

**AUTHORITY FOR ADVANCE RULING
GOODS AND SERVICE TAX
UTTAR PRADESH**

4, Vibhuti Khand, Gomti Nagar, Lucknow-

ADVANCE RULING NO. UP ADRG 65 /2020

DATED 17.09.2020

PRESENT:

1. Shri Abhishek Chauhan

Joint Commissioner, Central Goods and Service Tax

Audit Commissionerate, Lucknow

.... Member (Central Tax)

2. Shri D K Verma

Joint Commissioner, State Goods and Service Tax

.....Member (State Tax)

1.	Name of the Applicant	M/s Apex Powers (Legal Name Anupam Varshney)
2.	GSTIN or User ID	09AFIPV1167J1ZX
3.	Date of filing of Form GST ARA-01	16.06.2020
4.	Represented by	1. Ms. Anupam Varshney (Proprietor) 2. Mr. Abhay Agarwal (C.A.)
5.	Jurisdictional Authority-Centre	Range-Hathras, Division-Aligarh
6.	Jurisdictional Authority-State	Mahamaya Nagar (Hathras), Sector-1
7.	Whether the payment of fees discharged and if yes, the amount CIN	Yes IBKL20010900321831 & IBKL20060900160674

**ORDER UNDER SECTION 98(4) OF THE CGST ACT, 2017 & UNDER SECTION 98
(4) OF THE UPGST ACT, 2017**

1. M/s Apex Powers (Legal Name Anupam Varshney), Hathras, Uttar Pardesh – 204101 (here in after referred to as the applicant) is a registered assessee under GST having GSTN: 09AFIPV1167J1ZX.
2. The applicant is engaged in manufacture of Lead Acid Battery. As per the applicant-
 - (a) these batteries can be used in solar modules, inverter and E-rickshaw.
 - (b) one of their product is solar power generating module which is a combination of solar battery, solar panel, and charge controller.
 - (c) solar power generating system converts solar power into useable AC and DC currents.
 - (d) DC current stored in solar batteries can be directly used into street lights.
 - (e) DC current stored in solar batteries can also be used in daily home appliances by converting DC current into AC current with help of invertors.

(f) Government of India has defined solar power generating system under chapter 85 for which 5% rate has been prescribed and no separate four digit HSN has been defined under Chapter 85.

(j) they had arrived at HSN 8541 as per industry practice followed.

3. The applicant has sought advance ruling on following questions-

(1) Under Chapter 85 what is the correct 4 digit HSN code classification for solar power generating system?

(2) What constitutes solar power generating system under chapter 85, what are the various components and technical requirements that together constitutes solar power generating system under chapter 85?

4. As per declaration given by the applicant in Form ARA-01, the issue raised by the applicant is neither pending nor decided in any proceedings under any of the provisions of the Act, against the applicant.

5. The application for advance ruling was forwarded to the Jurisdictional GST Officer to offer their comments/views/verification report on the matter. The Deputy Commissioner, CGST & Central Excise Division, Aligarh submitted his views vide his C.No.V(30)Tech/Adv Ruling/21/Alg/2019 dated 05.08.2020 and also informed that no proceeding is pending or has been decided against the applicant's case by this office. The views contained in the said report dated 05.08.2020 are as under-

Question No.1:-What constitutes solar power generating system under chapter 85, what are the various components and technical requirements that together constitutes solar power generating system under chapter 85?

1.1 In this regard, it is submitted that the term "Solar Power Generating System" has not been defined under GST Act. However, it is learnt that the similar issue has been decided in the case of M/s Fermi Solar Farms Private Limited passed by AAR Maharashtra Order No. GST-ARA-03/2017/B-07 dated 03.03.2018 (available on <http://gstcouncil.gov.in/rulings-by-advance-authority>) where the Hon'ble AAR has stated the meaning of term "Solar Power Generating System" and applicability when all goods (including PV Modules) are supplied. It is noted in said ruling that:

1.2 "Solar Power Generating System" are the system which absorb sun light and Convert it into electricity which can be put to further use;

1.3 that "Solar Power Generating System" has been defined under solar power-Grid connected ground mounted and solar rooftop metering regulation 2014 issued by State of Goa. "Solar Power Generating System" as per the regulation means *"a grid connected solar generating station including the evacuation system upto the grid interconnection point."*;

1.4 that typically the term system has wide ambit. As per Oxford dictionary the definition of term system “a complex whole, a set of things working together as a mechanism or interconnecting network.” Similarly, the system is defined in Chamber’s 20th Century dictionary as “anything framed of parts placed together or adjusted into a regular and connected whole.” Hence, system typically includes various components/part which are manufactured/assembled together for performing a system;

1.5 that under erstwhile law also “Solar Power Generating System” have not been defined. However, under erstwhile excise law, various exemptions were extended to non conventional energy device, which included “Solar Power Generating System”- list 8 of Notification No. 12/2012-Central Excise dated 17.03.2012;

1.6 that since, “Solar Power Generating System” has not been defined in present law in order to understand the ambit of the said system, judicial pronouncement under the excise law can be examined;

1.7 that reference is made to judgment of Delhi Tribunal in the case of Rajasthan Electronics and instrument limited v/s Commissioner of Central Excise Jaipur, wherein it was held “7. The Adjudicating Authority admitted the fact that the Solar Photovoltaic module is a “Solar Power Generating System”; that other parts are only panel housing consisting of controller and switches. Hence the whole system is a “Solar Power Generating System” and is entitled for the benefit of Notification;

1.8 that in the case of Bangalore Tribunal, in the case of BHEL v/s Commissioner of Central Excise, Hyderabad, it was held that “in the present case the appellant has claimed exemption in respect of Inverter Charger Card as “Solar Power Generating System”. The appellant actually manufactured SPV Lantern. The above Lantern required electricity for its working. It is possible to convert solar energy to electricity with the help of inverter charger manufactured by the appellant. The Deputy General Manager has certified that the inverter merger constitute “Solar Power Generating System”, as it performs the function of generating the required high frequency AC power from sun light with the help of SPV module and supplying it to the compact fluorescent lamp of a solar lantern. In view of the above expert opinion, they hold that impugned item can be considered as solar power generating system as is entitled for the benefit of exemption Notification and allowed the appeal with consequential relief;

1.9 that in M/s Phenix Construction Technology v/s Commissioner of Central Excise and Service tax Ahamadabad –II [2017-TIOL-3281-CESTAT-AHM] the question under consideration was whether the structure and the part of structure cleared for initial setting of solar power plant are eligible for the benefit of Notification No. 15/2010-CE. The point of dispute in the said case law was that whether the aforesaid goods qualify as component of the solar power plant. Hon’ble CESTAT has decided that the item required for initial setting up of the plant would be qualify as component; hence the benefit of exemption would extend to such item also as per “Solar Power Generating System.”;

1.10 that in Jindal Strips Limited v/s Collector of Customs Bombay [2002-TIOL-347-CESTAT-Del-LB] CESTAT has observed that component means a constituent part or element. It was also observed that component means one of the parts or sub-assemblies, of which a manufactured product is made up and into which it may be resolved and includes an accessory (or attachment);

1.11 that Ministry of New and Renewable Energy (MNRE) in various instances has also approved entire BOQ consisting of various parts e.g. cables, module, monitoring structures, spares etc. as essentials of "Solar Power Generating System" and hence the concessions applicable have been extended to such parts drawing a corollary, concessional rates of 5% should be applicable on all the goods approved under BOQ by MNRE as well.

2. Further, the Hon'ble AAR of Uttarakhand (Goods and Service Tax) in the case of M/s Eapro Global Limited, Roorkee vide their order No. 07/2018-19 dated 28.08.2018 (available on <http://gstcouncil.gov.in/rulings-by-advance-authority>) has stated that-

2.1 There are four main components to a solar power generating system as under:

(i) **Solar panels:** *The main part of a solar power generating system is the solar panel. Solar panels contain solar sales. Solar sales sometimes called photovoltaic cells, convert the energy of sun into electricity.*

(ii) **Inverters:** *The electricity produced in a solar panel is DC. Electricity we get from the grid supply is AC. So it is required to install an inverter to convert DC of solar system to AC of same level as grid supply. In off grid system the inverter is directly connected across the battery terminals so that DC coming from the batteries is first converted to AC then fed to the equipment. In grid tie system the solar panel is directly connected to inverter and this inverter then feeds the grid with same voltage and frequency power.*

(iii) **Controller:** *This is not desirable to overcharge and under discharge a lead acid battery. Both overcharging and under discharging can badly damage the battery system. To avoid these both situations a controller is required to attach with the system to maintain flow of current to and fro the batteries.*

(iv) **Battery:** *The battery is charged by solar electricity and this battery then feeds a load directly or through an inverter. In this way variation of power quality due to variation of sunlight intensity can be avoided in solar power system instead an uninterrupted uniform power supply is maintained.*

2.2 The Hon'ble AAR also relied upon the above referred case laws as mentioned in the case of M/s Fermi Solar Farms Private Limited passed by AAR Maharashtra Order No. GST-ARA-03/2017/B-07 dated 03.03.2018 and ordered that:

Supply of Solar Inverter, Controller, Battery and panels would covered under "Solar Power Generating System" as a whole in terms of Sl No. 234 of Schedule-I of the Notification No. 01/2017-Central Tax (Rate) dated 28.06.2017 when supplied for said purpose and applicable rate of GST on such supply will be 5% [2.5% CGST+2.5%SGST] and such supply will be treated as composite supply.

In view of above, this office is of opinion that the combination of solar panel, solar battery and charge controller may qualify as "Solar Power Generating System"

3. **Question No.2:-** Under Chapter 85 what is the correct 4 digit HSN code classification for solar power generating system?

3.1 In this regard, it is submitted that, since, there is no specific heading available for "Solar Power Generating System" in HSN, therefore, the classification upto 4 digit is not readily available. Moreover, as per Notification No.1/2017-Central Tax (Rate) dated 28.06.2017 w.e.f 01.07.2017 the "Solar Power Generating System" has been mentioned along with other renewable energy devices under Chapter 84 or 85.

3.2 Regarding 4 digit HSN code it is submitted that as per Customs export data the 4 digit HSN code used for Solar power generating system/component is either 8541 or 8543 depending upon the actual items.

6. The applicant was granted a personal hearing on 03.09.2020 which was attended by Ms. Anupam Varshneey and Shri Abhay Agarwal, Chartered Accountant through video conferencing during which they reiterated the submissions made in the application of advance ruling and relied on advance ruling given by authority of advance ruling in case of M/s Eapro Global Limited.

DISCUSSION AND FINDING

7. At the outset, we would like to make it clear that the provisions of both the CGST Act and the UPGST Act 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 same provision under the UPGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST Act / UPGST Act would be mentioned as being under the 'CGST Act'.

8. We have gone through the submissions made by the applicant and have examined the explanation submitted by them. At the outset, we find that the issue raised in the application is squarely covered under Section 97(2)(a) of the CGST Act 2017 being a matter related to classification of goods. We therefore, admit the application for consideration on merits.

9. We observe that the applicant has sought advance ruling on the issue Under Chapter 85 what is the correct 4 digit HSN code classification for solar power generating system? The applicant has arrived the classification of the same under Chapter 8541 as per industry practice and the jurisdictional officer has opined that classification of the same falls under chapter 8541 or 8543 depending upon the actual use. As per Customs Tariff Act, 1975 the HSN 8541 has been defined as under:

8541- DIODES, TRANSISTORS AND SIMILAR SEMI-CONDUCTOR DEVICES; PHOTO SENSITIVE SEMI-CONDUCTOR DEVICES; INCLUDING PHOTO VOLTAIC CELLS, WHETHER OR NOT ASSEMBLED IN MODULES OR MADE UP INTO

PANELS; LIGHT EMITTING DIODES; (LED); MOUNTED PIEZO-ELECTRIC CRYSTALS.

854140- Photosensitive semi-conductor devices, including photo voltaic cells whether or not assembled in modules or made up into panels; light-emitting diodes (LED).

8541 40 11- Solar cells whether or not assembled in modules or panels

85414012- Solar cells, assembled in modules or made up into panels

10. As per Rule 2b of General Rules for interpretation of the first schedule (Import Tariff), any reference in a heading to a material/substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances. As per Rule 3a of the said Rules of interpretation, the heading which provides the most specific description shall be preferred to heading having more general description. According to Rule 3b of the Rules of interpretation, in case Rule 3a is not applicable, the goods shall be classified as if they consisted of the material/ raw material which give their essential character. In the applicant's case, the essential character to Solar Power Generating System is Solar Panel consisting of multiple solar cells as also held by Advance Ruling Authority of Uttarakhand (supra) in case of M/s Eapro Global Limited, Roorkee. Further, Chapter Note 9 of Chapter 85 states that for the classification of the articles defined in this Note, headings 8541 and 8542 shall take precedence over any other heading in this Schedule, except in the case of heading 8523. As such, in our view, the four digit HSN of Solar Power Generating System is 8541.

11. We find that the second question of the applicant is what constitutes solar power generating system under chapter 85, what are the various components and technical requirements that together constitutes solar power generating system under chapter 85? We find that the AAR of Uttarakhand (Goods and Service Tax) in the case of M/s Eapro Global Limited, Roorkee vide their order No. 07/2018-19 dated 28.08.2018 relying on various case laws has held that-

There are four main components to a solar power generating system as under:

(i) **Solar panels:** *The main part of a solar power generating system is the solar panel. Solar panels contain solar sales. Solar sales sometimes called photovoltaic cells, convert the energy of sun into electricity.*

(ii) **Inverters:** *The electricity produced in a solar panel is DC. Electricity we get from the grid supply is AC. So it is required to install an inverter to convert DC of solar system to AC of same level as grid supply. In off grid system the inverter is directly connected across the battery terminals so that DC coming from the batteries is first converted to AC then fed to the equipment. In grid tie system the solar panel is directly connected to inverter and this inverter then feeds the grid with same voltage and frequency power.*

(iii) **Controller:** This is not desirable to overcharge and under discharge a lead acid battery. Both overcharging and under discharging can badly damage the battery system. To avoid these both situations a controller is required to attach with the system to maintain flow of current to and fro the batteries.

(iv) **Battery:** The battery is charged by solar electricity and this battery then feeds a load directly or through an inverter. In this way variation of power quality due to variation of sunlight intensity can be avoided in solar power system instead an uninterrupted uniform power supply is maintained.

12. The Ministry of New and Renewable Energy (MNRE) in various instances has also approved entire BOQ consisting of various parts e.g. cables, module, monitoring structures, spares etc. as essentials of "Solar Power Generating System".

13. Accordingly, we hold that Solar Panel, Inverter, Controller and Battery are essential components of 'Solar Power Generating System'. But, we also hold that cable & monitoring structures are supplementary components of 'Solar Power Generating System'.

14. In view of the above discussions, we, both the members unanimously rule as under;

RULING

15.

Question:- Under Chapter 85 what is the correct 4 digit HSN code classification for solar power generating system?

Answer:- The 4 digit HSN code of 'Solar Power Generating System' is 8541.

Question:- What constitutes solar power generating system under chapter 85, what are the various components and technical requirements that together constitutes solar power generating system under chapter 85?

Answer:- Solar Panel, Inverter, Controller and Battery are essential elements of 'Solar Power Generating System' and supply of aforesaid four items as a whole would cover under the 'Solar Power Generating System'. But, cable & monitoring structures are also supplementary elements of 'Solar Power Generating System'.

16. This ruling is valid only within the jurisdiction of Authority for Advance Ruling Uttar Pradesh and subject to the provisions under Section 103(2) of the CGST Act, 2017 until and unless declared void under Section 104(1) of the Act.


(Dinesh Kumar Verma)

Member of Authority for Advance
Ruling


(Abhishek Chauhan)

Member of Authority for Advance
Ruling

To,

M/s Apex Power
Opposite Maruti Showroom
Aligarh Road, Village-Ruheri
Hathras - 204101

AUTHORITY FOR ADVANCE RULING –UTTAR PRADESH

Copy to –

1. The Chief Commissioner, CGST & Central Excise, Lucknow, Member, Appellate Authority of Advance Ruling.
2. The Commissioner, Commercial Tax, Uttar Pradesh, Member, Appellate Authority of Advance Ruling.
3. The Commissioner, CGST & C. Ex, Agra, Uttar Pradesh.
4. The Deputy/Assistant Commissioner, CGST & Central Excise, Division-Aligarh, Masood Mahal, Lal Diggi Road, Aligarh 202001.
5. Through the Additional Commissioner, Gr-I, Commercial Tax, *Aligarh*....., Uttar Pradesh to jurisdictional tax assessing officers.

Note: An Appeal against this advance ruling order lies before the Uttar Pradesh Appellate Authority for Advance Ruling for Goods and Service Tax, 4, VibhutiKhnaad, Gomti Nagar, Lucknow – 226010, within 30 days from the date of service of this order.