

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI**

PRINCIPAL BENCH - COURT NO. 1

Excise Appeal No. 52907 OF 2019

[Arising out of Order-in-Appeal No. 236(CRM)/CE/JPR/2019 dated 29/09/2019 passed by the Commissioner of Central Excise and Central Goods & Service Tax (Appeals), Jaipur.]

M/s. KEC International Limited

14-15, Benar Road,
Industrial Area,
Jhotwara,
Jaipur - 302 012.

.....Appellant

VERSUS

**Commissioner of Central Excise and
Central Goods & Service Tax (Appeals)**

NCRB, Statue Circle,
Jaipur – 302 005.

.....Respondent

Appearance:

Mr. Mehul Jiwani, Chartered Accountant for the Appellant.

Shri O.P. Bisht, Authorised Representative for the Respondent.

CORAM:

**HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR. P. ANJANI KUMAR, TECHNICAL MEMBER**

Final Order No. 50404/2022

Date of Hearing: 28/02/2022

Date of Decision: 10/05/2022

Per: P. ANJANI KUMAR

M/s. KEC International Limited¹ contests the impugned order dated 02.09.2019. The contentious issue is about the applicability of the exemption notification dated 27.02.2010² availed by the appellant on the galvanised solar structure manufactured and cleared by it for the initial setting up of solar power plants.

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1. the appellant
 2. the exemption notification

2. The Order-in-Original relies on **M/s. Saraswati Sugar Mills Ltd. vs. Commissioner of Central Excise, Delhi-III**³ and **M/s. Bharti Airtel Ltd. vs. Commissioner of Central Excise, Pune-III**⁴.

The Commissioner (Appeals) upholds the Order-in-Original and the finding as follows:

“8. In the light of the aforesaid discussion, I find that the reliance of the aforesaid judgments on behalf of the Revenue is quite appropriate. The enunciation of law as laid down in the citations clearly goes to show that the mounting structures, supplied by the appellants, cannot be considered as ‘component’ of a solar power generation project or facility. As regards the contention of the appellant that the demand is time barred. I find that the appellant never informed the department about the admissibility of exemption under Notification No.15/2010-CE and I do not find any substance in defence submissions made by the appellant.”

3. Mr. Mehul Jiwani, learned Chartered Accountant appearing for appellant would submit that it was noticed by the department, during an audit conducted, that the clearance of galvanised solar structure (module mounting structure hot dip galvanized structure) falling under Central Excise Tariff Heading⁵ 7308 2019 was being done by availing the benefit of exemption notification as amended on 08.05.2012. The appellant availed the benefit of the exemption notification after being duly permitted by the competent authority in terms of the said notification. The Central Excise authorities allowed clearance only after they were satisfied that the appellant was justified in availing the said notification.

4. The Revenue alleges that mounting structure cleared by the appellant cannot be said to be machinery, prime movers, instruments,

3. 2011 (270) E.L.T. 465 (SC)
4. 2014 (35) S.T.R. 865 (Bom.)
5. CETH

apparatus and appliances, control gear and transmission equipment and auxiliary equipment (including those required for testing and quality control) and component and thus, the benefit is not available to the appellant.

5. Learned Chartered Accountant submits that mounting structures are required to hold the solar power panels at a particular angle to maximise energy generation; typically, the angle required in South India is 10° - 15° C and in North India it is 20° - 35° C; power generating solar panels are designed to sustain only a minor amount of load (pressure) from nature, like wind, rain, earthquake, etc. Therefore, the panels are required to be secured using well designed structure.

6. Learned Chartered Accountant also submits also that the publication "Best Practices in OPERATION AND MAINTENACE of Rooftop Solar PV Systems in India" published by Gujarat Energy Research & Management Institute (GERM), in Chapter 2, has described the PV System Components. On page 30, the Module Mounting Structure has been described to be a component of the PV System used to secure the PV modules in particular orientation to collect maximum sunlight. Further, MNRE has issued a publication "Best Practice Manual for Implementation of State-level Rooftop Solar Photovoltaic Programmes in India" wherein in paragraph 4.2 it has discussed the design of grid-connected rooftop PV systems. Under this paragraph, at Serial No.9, the Module Mounting Structure has been described as one of the components of the PV system. The MNRE has also published certain technical drawings of the Solar PV systems on

pages 48 to 50. All the diagrams have mentioned the Module Mounting Structure as other components of the PV System. He relies upon the ratio of the following cases:

- i. **Order-in-Original⁶ in the case of M/s. Pennar Industries Ltd.**
- ii. **Jindal Strips Ltd. vs. Collector of Customs, Bombay⁷**
- iii. **Hindustan Sanitaryware & Industries Ltd. vs. Collector of Customs, Calcutta⁸**
- iv. **Ganesh International Pvt. Ltd. vs. Commissioner of C. Ex., Raipur⁹**
- v. **Atmasco (P) Ltd. vs. Commissioner of C. Ex. & Cus., Raipur¹⁰**
- vi. **Phoenix Construction Technology¹¹**
- vii. **C.C.E., Nagpur vs. Hyundai Unitech Electrical Transmission Ltd.¹²**
- viii. **Rakhoh Enterprises vs. Commissioner of Central Excise, Pune¹³**

7. Learned Chartered Accountant submits 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 notification, the project developer shall be liable to pay the duty which was not paid on account of exemption at the time of clearance. Further, as per Clause (d) of the Certificate issued by the Ministry of New and Renewable Energy Resources, the customer of the appellant has undertaken to pay the duty in case of non-compliance and the Commissioner, Hyderabad vide order cited above has held that as per the condition of the notification, the liability to pay duty is on the customer and not on the appellant.

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6. **No.HYD-EXCUS-001-COM-11-14-15 dated 20.10.2014**
 7. **1997 (94) ELT 234 (Tribunal)**
 8. **1999 (114) ELT 778 (SC)**
 9. **2014 (308) ELT 106 (Tri.-Del.)**
 10. **2016 (334) ELT 122 (Tri.-Del.)**
 11. **2017 (359) ELT 241 (Tri.-Ahmd.)**
 12. **2015 (323) ELT 220 (SC)**
 13. **2016 (338) ELT 449 (Tri.-LB)**

8. He would submit that the case law cited by the Original or Appellate Authority are not applicable to the facts of the present case; in respect of **Saraswati Sugar Mills Ltd.**, the issue before the Supreme Court was not of the exemption notification dated 27.02.2010 and in respect of **Bharti Airtel**, there is a contrary judgment by Delhi High Court which has allowed credit on towers and shelters required for supporting antennas for effective transmission. The Delhi High Court has also come to above conclusion after referring to the Bombay High Court judgment in **M/s. Bharti Airtel**.

9. Learned Chartered Accountant submits that the show-cause notice is for the period December 2015 to September 2016 and was received by the appellant on 2.3.2018. The demand up to the period 31.1.2016 is barred by limitation; there was no suppression, fraud, collusion, etc., to necessitate invocation of extended period; the appellant had intimated the jurisdictional Assistant Commissioner, vide letter dated 31.12.2015, regarding the clearance of excisable goods without payment of duty for solar power project. The clearances were on the basis of a certificate issued by Ministry of New and Renewable Energy Resources. He relies upon the following:

- i. **Continental Foundation Jt. Venture vs. Commr. of C. Ex., Chandigarh-I** ¹⁴
- ii. **Commissioner Of Customs & Central Excise vs. ITW India Ltd.** ¹⁵
- iii. **Cosmic Dye Chemical vs. Collector of Central Excise, Bombay** ¹⁶
- iv. **CCE vs. Chemphar Drug and Liniments** ¹⁷
- v. **Pushpam Pharmaceuticals vs. CCE, Bombay** ¹⁸

14. 2007 (216) ELT 177 (SC)

15. 2011 (268) ELT 311 (AP)

16. 1995 (75) ELT 721 (SC)

17. 1989 (40) ELT 276 (SC)

18. 1995 (78) ELT 401 (SC)

vi. **Tamil Nadu Housing Board vs. Collector of Central Excise, Madras** ¹⁹

10. Shri O.P. Bisht, learned Authorised Representative, appearing for Revenue reiterates the findings of Order-in-Original and Order-in-Appeal and further submits that the mounting structure supplied by the appellant cannot be considered as 'component' of a solar power generation project or facility. Since appellant never informed the department about the admissibility of exemption under the notification, the contention of the appellant that the demand is time barred is not correct.

11. Learned authorised representative submits that the contention of the appellant that galvanised solar structure (Module mounting structure Hot Dip Galvanised Structure) is a component since they are used in solar power generation or solar energy production project and is an integral part of the entire plant is not correct inasmuch as mounting structure cannot be considered as 'component of a solar power generation project or facility in view of the proposition of law enunciated by the Courts in the cases cited below, which have been relied upon by the Commissioner (A). He submits that there is a plethora of judgments that an exemption notification has to be read strictly. In **Commissioner of Customs (Import), Mumbai vs. Dilip Kumar and Company & Others**, the Supreme Court held that exemption notification should be interpreted strictly and 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. Further, when there is ambiguity in exemption notification

19. 2004 (74) ELT 9 (SC)

which is subject to strict interpretation, the benefit of such ambiguity cannot be claimed by the assessee and it must be interpreted in favour of the revenue. The contention is that the above proposition of law is also applicable to the present case and the exemption notification is not available to the appellant.

12. Having heard rival contentions and having given careful consideration to the facts and records of the case, we turn our attention to the analysis of the issues involved from a factual and legal matrix.

13. The brief dispute involved in this case is as to whether the appellant is entitled to the benefit of the exemption notification for the galvanised solar structure it cleared to solar power generating companies; and as to whether in case of non-applicability, duty can be recovered from the appellant and as to whether the show-cause notice is barred by limitation.

14. Coming to the first issue of the applicability of the notification, we find that it would be beneficial to have a look at the text of the notifications.

“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.”;

15. In terms of the notification, 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; 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 and the said officer certifies that the goods are required for initial setting up of solar power generation project or facility.

16. It is not the case of the department that the appellant or the customers are not in the possession of such a certificate. The only dispute that is between the appellant and the department is whether the impugned goods are components of solar power projects or not.

The scope of the notification is very large and exempts a variety of goods including prime movers used in the initial setting up of solar power generation project or facility. The appellant has successfully demonstrated, relying upon the technical literature, that Module Mounting Structure is a component of PV (Photo voltaic) system. The department on the other hand would rely on the cases of **Saraswati Sugar Mills** and **Bharti Airtel Ltd.** to arrive at the conclusion that the structures are not components of machinery required in the initial setting up of solar power generation project or facility. While **Saraswati Sugar Mills** is about the applicability of Cenvat Credit on iron and steel products used for fabrication of structures used in the factory, **Bharti Airtel** is about the applicability of credit on towers used for mounting the antennas.

17. The facts of both the cases, relied upon by the revenue, are entirely different than those involved in the impugned case before us. Availability of exemption under any notification was not the subject matter of the cases. Applying the ratio of judgment in cases wherein the facts are different would not be appropriate. Moreover, **Bharti Airtel** has been discussed and not relied upon by **Delhi High Court**. Be that as it may, it can be argued that the antennas can be fixed on high rise buildings also. However, in the present matter, it is nobody's case that the solar panels can be fixed to the floor on solar farms or on the ground of the top floor of the buildings. The fabricated structures are used not only to keep the solar panels secured form the vagaries of nature but also to keep them in a particular angle to maximise energy production. This being so, the Module Mounting Structures are

essential to the initial set up and functioning of the solar system and therefore, it has to be held that they are components of solar power system. Under these circumstances, we find that there is considerable force in the argument of the appellant, backed by technical literature, that the Module Mounting Structure are essential components required for initial setting up of solar power project or facility. Information available in technical literature, which throws light on issues relating to matters of technical nature, cannot be brushed aside. Technical Literature would be of great help in understanding not only the concepts of technology but also the language and terminology of the same. Nomenclature adapted by technical personnel working in the field is important in understanding such issue.

18. The appellant would submit that the Commissioner has passed an order on similar set of facts in the case of M/s. Pennar Industries Ltd. The Commissioner finds that:

"22. I find that the Director, Ministry of New and Renewable Energy, New Delhi addressed a letter Ref. No.4/40/2012-13/PVSP dt. 27.2.2013 to the department, with reference to the correspondence by clarifying that Module Mounting Structure form an essential part of the solar power plants that they were the components of the solar power plants and hence were covered in the Notifications issued in this regard. If the goods cleared were components, what is the exact meaning of component? As per the Dictionary Meaning, Component is a noun"; a part or element of a larger whole, especially a part of a machine or vehicle" and as an adjective "Constituting part of a larger whole; constituent". From the dictionary meaning it is clear that component is apart. As the subject items were parts of the solar power facility and since they were supplied for initial setting up of the said facility, in fact which is undisputed. I find that the subject items were eligible for the exemption under subject notification."

19. From the above, 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.**²⁰. The Tribunal held that:

"3. On a careful consideration of the issue we do not find that the Revenue has made proper grounds for appealing against the impugned order. So long as the competent authority has certified that they are necessary in the use of scientific and technical appliances, the exemption cannot be denied. Moreover, the Commissioner has given detailed justification for extending the benefit. The findings of the Commissioner (Appeals) are reproduced below:

"The items cleared by the appellant are switch gears and control panels and the same are cleared to public funded research institutions against a valid certificate issued to them by research institutions who have made the indent for the goods. The appellant also contends that the aforesaid items are essential parts to the main scientific equipment. The adjudicating authority in his findings in the impugned order have fairly conceded that the certificates issued are valid and are issued by public funded research institutions and the transactions/receipt etc., are not questioned. The adjudicating authority in his findings have clearly concedes that the appellants have satisfied all the requirements of the said exemption notification and merely denied the exemption to the appellants on the ground that the aforesaid items are not mentioned in the Table to the said notification.

On perusal of the table to the said Notification, I find that it reads as follows: -

- (a) Scientific and technical instruments, apparatus, equipment (including computers);

20. 2009 (248) E.L.T. 919

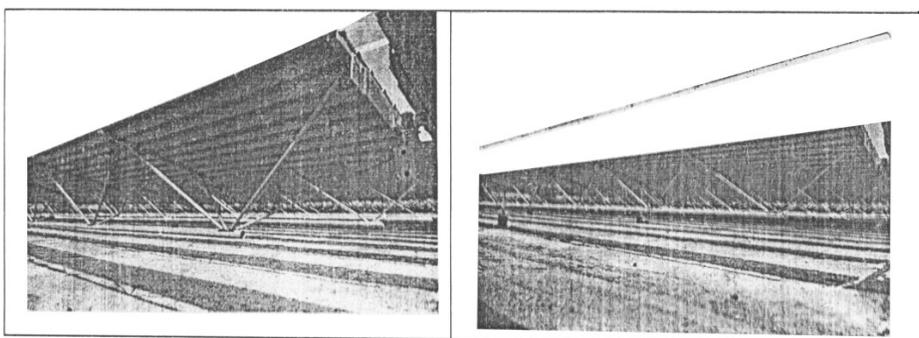
- (b) Accessories and spare parts, of goods specified in (a) above and consumables
- (c) computer software.

From the above table it is seen that the broad heading is mentioned at (a) and their parts, accessories and consumables are mentioned at (b). There is no specific mention of any specific equipments, instruments or apparatus at (a) nor in respect of spares, accessories or parts in (b), above. This gives the meaning that the intention of the Government is to allow exemption to all the scientific and technical equipments, instruments, apparatus and all the spare parts, accessories and consumables to the equipments, as long as it is indented by specified research institutions mentioned in the notification. The Table of items for the exemption is not exhaustively listed but all-inclusive in the sense if any item comes under the broad heading of scientific and technical instruments, and parts for the same are eligible for the exemption irrespective of any item specifically mentioned or not. Hence the basic criteria for the exemption is to confirm whether the items are coming under (a) or (b), irrespective of any specific mention of any such items, which I find is not the purpose of the exemption. Further, I find from the careful reading of the said notification that the emphasis is on supply of items to specified scientific & research institution. In this case, there is no dispute with regard to supply of items by the appellant other than specified institutions as per the said notification. The main condition in the notification being issue of certificate by the specified institutions confirming the requirement of such exempted items in their institutes, and this was satisfied in the instant case as could be seen from the findings of the adjudicating authority in the impugned order. I agree with the contention of the appellants that certificate issued by competent authorities cannot be questioned as held by CESTAT Bangalore Bench in their recent judgment [Andhra Sugars Ltd. v. CCE Guntur - 2005 (71) RLT 659]. Further in a similar case involving items viz., controllers and switches for making a Dusk dawn system for street lights, recently the CESTAT, Delhi have allowed the exemption under GOI Notification No. 6/2002 [Rajasthan Electronics & Instruments Ltd. v. CCE, Jaipur - 2005 (68) RLT 352]. The same analogy can be drawn to the present case and exemption benefit can be allowed to the appellant which they are eligible. Therefore, the appellant is eligible for the exemption for the impugned clearances under the said notification".

The Order appears to be well reasoned. Hence, we uphold the same and reject the Revenue's appeal."

20. The issue of availability of exemption to support steel structures is no longer *res integra*. The Ahmedabad Bench of the Tribunal has gone into the very same issue in **Phenix Construction Technology**²¹. The Bench examined as to whether the structures are 'components' of solar power project/facility and held that support steel structures for mounting / holding reflectors/mirrors is to be considered as 'components' of reflectors/mirrors; they being required for initial setting up of solar power generation project are eligible for benefit of exemption available under notification dated 27.2.2010. The Bench observed as follows:

"16. We do not find substance in the observations of the learned Commissioner, inasmuch as there is no evidence on record to show that any of these items have been used for execution of civil work to construct buildings, storage tanks, etc. On the other hand, the same are used as detailed in the above technical literature, to hold the reflector one of the main parts of the solar power generation system. Also, it is evident from the following photographs submitted by the Id. Advocate for the appellant during the course of hearing.



27. The meaning of 'components' and 'parts' has been explained by five Member Bench of this Tribunal in the case of *Jindal Strips Ltd. v. Collector of Customs, Bombay* - 1997 (94) E.L.T. 234 (Tribunal) while drawing distinction between 'parts' & 'component' in the context of exemption Notification No. 77/90-Cus., dated 20-3-1990 as :

21. 2017 (358) ELT 241 (Tri.-Ahmd.)

"12. "Part" is defined in Black's Law Dictionary Sixth Edition at page 1117 as under: -

"An integral portion, something essential belonging to a larger whole; that which together with another or others makes up a whole a portion, share or purport".

In Chambers 20th Century Dictionary, the meaning given for "component" is as under: -

"One of the parts or elements of which anything is made up, or into which it may be resolved".

In Oxford Dictionary the meaning of "component" is: -

"Contributing the composition of whole"

In Webster's Dictionary the meaning given is

"A part; a constituent, an ingredient."

In our view, the common parlance meaning of the expression "component" is also the same, that is, one of the parts or elements of which anything is made up or into which it may be resolved or a constituent. The meaning in common parlance has to be looked into since the notification itself does not contain any definition of the expression.

13. Several decisions of High Courts containing reference to "part", "component" or spares have been placed before us in the course of submissions. In *C.S.T. v. Amar Radio Cabinet Works* - 1968 (22) STC 63 (Bom HC) entry No. 65 in the Bombay Sales Tax Act referring to wireless apparatus, radiographs, loudspeakers, etc. and spare parts of wireless equipments and radiographs was considered. The question was whether radio cabinets sold by a dealer would attract entry 65 or the residuary entry 22. It was held that while the word "part" has a general sense, "spare part" takes colour from the word "spare", that is a part which would require replacement in ordinary course on account of wear and tear and would not have the amplitude of the word "component". It was indicated that the owner of radio will not ordinarily keep an extra cabinet spare and, therefore, cabinet cannot be regarded as a spare part, though it is a component of radio and, therefore, entry No. 65 would not apply. In *Commissioner of Sales Tax v. Pritam Singh* - 1968 (22) STC 414 (All. HC) the question arose in the context of manufacture of bodies of motor vehicles. Item 24 of the exemption notification referred to motor vehicles and component parts of motor vehicles. It was held that a component part of an article is an integral part necessary for the constitution of the whole article and without it the article will not be

complete and body of a motor vehicle being an integral part of the motor vehicle has to be regarded as a component part. In *Sujan Singh & Another v. A.A.C. Sales Tax - 1969* (24) STC 504 (Delhi HC) the question was whether the body of motor vehicle is a spare part within the meaning of the entry "motor vehicles including chassis of motor vehicles, motor tyres and tubes and spare parts of motor vehicles" under item 1 of first schedule to the Bengal Finance (Sales Tax) Act. It was held that spare part is an extra part kept for use in emergency for replacement, that every component will not be a spare part and no owner of vehicle would keep a body of motor vehicle as spare part and, therefore, it cannot be regarded as a spare part. In *Bajoria Halwasiya Service Stn. v. The State of Uttar Pradesh - 1970* (26) STC 108 (All. HC) a similar question arose under the provisions of the U.P. Sales Tax Act and a notification issued thereunder. It was held that body of a motor vehicle is not a spare part, though it is a component since a spare part means a part kept in readiness for use in emergency and no owner of vehicle will keep body of a vehicle in readiness for use in emergency. It was held that every component part need not be a spare part while every spare part will necessarily be a component part.

14. In *Paul Lazar v. State of Kerala - 1977* (40) STC 437 (Kerala HC) it was held that copper wire used in manufacture of transformers is not a component part thereof. It was indicated that component part has to be an identifiable object and copper wire used in the manufacture of transformer is not an identifiable object.

15. In *Ghaziabad Engg. Co. (P) Ltd. v. Commr. of Sales Tax - 1991* (80) STC 243 (Delhi HC) under the provisions of the Bengal Finance (Sales Tax) Act, the Court considered entry 1 of first schedule of Bengal Finance (Sales Tax) Act, namely, motor vehicles, including motor vehicles tyres and tubes and spare parts of motor vehicles and held that fuel injection pump, which is a part of diesel engine is a component part of the diesel engine and not a component part of the motor vehicle and, therefore, the fuel injection pump sold as a spare part would not be a spare part of motor vehicle. In *Khoday Distilleries (P) Ltd. v. Commr. of Commercial Taxes, Karnataka - 1991* (82) STC 251 (Karnataka HC) it was held that molasses used in the manufacture of Ethyl alcohol can be identified by chemical test and, therefore, is a component part of the end product. The *Supreme Court in State of Madras v. R.M.K. Krishnaswami Naidu and Others - 1970* (26) STC page 42 has taken a similar view. In *State of Tamil Nadu v. Tube Investments of India Ltd. - 1992* (85) STC 245 (Madras HC) it was held that dynamo of a cycle is not a component part but an accessory of cycle. In *Televista*

Electronics v. Commr. of Sales Tax - 1992 (87) STC 410 (Delhi HC) in considering the entry relating to wireless receiving instruments and spare parts and accessories in the schedule to the Bengal Finance (Sales Tax) Act, it was held that a spare part is always a component part but the converse may not be invariably true.

15. In *Star Paper Mills Ltd. v. Collector of Central Excise* - 1989 (43) E.L.T. 178 (S.C.), the Supreme Court held that paper core used for rewinding of paper in rolls is a component part within the meaning of Notification No. 201/79. The Court relied on the dictionary meaning of the word "component" as "a constituent part". Since use of paper core is necessary for rewinding of paper if delivered to the customers in rolls, it should be a component part within the meaning of the Notification.

16. Notifications 246/76, 77/90 and 112/87 do not define the word "component part" with the result that one has to go by the meaning the word carries in common parlance. The dictionary meaning of "component" is "one of the parts or elements of which anything is made of or into which it may be resolved", or "a constituent part" and this meaning has been accepted by the Supreme Court in *Star Paper Mills Ltd. - 1989* (43) E.L.T. 178. Much is sought to be made out of the meaning stated as "constituent part". The suggestion is that it must be a part in the initial constitution of the manufactured product. This suggestion is merely based on a priori assumption. "Constituent", according to Chambers 20th Century Dictionary means: -

"constituting or forming; essential; elemental; component; electing; constitution-making - n. an essential or elemental part; one of those who elect a representative, esp. in parliament; an inhabitant of one's constituency."

Thus, "constituent" only means an essential part or component. Use of the words "component parts" or "constituent parts" is an example of tautology. "Constituent" and "component" essentially mean the same thing, that is, an essential part of which anything is made of or into which it may be resolved. When parts are put together to create an end product, they are regarded as component parts. When an assembled product is dismantled, it gives rise to component parts. Whatever be the stage, that is, before assembling, after assembling and after dismantling, such essential are [integral] part is a component, when a component part is damaged or is worn out and therefore requires replacement and is replaced, the replacing part does not cease to be a component part because it was not present in the initial assembly and had been put in the place of a damaged or worn-out component part. The

much wider meaning given to the expression "component" in *Khodey Distilleries (P) Ltd. v. Commissioner of Commercial Taxes, Karnataka and Others* - 1991 (82) STC 251 (Kar. HC) and in *State of Madras v. R.M.K. Krishnaswami Naidu & Ors.* - 1970 (26) STC 42 (S.C.) does not affect this position. A spare is a replacement part, to replace a damaged or worn out component; nevertheless it is a component part.

17. "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 several notifications where such qualifying or restrictive words have been used to suggest that the component part must have been used in the initial assembly or in the manufacture of the final product thereby excluding "spare" from the ambit of the expression "component part". There are no such qualifying or restrictive words used in the notifications under consideration. Hence, with respect, it is not possible to agree with the view taken in some of the decisions of the Tribunal that "component" implies parts used in the initial assembly or manufacture and excludes "spares". 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 view taken in *Vaz Forwarding Pvt. Ltd.* - 1989 (43) E.L.T. 358 (Tribunal) was not followed in *Metal Impacts Pvt. Ltd.* - 1993 (64) E.L.T. 286 (Tribunal), but the distinction drawn based on the fact that the words "component parts" occur in isolation and not in conjunction with the final product is a distinction without difference. The amplitude of the words "component part" is not in any way restricted by using the words in conjunction with the article of which they are component parts."

28. The aforesaid decision of the Tribunal was later upheld by Hon'ble Supreme Court in the case of *Hindustan Sanitaryware & Industries Ltd. v. Collector of Customs, Calcutta* - 1999 (114) E.L.T. 778 (S.C.).

29. The Tribunal in the case of *Ganges International Pvt. Ltd. v. CCE, Raipur* - 2014 (308) E.L.T. 106 (Tri.-Del.), while considering the goods viz. General Fabrication Structures, Auto Welded Beams and Boxes for Thermal Power Project, in the context of its eligibility to exemption under Notification No. 6/2006-C.E., dated 1-3-2006, mentioned at Sr. No. 13 of the table annexed to the Notification, has observed as follows :-

"7In our view, 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 SI. No. 91B of Notification No. 6/2006-C.E., SI. 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."

30. Also, we find that recently the Larger Bench of the Tribunal in the case of *Rakhoh Enterprises* (supra), while considering the eligibility of the items viz. 'doors of windmills' under the exemption under Notification No. 6/2006-C.E. as amended observed that these are parts of 'Wind Operated Electricity Generator' (WOEG) and eligible to the benefit of notification. Similar findings are also recorded in the case of items viz. anchor rings and load spreading plates as parts of the tower specifically designed for wind operated electricity generator and accordingly eligible to Notification No. 6/2006-C.E., dated 1-3-2006.

31. Therefore, considering the meaning of component elucidated in the aforesaid judgments, the technical literatures and other evidences produced by the appellant, we find merit in the contention of the learned Advocate for the appellant that the items in question definitely be considered as 'components' of the reflector, undisputedly used being required for initial setting up of a solar power generation project or facility, hence eligible to the benefit of exemption Notification No. 15/2002C.E., dated 27-2-2010, as amended."

21. Now we turn our attention to the other issues involved. The appellant has vehemently submitted that they have cleared the goods on the basis of the exemption notification on a certificate to this effect having been issued by the Competent Authority in the Ministry of New and Renewable Energy Resources. They have submitted the certificate to the jurisdictional Central Excise authorities before effecting the

clearance and therefore, no suppression or misrepresentation can be alleged and the extended period cannot be invoked. They submit that for this reason, the demand prior to 31.1.2016 is beyond the normal period of limitation.

22. There is force in the submission of the appellant. When the clearances are intimated to the department, it is not open to the department to invoke the extended period as no fraud, collusion, suppression, etc., has been brought on record, as held in the cases of **Bombay Chemicals Pvt. Ltd.** and **LAPP Pvt. Ltd.** When the competent authority in the Ministry has issued a certificate stating that exemption is available, exemption under said notification cannot be denied.

23. The appellant has also argued that in terms of the notification, in case of any non-compliance of subclause (1), the liability to pay the duty is on the project developer and not the appellant. As per the discussion above, it has to be 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 notification.

24. Coming to the procedural compliance, it is not the case of the department that the appellant did not produce the requisite certificate from the competent authority. In such circumstances, in terms of the notification in the event of non-compliance, 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.

25. The department has relied upon the decision in **Saraswati Sugars Ltd., Krishi Upaj Mandi Samiti, New Mandi Yard, Alwar vs. Commissioner of Central Excise and Service Tax, Alwar**²² and **Dilip Kumar and Company**. The wordings of the notification being clear, there is no scope for any interpretation, strict or liberal in the instant case. Therefore, the ratio of the cases is not applicable to the facts of the present case. In fact, these cases would help the cause of the appellant rather than the department. When the notification provides unambiguously that duty foregone, if any, is to be recovered from the project developer and not from the appellant-manufacturer; it is not open to the Revenue to demand duty from the appellant. As far as the appellant is concerned, the clearances are made in accordance with the provisions of the notification and on the strength of a certificate issued by the competent authority. No demand can be raised against the appellant without getting the said certificates cancelled. For this reason, also the demand is not sustainable.

26. In the result, the impugned order does not survive on merits and limitation in view of our discussion above. The same is, therefore, set aside and the appeal is allowed with consequential relief, if any.

(Order Pronounced on 10.05.2022)

**(JUSTICE DILIP GUPTA)
PRESIDENT**

**(P. ANJANI KUMAR)
MEMBER (TECHNICAL)**

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI**

PRINCIPAL BENCH - COURT NO. 1

Excise Appeal No. 52907 OF 2019

[Arising out of Order-in-Appeal No. 236(CRM)/CE/JPR/2019 dated 29/09/2019 passed by the Commissioner of Central Excise and Central Goods & Service Tax (Appeals), Jaipur.]

M/s. KEC International Limited

14-15, Benar Road,
Industrial Area,
Jhotwara,
Jaipur - 302 012.

.....Appellant

VERSUS

**Commissioner of Central Excise and
Central Goods & Service Tax (Appeals)**

NCRB, Statue Circle,
Jaipur – 302 005.

.....Respondent

Appearance:

Mr. Mehul Jiwani, Chartered Accountant for the Appellant.

Shri O.P. Bisht, Authorised Representative for the Respondent.

CORAM: HON'BLE MR. P. ANJANI KUMAR, TECHNICAL MEMBER

Date of Hearing: 28/02/2022

Date of Decision: 10/05/2022

ORDER

Order Pronounced

**(P. ANJANI KUMAR)
MEMBER (TECHNICAL)**