

KARNATAKA APPELLATE AUTHORITY FOR ADVANCE RULING
6TH FLOOR, VANIJYA THERIGE KARYALAYA
KALIDASA ROAD, GANDHINAGAR, BANGALORE 560009

(Constituted under Section 99 of the Karnataka Goods and Services Tax Act, 2017 vide Government of Karnataka Order No FD 47 CSL 2017, Bengaluru, dated 25-04-2018)

BEFORE THE BENCH OF

Shri. D.P.NAGENDRA KUMAR, Member

Shri. M.S. SRIKAR, Member

ORDER NO:-KAR/AAAR/03/ 2019-20

Dated:-16.08.2019.

Name and address of the appellant	M/s. Nuetech Solar Systems Private Ltd, No.5,B.M Shankarappa Industrial Estate Road, Sunkadakatte, Bangalore-560091
GSTIN or User ID	29AABCN6398L1ZO
Advance Ruling Order against which appeal is filed	Advance Ruling No. KAR ADRG 33/2018 Dated:31.12.2018
Date of filing appeal	29.05.2019
Represented by	Mr. K.R Surendra Kumar, Managing Director & Shri, K Vijaya Rajesh, Advocate & Tax Consultant
Jurisdictional Authority – Centre	Range CNWD4
Jurisdictional Authority – State	LGSTO-80, Bengaluru
Whether payment of fees for filing appeal is discharged. If yes, the amount and challan details.	Yes. Payment of Rs. 20,000/- made vide Challan CIN IBKL19022900213584 dated 23.05.2019

PROCEEDINGS

(Under Section 101 of the CGST Act, 2017 and the KGST Act, 2017)

At the outset, we would like to make it clear that the provisions of both the Central Goods and Services Tax Act, 2017 and the Karnataka Goods and Services Tax Act, 2017 (hereinafter referred to as CGST Act, 2017 and KGST Act, 2017) are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the corresponding similar provisions under the KGST Act.

The present appeal has been filed under Section 100 of the CGST Act, 2017 and the KGST Act, 2017 by M/s.Nuetech Solar Systems Private Limited (hereinafter referred to as 'Appellant') against the Advance Ruling No. KAR ADRG 33/2018 dated 31.12.2018 pronounced by the Karnataka Authority for Advance Ruling.

Brief facts of the case:

1. M/s Nuetech Solar Systems Pvt Ltd₁ is a private limited company focused on providing energy solutions by using concentrated technology. The Company is in the business of selling Solar water heaters. Solar Water Heater is one of the most popular renewable energy devises.
2. Solar power-based devices are products powered by sunlight, either directly or through electricity generated by solar panels. Solar power-based devices use solar energy as its input. To convert solar light to energy, the solar power-based devises need solar panels. These solar panels come in the following models:
 - a) Flat plate – traditional system. Flat plate collectors are an extension of the idea to place a collector in an ‘oven’ like box with glass directly facing the sun.
 - b) Evacuated tube – Evacuated tubs collectors (ETC) are a way to reduce the heat loss, inherent in flat plates. Evacuated/Vacuum tube collectors are used for solar water heating system.
3. The Appellant applied to the Authority for Advance Ruling on the following question:
“Whether Evacuated/Vacuum Tube Collectors (ETC/VTC) falls under Chapter 84 of HSN which is covered in Sl.No 234 of Schedule – I under Notification, 01/2017 IGST Rate dated 28.06.2017?”
4. The Authority for Advance Ruling vide order No KAR/ADRG 33/2018 dated 31.12.2018 passed a ruling on the following two points:
 - a) The correct classification of the product “ETC”, and
 - b) Whether the said product is entitled for the concessional rate as per Sl.No 234 of Schedule – I of Notification, No 01/2017 Integrated Tax (Rate).
5. On the issue of classification of the ETC/VTC, the Authority opined that the same merits to be a part of solar water heater systems under Chapter Heading 8419. On the second issue of entitlement for concessional rate of tax under Sl.No 234 of the said Notification, the Authority held that, in order to be eligible to claim the concessional rate of 5%, the product must be a solar power based device (renewable energy device) or part thereof. The Authority, after referring to the definition of “Power System” given in the Electricity Act, 2003, opined that the term “Power” used in the term “Solar power based device” means electricity and therefore, “Solar power based devices” would be such devices which are operated by electricity generated out of solar energy. In such devices, first the solar energy gets converted to electric energy and then the electricity so generated runs the appliance / device.
- 5.1 In the instant case, the Authority for Advance Ruling held that, the solar water heater consists of an array of tubes arranged side by side and the entire system works on the basis of the phenomenon of natural Thermosyphon circulation. This process by which the sunlight

(solar energy) is converted to heat energy, does not involve generation of electricity. In other words, the solar energy is not converted into electric energy which may heat the water. Here the solar energy is absorbed by the coated surface of the inner tubes, thereby, heating them, which in turn heats the water contained therein. In view of the above, the Authority for Advance Ruling held that the product ETC does not generate electricity at any stage and hence cannot be construed as either solar power-based device or part thereof. Accordingly, the Authority held that the product "ETC" is not covered under Sl.No 234 of Schedule – I of the Notification, No 01/2017 IGST (Rate) dated 28.06.2017 and hence not entitled for concessional rate of 5%.

6. Aggrieved by the order of the Authority for Advance Ruling, the appellant filed this appeal before this Appellate Authority on the following grounds:

6.1 The appellant submits that the order of the AAR is against the principle of natural justice; that the reason mentioned in the order was never discussed in the personal hearing.

6.2 The appellant submits that the contention of the AAR is baseless and has no connection with the case in hand. Equating "power" to electricity and "Solar power-based devices" to work solely on the principles of conversion of electrical energy to other forms of energy is incorrect and not justified. They submitted that power in common parlance is "energy"; ETC/VTC are devices that work on conversion of solar power i.e. solar energy to heat power or heat energy. Solar ETC essentially consisting of solar evacuated tubes is the heart of the solar water heater where the solar power is efficiently transferred to water thus heating it. The solar ETC is a part of the solar water heater and is used specifically for the particular function of heating the water with the solar power. Renewable energy is energy that is collected from renewable resources, which are naturally replenished on a human timescale, such as sunlight, wind, rain, tides, waves and geothermal heat. The different renewable energy devices mentioned in Sl.No 234 do not necessarily operate out of electricity generated from a renewable source. Therefore, the appellant submits that solar water heater is a renewable energy device that runs on solar power and the ETC/VTC converts the solar energy to heat energy and hence is a solar power device which is eligible for concessional rate of tax under Sl.No 234 of Notification, No 01/2017 IGST (Rate).

6.3 The appellant also filed an application for condonation of delay in filing the appeal before this Appellate Authority. They submitted that the ruling of the AAR given vide order dated 31.12.2018 was received by them on 04.01.2019. On receipt of the ruling, they communicated with the following authorities to obtain their views on the matter:

- a) Solar Thermal Federation of India
- b) Karnataka Solar Manufacturers Association
- c) Gold Standard Foundation
- d) Ministry of New & Renewable Energy
- e) Customs Authority.

They submitted that after getting the confirmation from these authorities that solar water heater systems are renewable energy devices and eligible for concessional rate of tax under Notification, No 01/2017 IGST (Rate), they have filed this appeal which is delayed. They sought for a condonation of the delay in filing the appeal on the ground that the ruling of the Authority is causing a commercial strain on their business.

Personal hearing:

7. The appellants were called for a personal hearing on 2nd July 2019 and were represented by Shri. K.R Surendra Kumar, Managing Director & Shri. K Vijaya Rajesh, Advocate & Tax Consultant. Shri. Vijaya Rajesh, Advocate explained that the company is manufacturing solar water heaters for which they import the ETC from China. Since they got a good rate for the ETC from the supplier they had imported excess quantity than what is required for manufacture and they intend to supply the same in the domestic market. For this they had applied to the AAR to ascertain whether the ETC proposed to be traded by them will attract concessional rate of 5% GST in terms of Sl.No 234 of Notification, No 01/2017 IGST (Rate) Dated. 28.06.2017. However, the AAR ruled against them by bifurcating the phrase "Solar power based devices" into "Solar" and "Power" and drawing reference to the Electricity Act, 2003 wherein "power" is defined in connection with electricity, had held that the ETC does not convert solar energy to electricity and hence cannot be considered as a solar power based device eligible for the concessional rate of 5%. He submitted that the basis for the AAR ruling is not correct and hence they have filed this appeal. He also submitted that, except in Bangalore and Chennai ports, all over the country the ETC is subjected to levy of 5% CVD on the imports.

7.1. On being specifically asked by the Members about the reasons for delay in filing the appeal before the Appellate Authority, he admitted that as per the law the appeal before the Appellate Authority has to be filed within 30 days of the receipt of the AAR ruling and the Appellate Authority has the power to condone a delay of a further 30 days. However, in their case they had received the AAR ruling dated 31.12.2018 on 04.01.2019. Immediately on receipt of the order, the Managing Director consulted with several agencies and Trade associations and after being certain that they have a valid case, they decided to file the appeal even though it was belated. They requested that the delay in filing the appeal in May 2019 be condoned in the interest of justice.

Discussion & findings:

8. We have gone through the records of the case and taken into account the submissions made by the appellant in their grounds of appeal as well as during the personal hearing. We find that the ruling of the Advance Ruling Authority that the ETC is not eligible for concessional rate of 5% GST in terms of Sl.No 234 of Notification, No 01/2017 IGST (Rate), has been challenged before us along with a prayer for condonation of delay in filing the appeal before this Authority.

9. Before we proceed with the main issue of eligibility of concessional rate of GST on the product Evacuated Tube Collector (ETC), we take up the matter of delay in filing the

present appeal. The order of the Authority of Advance Ruling dated 31.12.2018 was admittedly received by the appellant on 4th January 2019. The appeal was filed before this Appellate Authority on 29th May 2019 after a period of 145 days from the date of receipt of the order of the AAR. At this juncture it is relevant to take note of Section 100 of the CGST Act which reads as under:

100 (1) The concerned officer, the jurisdictional officer or an applicant aggrieved by any advance ruling pronounced under sub-section (4) of section 98, may appeal to the Appellate Authority.

(2) Every appeal under this section shall be filed within a period of thirty days from the date on which the ruling sought to be appealed against is communicated to the concerned officer, the jurisdictional officer and the applicant.

Provided that the Appellate Authority may, if it is satisfied that the appellant was prevented by a sufficient cause from presenting the appeal within the said period of thirty days, allow it to be presented within a further period not exceeding thirty days.

(3) Every appeal under this section shall be in such form, accompanied by such fee and verified in such manner as may be prescribed.

10. On a plain reading of the provisions of Section 100 of the said Act, it is apparent that the same mandates that an appeal should be filed within 30 days from the date of communication of the advance ruling order that is sought to be challenged. However, in view of the proviso thereto, the Appellate Authority is empowered to allow the appeal to be presented within a further period of 30 days if it is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the initial period of 30 days. Thus, the Appellate Authority is empowered to extend the period for filing an appeal for a further period of 30 days only and not more than such period. In other words, the total limitation period during which an appeal can be preferred before this Authority is 60 days from the date of communication of the advance ruling order, on showing sufficient cause. The proviso does not mean that the appeal can be presented after 60 days. If it is presented beyond the period of 30 days but within the further period of 30 days as stipulated by the proviso, then, the Appellant has to satisfy the Appellate Authority that there was sufficient cause which prevented him from filing the appeal within the period of 30 days.

11. The question whether this Appellate Authority can entertain an appeal under Section 100 of the CGST Act beyond the period of 60 days does not require much debate and has been answered in the negative by the Supreme Court in the case of *Singh Enterprises vs CCE reported in (2008) 3 SCC 70*. The Supreme Court in the said case interpreted Section 35 of the Central Excise Act, 1944 which is similar to Section 100 of the CGST Act and examined the question whether the Commissioner (Appeals) has the power to condone the delay beyond the period of 30 days from the date of expiry of the period of 60 days prescribed for filing the statutory appeal and also whether the High Court, in exercise of the power

conferred under Article 226 of the Constitution of India, can condone the delay. The Hon'ble Supreme Court in Para 8 of its order held thus:

8. *The Commissioner of Central Excise (Appeals) as also the Tribunal being creatures of Statute are vested with jurisdiction to condone the delay beyond the permissible period provided under the Statute. The period upto which the prayer for condonation can be accepted is statutorily provided. It was submitted that the logic of Section 5 of the Indian Limitation Act, 1963 (in short the Limitation Act) can be availed for condonation of delay. The first proviso to Section 35 makes the position clear that the appeal has to be preferred within three months from the date of communication to him of the decision or order. However, if the Commissioner is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of 60 days, he can allow it to be presented within a further period of 30 days. In other words, this clearly shows that the appeal has to be filed within 60 days but in terms of the proviso further 30 days' time can be granted by the appellate authority to entertain the appeal. The proviso to sub-section (1) of Section 35 makes the position crystal clear that the appellate authority has no power to allow the appeal to be presented beyond the period of 30 days. The language used makes the position clear that the legislature intended the appellate authority to entertain the appeal by condoning delay only upto 30 days after the expiry of 60 days which is the normal period for preferring appeal. Therefore, there is complete exclusion of Section 5 of the Limitation Act. The Commissioner and the High Court were therefore justified in holding that there was no power to condone the delay after the expiry of 30 days period.*

12. Section 5 of the Limitation Act, 1963 gives an opportunity to a litigant to file applications beyond the prescribed period of limitation provided, he is able to establish that he was prevented by sufficient cause from approaching the Court within the said period. However, the Supreme Court in the case of *Consolidated Engineering Enterprises vs Principal Secretary, Irrigation Department and Others* - (2008) 7 SCC 169, while considering Section 34(3) of the Arbitration and Conciliation Act, 1996 observed that

"When any special statute prescribes certain period of limitation as well as provision for extension up to specified time limit, on sufficient cause being shown, then the period of limitation prescribed under the special law shall prevail. and to that extent the provisions of the Limitation Act shall stand excluded."

Further, in the case of *Commissioner of Customs and Central Excise vs Hongo India (P) Ltd* - (2009) 5 SCC 791, the Hon'ble Supreme Court considered the question whether Section 5 of the Limitation Act can be invoked for condonation of delay in filing an appeal or reference to the High Court and observed thus:

"As pointed out earlier, the language used in Sections 35, 35-B, 35-EE, 35-G and 35-H makes the position clear that an appeal and reference to the High Court should be made within 180 days only from the date of communication of the decision or order. In other words, the language used in other provisions makes the position clear that the legislature intended the appellate authority to entertain the appeal by condoning the delay only up to 30 days after expiry of 60 days which is the preliminary limitation period for preferring an appeal. In the absence of any clause condoning the delay by showing sufficient cause after the prescribed period, there is complete exclusion of Section 5 of the Limitation Act. The High Court was, therefore, justified in holding that there was no power to condone the delay after expiry of the prescribed period of 180 days."

13. In view of the above settled legal position, it is evident that this Appellate Authority being a creature of the statute is empowered to condone a delay of only a period of 30 days after the expiry of the initial period for filing appeal. As far as the language of Section 100 of the CGST Act is concerned, the crucial words are "not exceeding thirty days" used in the proviso to sub-section (2). To hold that this Appellate Authority could entertain this appeal beyond the extended period under the proviso would render the phrase "not exceeding thirty days" wholly otiose. No principle of interpretation would justify such a result. Therefore, we hold that we are not empowered to condone the delay of 145 days in filing this appeal. The application for condonation of delay in filing this appeal is accordingly rejected.

14. Since the appeal cannot be allowed to be presented on account of time limitation, the question of discussing the merits of the main issue in appeal which is the eligibility to concessional rate of GST on the product Evacuated Tube Collector, does not arise.

15. In view of the above we pass the following order

ORDER

We dismiss the appeal filed by the appellant M/s. Nuetech_Solar Systems Pvt Ltd, on the grounds of time bar.



(D.P.NAGENDRA KUMAR)
Member
Karnataka Appellate Authority



(M.S. SRIKAR)
Member
Karnataka Appellate Authority