M/s. Nuetech Solar Systems Private Ltd. (appellant before the Karnataka Appellate Authority for Advance Ruling)

Appellate Authority for Advance Ruling — Karnataka

ORDER NO:-KAR/AAAR/03/ 2019-20 Dated:-16.08.2019 Dated **16.08.2019**

Q Questions Before the Authority

- Whether Evacuated/Vacuum Tube Collectors (ETC/VTC) fall 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 (as put to the Authority for Advance Ruling, whose order No. KAR ADRG 33/2018 dated 31.12.2018 is under appeal)
- Whether the product ETC is entitled to the concessional rate of 5% under Sl.No 234 of Schedule I of Notification No. 01/2017 IGST (Rate) (second point decided by the Advance Ruling Authority, as recorded in the appellate order)

F Facts

The appellant manufactures solar water heaters and imports evacuated tube collectors (ETC) from China. It had imported more ETC than needed for manufacturing and proposed to trade the surplus in the domestic market, so it sought an advance ruling on whether the ETC attracts the 5% concessional rate. The Advance Ruling Authority ruled against the appellant (Advance Ruling No. KAR ADRG 33/2018 dated 31.12.2018), and the appellant received that order on 04.01.2019. The appeal was filed on 29.05.2019, 145 days after receipt.

H Ruling

The Appellate Authority dismissed the appeal on the ground of time bar and did not examine the merits. It held that under the proviso to Section 100(2) it can condone delay only up to a further 30 days beyond the initial 30-day period, so the 145-day delay could not be condoned. The application for condonation of delay was rejected.

R Reasoning

The Authority read Section 100(2) and its proviso together and held that the words "not exceeding thirty days" cap the total limitation at 60 days from communication of the advance ruling. It relied on the Supreme Court decisions in Singh Enterprises v CCE (2008) 3 SCC 70, Consolidated Engineering Enterprises (2008) 7 SCC 169 and Commissioner of Customs v Hongo India (2009) 5 SCC 791, which hold that Section 5 of the Limitation Act does not extend a statutory appeal period that a special statute has fixed. Since the appeal could not be entertained, the Authority declined to decide whether the ETC qualifies under Sl.No 234. The order does not decide any question of classification or rate.

P Provisions Relied On

Prepared as a reading aid. Where this summary and the original order differ, the order governs.

Section 100(1), (2) and (3) of the CGST Act, 2017 and the corresponding KGST Act, 2017 provisions, including the proviso to…

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

Section 98(4) of the CGST Act, 2017 (referred to within the text of Section 100(1))

Section 5 of the Limitation Act, 1963 (held inapplicable)

Notification No. 01/2017 IGST (Rate) dated 28.06.2017, Sl.No 234 of Schedule I (merits not decided)

Supreme Court decisions: Singh Enterprises v CCE (2008) 3 SCC 70; Consolidated Engineering Enterprises v Principal Secr…

! For the Practitioner

This order is useful as a procedural authority: an appeal to the Karnataka Appellate Authority under Section 100 must be filed within 30 days of communication of the advance ruling, extendable by at most a further 30 days on sufficient cause, and the Authority will not condone delay beyond 60 days. Practitioners should calendar the appeal deadline from the date of receipt of the AAR order. The order does not decide whether evacuated tube collectors are classified under Chapter 84 or qualify for the 5% rate under Sl.No 234, so it gives no guidance on the merits.

Source

Summary prepared from the published order, which is a scanned document. It is a reading aid and not the authority: where the two differ, the order governs. Verify every provision against the original before relying on it.

Original order: www.gstcouncil.gov.in -> kar_aaar_03_2019_nuetechapealorder.pdf

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