5) TMI 1063 (CESTAT-Bang)]

iv) M/s HHV Solar Technologies Ltd., Vs The Commissioner of Central Excise, Bangalore-II [2024 (10) TMI 46 (CESTAT-Bang)]

v) M/s Raydean Industries Vs Commissioner of CGST, Jaipur [2023 (1) TMI 53 (CESTAT-New Delhi)]

vi) Eagle Flask Industries Ltd., Vs Commissioner of Central Excise, Pune [2004 (9) TMI 102 (SC)]

6. Learned Authorised Representative for the assessee/respondent submitted as follows:

a) There is no infirmity in the order of the Commissioner (Appeals) in sanctioning refund.

b) Although the assesse had applied for the certificate beforehand, it was issued much later as MNRE took time and the goods had to be cleared before that date. Simply because the certificate was issued by the MNRE at a later date, the substantive benefit of the exemption notification should not be denied to them.

c) The mounting structures are not any general equipment but were specifically designed and were intended for setting up of the solar power plant.

d) The exemption notification covers all items of machinery and is not restrictive. Infact, it further elaborates its scope by including instruments, apparatus and appliances, control gear transmissions equipment, auxiliary equipment etc. Therefore, the mounting structures were cleared by the exemption notification.

e) In view of the above, the impugned order requires no interference.

7. We have considered the submissions from both the sides and perused the records. It is true that the exemption notification must be strictly construed against the assesse. But it must also be noted that where the assesse is entitled to the exemption notification, it cannot be denied.

Paragraph 45 to 47 of the judgment of Supreme Court in the case of Dilip Kumar and Others are reproduced below:

**45.** In *Parle Exports* case (supra), a Bench of two-Judges of this Court considered the question whether non-alcoholic beverage base like Gold spot base, Limca base and Thumps Up base, were exempted from payment of duty under the Central Government notification of March, 1975. While considering the issue, this Court pointed out the strict interpretation to be followed in interpretation of a notification for exemption. These observations are made in para 17 of the judgment, which read as follows :

"How then should the Courts proceed? The expressions in the Schedule and in the notification for exemption should be understood by the language employed therein bearing in mind the context in which the expressions occur. The words used in the provision, imposing taxes or granting exemption should be understood in the same way in which these are understood in ordinary parlance in the area in which the law is in force or by the people who ordinarily deal with them. It is, however, necessary to bear in mind certain principles. The notification in this case was issued under Rule 8 of the Central Excise Rules and should be read along with the Act. The notification must be read as a whole in the context of the other relevant provisions. When a notification is issued in accordance with power conferred by the statute, it has statutory force and validity and, therefore, the exemption under the notification is as if it were contained in the Act itself. See in this connection the observations of this Court in *Orient Weaving Mills (P) Ltd.* v. *Union of India,* 1962 Supp 3 SCR 481 = AIR 1963 SC 98. See also *Kailash Nath* v. *State of U.P.,* AIR 1957 SC 790. The principle is well-settled that when two views of a notification are possible, it should be construed in favour of the subject as notification is part of a fiscal enactment. But in this connection, it is well to remember the observations of the Judicial Committee in *Coroline M. Armytage* v. *Frederick Wilkinson,* (1878) 3 AC 355, that it is only, however, in the event of there being a real difficulty in ascertaining the meaning of a particular enactment that the question of strictness or of liberality of construction arises. The Judicial Committee reiterated in the said decision at page 369 of the report that in a taxing Act provisions enacting an exception to the general rule of taxation are to be construed strictly against those who invoke its benefit. While interpreting an exemption clause, liberal interpretation should be imparted to the language thereof, provided no violence is done to the language employed. It must, however, be borne in mind that absurd results of construction should be avoided."

In the above passage, no doubt this Court observed that *"when two views of a notification are possible, it should be construed in favour of the subject as notification is part of fiscal document".* This observation may appear to support the view that ambiguity in a notification for exemption must be interpreted to benefit the subject/assessee. A careful reading of the entire para, as extracted hereinabove would, however, suggest that an exception to the general rule of tax has to be construed strictly against those who invoke for their benefit. This was explained in a subsequent decision in *Wood Papers Ltd.* case (supra). In para 6, it was observed as follows :

"... In *Collector of Central Excise* v. *Parle Exports (P) Ltd.,* (1989) 1 SCC 345, this Court while accepting that exemption clause should be construed liberally applied rigorous test for determining if expensive items like Gold Spot base or Limca base of Thums Up base were covered in the expression food products and food preparations used in Item No. 68 of First Schedule of Central Excises and Salt Act and held 'that it should not be in consonance with spirit and the reason of law to give exemption for non-alcoholic beverage basis under the notification in question'. Rationale or ratio is same. Do not extend or widen the ambit at stage of applicability. But once that hurdle is crossed construe it liberally. Since the respondent did not fall in the first clause of the notification there was no question of giving the clause a liberal construction and hold that production of goods by respondent mentioned in the notification were entitled to benefit."

> **46.** The above decision, which is also a decision of two-Judge Bench of this Court, for the first time took a view that liberal and strict construction of exemption provisions are to be invoked at different stages of interpreting it. The question whether a subject falls in the notification or in the exemption clause, has to be strictly construed. When once the ambiguity or doubt is resolved by interpreting the applicability of exemption clause strictly, the Court may construe the notification by giving full play bestowing wider and liberal construction. The ratio of *Parle Exports* case (supra) deduced as follows :
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> "Do not extend or widen the ambit at stage of applicability. But once that hurdle is crossed, construe it liberally".
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> **47.** We do not find any strong and compelling reasons to differ, taking a *contra* view, from this. We respectfully record our concurrence to this view which has been subsequently, elaborated by the Constitution Bench in *Hari Chand* case (supra).

8. The decision in the case of **Dilip Kumar and Company & Others**, makes it clear that while the exemption notification must be strictly construed to decide whether an assessee falls within its ambit or not, thereafter, full play of strict and liberal interpretations must be resorted to in order to decide whether an assesse is entitled to benefit of exemption notification.

9. We also note that the exemption notification, in this case, does not list any specific items but says all items of machinery and further elaborates by specifically including certain goods. The inclusive part of a definition does not restrict the main part of the definition but only elaborates it. In our considered view, "all items of machinery required for setting up of solar power generation" in the exemption notification is wide enough to cover the mounting structures for the solar panels. The mere fact that the inclusion part of the definition in the exemption notification does not list the mounting structures would make no difference because main part of the definition of items of machinery itself covers the mounting structures.

10. Insofar as the non-submission of the certificate before clearance of the goods is concerned, once the assesse had applied for the certificate and the bureaucratic procedure took time, it cannot be held against the assesse and the certificate which was produced subsequently must be accepted. The

Commissioner (Appeals) was correct in holding that the substantive benefit of the notification cannot be denied on procedural grounds. This is consistent with the law laid down in paragraphs 46 & 47 of the **Dilip Kumar and Company & Others.**

11. In view of the above, we find there is no infirmity in the impugned order. Accordingly, we uphold the impugned order and dismiss the appeal of the Revenue.

(Dictated and pronounced in open court)

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

**(ANGAD PRASAD)**
**MEMBER (JUDICIAL)**

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