

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE  
TRIBUNAL  
BANGALORE**

REGIONAL BENCH - COURT NO. 1

**Central Excise Appeal No. 20731 of 2016**

(Arising out of Order-in-Original No. BLR-EXCUS-003-COM-29-15-16  
dt. 22.02.20216 passed by the Commissioner of Central Excise,  
Bengaluru)

**M/s. AEG Power Solutions  
(India) Private Limited,**

(Now known as TMEIC Power Electronics  
Systems (I) Pvt. Ltd.)  
No.85, Kaniminiki Village, Kengeri Hobli,  
Bangalore 560 074. Karnataka.

Appellant(s)

*VERSUS*

**The Commissioner of Central  
Excise, Bengaluru-II,**

6<sup>th</sup> Floor, CR Building,  
Post Box No.5400, Queens Road,  
Bangalore  
560001.

Respondent(s)

**APPEARANCE:**

Mr. Mihir Deshmukh, Advocates for the Appellant

Mr. H. Jayathirtha, Superintendent (AR) for the Respondent

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

**Final Order No. 20275 /2024**

DATE OF HEARING: 21.12.2023

DATE OF DECISION: 19.04.2024

**PER : DR. D.M. MISRA**

This is an appeal filed against the Order-in-Original  
No.BLR-EXCUS-003-COM-29-15-16 dated 22.02.2016 passed by  
the Commissioner of Central Excise, Bangalore.

2. Briefly stated the facts of the case are that the appellants  
are engaged in the manufacture of Telecom Power Supply

System Assembly, Power Controllers, solar inverters etc. falling under Chapter heading 8504 and 8537 of Central Excise Tariff Act, 1985. During the course of audit of the records of the appellant, it was noticed that they have wrongly availed exemption under Notification No.12/2012-CE dated 17.03.2012 on Solar Inverters falling under CSH 85044010, Combiner Box / Array Guard falling under CSH 85049090 and PV Logs falling under CSH 85371000 declaring the same as Solar Power Generating System and cleared the same without payment of duty (against Sl.No.332 List 8, No.10 of Notification No.12/2012-CE). Alleging that the items manufactured and cleared by the appellants are parts of the Solar Power Generating System, show-cause notice was issued proposing denial of benefit of Notification No.12/2012-CE dated 17.03.2012 to them and demanding duty of Rs.10,00,32,771/- for the period December 2011 to June 2014 along with interest and penalty. On adjudication, the demand was confirmed with interest and equal penalty and the duty amount deposited by the appellant had been appropriated against the demand. Hence, the present appeal.

3. The learned advocate for the appellant submitted that the appellant had voluntarily deposited the amount of duty under protest in August 2014. He has further submitted that the show-cause notice is barred by limitation as there is no wilful suppression of facts with intent to evade payment of duty and they have availed the benefit under bona fide belief that they are eligible for exemption under Notification No.12/2012-CE dated 17.03.2012 and not required to pay excise duty on the clearances effected by them. In support, they have referred to the judgment of the Hon'ble Supreme Court in the case of ***Padmini Products Vs. Collector*** [1989(43) ELT 195 (SC)]. Also they have submitted that exemption under Notification No.15/2010-CE dated 27.02.2010 also available to them on submission of MNRE certificate prior to clearance of goods. Non-

production of the said certificate at best be a procedural lapse and substantial benefit should not be denied to them. The Department cannot feign ignorance of the facts as they have been filing regularly periodical ER-1 returns with the Department and no objection was ever raised on the said returns by the Revenue. Further explaining the scope of suppression, they referred to the judgment of the Tribunal in the case of **Lakshmi Engineering Works Vs. CCE** [1989(44) ELT 353 (Tri.)] which is also upheld by the Hon'ble Supreme Court. They also referred to the following judgments on the issue of limitation.

- i. **Pushpam Pharmaceuticals Company Vs. CCE** [1995(78) ELT 401 (SC)]
- ii. **Anand Nishikawa Company Ltd. Vs. CCE** [2005(188) ELT 149 (SC)]
- iii. **Uniworth Textile Limited Vs. CCE, Raipur** [2013(288) ELT 161 (SC)]
- iv. **Continental Foundation Joint Venture Holding Vs. CCE, Chandigarh-I** [2007(216) ELT 177 (SC)]
- v. **Bharat Hotels Limited Vs. CCE(Adjudication)** [2018(12) GSTL 368 (Del.)]

4. *Per contra*, learned AR for the Revenue reiterated the findings of the learned Commissioner. Further, he has submitted that the issue of admissibility of Notification No.12/2012-CE dt. 17.03.2012 to the parts manufactured by the appellant viz. Solar Inverters, Combiner Box / Array Guard and PV Logs is squarely covered by the judgment of the Principal Bench of this Tribunal in the case of **Raydean Industries Vs. Commissioner of CGST, Jaipur** [2022-TIOL-355-CESTAT-DEL]. On the issue of limitation, the learned AR for the Revenue referring to the findings of the learned Commissioner submitted that the appellant all along declared their product as Solar Power Generating System in their statutory records filed with the

Department in the form of periodical ER-1 returns. The description furnished by the appellant in the ER-1 returns never matched with goods they have manufactured and cleared availing the benefit of Notification No.12/2012-CE dated 17.03.2012. Non-declaration of the correct description in the ER-1 returns itself indicates suppression of facts with intent to evade payment of duty; therefore the learned Commissioner has rightly invoked the extended period of limitation in confirming the demand. In support of the submission, he referred to the judgment of the Hon'ble Supreme Court in the case of **CCE, Ahmedabad Vs. Urmin Products P. Ltd. & others** [2023-TIOL-148-SC-CX]. Also the appellant could not establish through evidences that they have availed benefit of exemption under bona fide belief; hence the plea of the appellant of bona fide belief is not acceptable. In support, he referred to the judgment of Hon'ble Bombay High Court in the case of **Responsive Industries Ltd. (UNIT-II) Vs. CGGST&CE, Palghar** [2019-TIOL-1229-HC-MUM-CX].

5. Heard both sides and perused the records.

6. The appellant in their written submissions as well as during the course of hearing feebly contested on the issue of denial of Notification No.12/2012-CE dated 17.03.2012 to their products viz. Solar Inverters, Combiner Box / Array Guard and PV Logs

and parts. However, they have argued against invocation of extended period of limitation in confirming the demand. The Revenue has referred to the judgment of the Principal Bench in **Raydean Industries'** case wherein parts of Solar Power Generating System manufactured and cleared held to be not eligible to the benefit of the said Notification No.12/2012-CE dated 17.03.2012. We find that the Principal Bench in **Raydean Industries'** case, after analysing the entries held as follows:-

*16. The Principal Commissioner has rightly concluded that the serial number 10 of List 8 refers to 'solar power generating system' and not to 'module mounting structures' manufactured by the appellant and only parts consumed within the factory of production of such parts for the manufacture of goods specified at serial numbers 1 to 20 of List 8 are exempted from payment of central excise duty.*

*17. The Principal Commissioner has also correctly appreciated the effect of the amendment made on 11.07.2014 to the aforesaid notification dated 17.03.2012. According to the Principal Commissioner, prior to the amendment only parts consumed within the factory of production of such parts for the manufacture of goods specified at serial numbers 1 to 20 of List 8 were exempted, but after the said amendment the exemption is also available to parts of goods specified at serial numbers 1 to 20 of List 8 in a situation where it is consumed not only within the factory of production for the manufacture of goods specified in List 8 but also when used elsewhere than in the factory of production, subject of course to the condition that the procedure laid down in the relevant rules has been followed.*

*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'.*

*19. Learned counsel for the appellant placed strong reliance upon the judgment of the Madhya Pradesh*

*High Court in Belectric Photovoltaic Tax. This judgment would not help the appellant. A writ petition was filed in the Madhya Pradesh High Court to assail the order passed by the Commissioner of Commercial Tax rejecting the application filed by the petitioner therein contending that the articles used for installing 'solar power generating system' are exempted from Value Added Tax. The State Government had framed a policy providing incentives to a developer, including exemption from Value Added Tax and at serial number 10 'solar power generating system' was mentioned. The contention of the appellant was that the existence of a sub-station was an essential practical requirement of 'solar power plant' and, therefore, this was also covered under the exemption. It is in this context that the Madhya Pradesh High Court observed as follows:*

*"18. Even by taking into account the aforesaid judgment, this Court is of the opinion that power generating system includes all components even the grid/goods related to sub-station, without which, the system cannot work.*

*19. The policy framed by the State Government otherwise will have no meaning. The policy was framed keeping in view global warming and resultant climatic changes and all kinds of incentives have been provided for setting up of solar power based projects in the State of Madhya Pradesh. It is really unfortunate that instead of promoting such projects, all kind of hurdles are being created on the ground of technicalities, on the ground that exemption notification is not clear, as has been done in the present case. Once an exemption has been granted in the matter of Value Added Tax/Entry Tax for setting up solar power based projects, the exemption has to be given in respect of a complete project, as all the equipment used in the project are integral part of the project and even without one of the equipments, the project cannot function. Once the entry includes "Solar Power Project", all the material equipments used for the purposes of setting up power based project are certainly entitled for grant of exemption.*

*20. In the considered opinion of this Court, the Learned Commissioner, with a total non-application of mind, has passed the impugned order, and therefore, the impugned order dated 25-3-2017 passed by the Learned Commissioner deserves to be quashed and is accordingly quashed. The respondents shall grant exemption under Entry No. 71(10) in respect of sub-station*

*equipment/grid and all other equipments supplied by the petitioner during the course of execution of its works contract, as they form integral part of solar power generating system. Recovery, if any, on account of impugned order dated 25-3-2017 also stands quashed. The petitioner shall be entitled for all consequential benefits."*

*20. The Madhya Pradesh High Court was examining a policy framed by the State Government which was different from what is contained in the notification dated 17.03.2012 under consideration. It is seen that the notification dated 17.03.2012 while describing the excisable goods refers to 'non-conventional energy devices or systems specified in List 8'. Entry 21 of List 8 deals with 'parts consumed within the factory of production of such parts for the manufacture of goods specified at serial numbers 1 to 20'. It is only such parts which are exempted from payment of central excise duty. Such an entry is not contained in the policy of the State Government that was being examined by the Madhya Pradesh High Court.*

*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.8 and in Larsen & Toubro Ltd. versus Commissioner of Central Excise, Hyderabad9.*

*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.*

*23. There is, therefore, no infirmity in the impugned order dated 15.07.2019 passed by the Principal Commissioner. The appeal is, accordingly, dismissed.*

7. Thus, the parts manufactured by the appellant are not eligible to the benefit of exemption under Notification No.12/2012-CE dated 17.03.2012. Also, we find that the Tribunal in the aforesaid case has upheld the order of the adjudicating authority wherein the demand of Rs.6,85,64,844/- has been confirmed invoking extended period of limitation under

Section 11A(4) of the Central Excise Act, 1944. In the present case, we find that the appellant has challenged the confirmation of demand invoking extended period of limitation advancing the argument that all the facts have been disclosed to the Department through their ER-1 Returns and hence suppression of facts cannot be invoked against them. We find that the appellants are engaged in the manufacture of parts of Solar Power Generating System viz. Solar Inverters, Combiner Box / Array Guard and PV Logs. But on going through one of the sample ER-1 return, filed with the Department, for the period February 2014, we find that under the heading 'Description of Goods', the item is mentioned as "power", "ELE", "Solar". Thus, there is no correct declaration of the description of the goods mentioned in the ER-1 Returns which have been manufactured and cleared by them by raising invoices mentioning a different description. Therefore, the judgments cited by the appellant are not applicable to the present case. On the other hand, mis-declaration of the description of the goods would invite extended period of limitation in view of the judgment of the Hon'ble Supreme Court in the case of **CCE, Ahmedabad Vs. Urmin Products P. Ltd. & others** (supra) Also, in the aforesaid judgment of the Principal Bench of this Tribunal, extended period of limitation has been upheld.

8. In view of the above, the order of the learned Commissioner denying the benefit of exemption under



Notification No.12/2012-CE dated 17.03.2012 and confirming the demand invoking extended period has been upheld. However, we find that even though the appellant had deposited the amount in August 2014, which has been appropriated in the impugned order passed in February 2016, the interest liability has not been calculated and mentioned in the order; therefore, the reduction of penalty to 25% as per Section 11AC(1)(c) could not have been availed by the appellant. In the circumstances, the appellant be given a fair chance by communicating the quantum of interest payable and in the event the appellant discharges the interest amount within 30 days from the date of communication of the amount, the benefit of reduced penalty of 25% under Section 11AC(1)(c) may be extended.

9. The impugned order is modified to the extent mentioned above and the appeal is disposed of as above.

*(Order pronounced in Open Court on 19.04.2024 )*

**(D.M. MISRA)**  
**MEMBER (JUDICIAL)**

**(R BHAGYA DEVI)**  
**MEMBER (TECHNICAL)**

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