

Exemption cannot be denied once granted by the competent Revenue Authority on components required for solar power generation

The CESTAT, New Delhi in *M/s. KEC International Limited v. Commissioner of Central Excise and Central Goods & Service Tax (Appeals)[Excise Appeal No. 52907 of 2019 dated May 10, 2022]* set aside the order passed by the Revenue Department denying benefit of exemption to the assessee. Held that, galvanised solar structures for mounting or holding reflectors or mirrors are to be considered as "components" of reflectors or mirrors as they are required for the initial setting up of solar power generation projects and are eligible for the benefit of exemption as granted on the basis of a certificate issued by competent Revenue Authority.

Facts:

M/s. KEC International Limited (**"the Appellant"**) is in the manufacturer of transmission towers and erection and laying of power transmission lines on an EPC basis.

An Audit was conducted by the Revenue Department (**"the Respondent"**) wherein, it was noticed that the clearance of galvanised solar structures (module mounting structures and hot dip galvanised structures (**"the Impugned Goods"**) falling under Central Excise Tariff Heading 7308 2019 was being done by availing the benefit of the **Notification No. 15/2010-Central Excise dated February 27, 2010** (**"Exemption Notification"**).

Subsequently, an order was passed by the Respondent, denying the benefit of exemption to the Appellant, which was further upheld by the Commissioner (Appeals) in **Order-in-Appeal No. 236(CRM)/CE/JPR/2019 dated September 29, 2019** (**"the OIA"**) holding that the mounting structures, supplied by the Appellant, cannot be considered as 'component' of a solar power generation project or facility.

Being aggrieved, this appeal has been filed.

The Appellant contended that benefit of exemption was availed after being duly permitted by the competent authority of the Central Excise that allowed clearance only after they were satisfied that the Appellant was justified in availing the Exemption Notification.

The Appellant contended that in terms of notification, the liability, if any, would be on the promoter and not on the manufacturer and in case of non-compliance of condition under the Exemption Notification, the project developer shall be liable to pay the duty which was not paid on account of exemption at the time of clearance.

Issue:

Whether the Appellant is entitled to the benefit of the Exemption Notification for the galvanised solar structure cleared to solar power generating companies?

Held:

The Hon'ble CESTAT, New Delhi in ***Excise Appeal No. 52907 OF 2019 dated May 10, 2022*** held as under:

- Observed 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.
- Further observed that, a component is an essential part of the system without which the system would not function.
- Noted that, exemption would be available to 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 for initial setting up of a solar power generation project or facility. Further, the exemption is granted on the basis of a certificate issued by an

Officer not below the rank of Deputy Secretary to the Government of India in the Ministry of New and Renewable Energy recommending the grant of this exemption.

- Opined that, if the competent authority in the Ministry has issued a certificate stating that exemption is available, exemption under Exemption Notification cannot be denied.
- Set aside the demand raised by the Respondent in OIA on the grounds of being not sustainable.
- Held that, the Impugned Goods are components required for initial setting up of solar power generation project or facility and to that extent, there is no violation of the substantial compliance of the Exemption Notification.
- Further held that the clearances are made in accordance with the provisions of the Exemption Notification and on the strength of a certificate issued by the competent authority. Therefore, it is not open to the Respondent to deny the benefit of Exemption Notification. Thus, no demand can be raised against the Appellant without getting the certificates cancelled.

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