HC-KAR

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 15TH DAY OF DECEMBER, 2025

BEFORE

THE HON'BLE MR. JUSTICE S.R.KRISHNA KUMAR

WRIT PETITION NO. 9686 OF 2025 (T-RES)
C/W
WRIT PETITION NO. 11788 OF 2025 (T-RES)
C/W
WRIT PETITION NO. 16708 OF 2025 (T-RES)

IN WP NO. 9686/2025

BETWEEN:

M/S ABB INDIA LIMITED
PLOT NO.5 AND 6, 2ND PHASE,
PEENYA INDUSTRIAL AREA,
BENGALURU – 560 058.
A COMPANY INCORPORATED
UNDER THE COMPANIES ACT, 1956,
REPRESENTED BY ITS AUTHORIZED SIGNATORY
MR. PRANESH T.N., - TAX MANAGER,
PLOT NO. 5 AND 6, 2ND PHASE,
PEENYA INDUSTRIAL AREA,
BENGALURU - 560 058.

...PETITIONER

(BY SRI. G. SHIVADASS, SENIOR COUNSEL APPEARING FOR
SRI. PRASHANTH SABARISH SHIVADASS, ADVOCATE)

AND:

1. THE JOINT COMMISSIONER
OF COMMERCIAL TAXES (APPEALS-6) ,
TTMC COMPLEX, SHANTINAGARA
BANGALORE- 560 027.

2. DEPUTY COMMISSIONER OF COMMERCIAL TAXES (AUDIT)- 6.2,
DGSTO-6, 3RD FLOOR, KIADB BUILDING,
PEENYA 2ND STAGE,
BENGALURU-560 058.

...RESPONDENTS

(BY SMT. JYOTI .M.MARADI, HCGP)

THIS W.P. IS FILED UNDER ARTICLE 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE IMPUGNED ORDER-IN-APPEAL NO. GST/AP. NO.11/2024-25 DATED 29.01.2025 ENCLOSED AS ANNEXURE-A, PASSED BY RESPONDENT NO. 1 AND ETC.

IN WP NO. 11788/2025

BETWEEN:

M/S ABB INDIA LIMITED
PLOT NO.5 AND 6, 2ND PHASE,
PEENYA INDUSTRIAL AREA,
BENGALURU – 560 058.
A COMPANY INCORPORATED
UNDER THE COMPANIES ACT, 1956,
REPRESENTED BY ITS AUTHORIZED SIGNATORY
MR. PRANESH T.N.,
TAX MANAGER,
PLOT NO. 5 AND 6, 2ND PHASE,
PEENYA INDUSTRIAL AREA,
BENGALURU - 560 058.

...PETITIONER

(BY SRI. G. SHIVADASS, SENIOR COUNSEL APPEARING FOR
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1. THE JOINT COMMISSIONER
OF COMMERCIAL TAXES (APPEALS-6) ,
TTMC COMPLEX,
SHANTINAGARA
BANGALORE- 560 027.

2. DEPUTY COMMISSIONER OF
COMMERCIAL TAXES (AUDIT)- 6.2,
DGSTO-6, 3RD FLOOR,
KIADB BUILDING,
PEENYA 2ND STAGE,
BENGALURU-560 058.

...RESPONDENTS

(BY SMT. JYOTI .M.MARADI, HCGP)

THIS W.P. IS FILED UNDER ARTICLE 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE IMPUGNED ORDER-IN-APPEAL NO. GST/AP. NO.184/2024-25 DATED: 28.02.2025 ENCLOSED AS ANNEXURE-A, PASSED BY RESPONDENT NO.1

IN WP No. 16708/2025

BETWEEN:

M/S. ABB INDIA LIMITED
PLOT NO.5 AND 6, 2ND PHASE,
PEENYA INDUSTRIA
BENGALURU URBAN – 560 058.
A COMPANY INCORPORATED
UNDER THE COMPANIES ACT, 1956,
REPRESENTED BY ITS AUTHORIZED SIGNATORY
MR. PRANESH T.N.,
TAX MANAGER,
PLOT NO. 5 AND 6,
2ND PHASE, PEENYA INDUSTRIAL AREA,
BENGALURU – 560 058.

…PETITIONER

(BY SRI. G. SHIVADASS, SENIOR COUNSEL APPEARING FOR
SRI. PRASHANTH SABARISH SHIVADASS, ADVOCATE)

AND:

1. THE JOINT COMMISSIONER
OF COMMERCIAL TAXES (APPEALS-6) ,
TTMC COMPLEX,
SHANTINAGARA
BANGALORE- 560 027.

2. DEPUTY COMMISSIONER OF
COMMERCIAL TAXES (AUDIT)- 6.2,
DGSTO-6, 3RD FLOOR,
KIADB BUILDING,
PEENYA 2ND STAGE,
BENGALURU-560 058.

3. UNION OF INDIA
THROUGH THE SECRETARY,

MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
GOVERNMENT OF INDIA
ROOM NO. 48-C, NORTH BLOCK
CENTRAL SECRETARIAT
NEW DELHI – 110 001.

4. STATE OF KARNATAKA
THROUGH PRINCIPAL SECRETARY
FINANCE DEPARTMENT
VIDHANA SOUDHA
BENGALURU – 560 001.

5. CENTRAL BOARD OF INDIRECT
TAXES AND CUSTOMS
THROUGH THE SECRETARY,
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
GOVERNMENT OF INDIA
ROOM NO. 48-C, NORTH BLOCK
CENTRAL SECRETARIAT
NEW DELHI – 110 001.

...RESPONDENTS

(BY SMT. JYOTI .M.MARADI, HCGP FOR R-1, R-2, R-4 & R-5
SRI. NAGENDRA.A, CGC FOR R-3)

THIS W.P. IS FILED UNDER ARTICLE 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE IMPUGNED ORDER-IN-APPEAL NO. GST/AP. NO.640/2024-25 DATED: 27.03.2025 ENCLOSED AS ANNEXURE-A, PASSED BY RESPONDENT NO.1 TO THE EXTENT PREJUDICIAL TO THE INTEREST OF THE PETITIONER.

THESE PETITIONS, COMING ON FOR FINAL HEARING, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE S.R.KRISHNA KUMAR

ORAL ORDER

In W.P.No.9686/2025, petitioner seeks for the following reliefs:-

> *" a) To issue order(s), directions, writ(s), in the nature of Certiorari quashing the impugned Order-in-Appeal No. GST/AP. No.11/2024-25 dated: 29.01.2025 enclosed as Annexure-A, passed by Respondent No.1;*
>
> *b) To issue order(s) or directions in the nature of Mandamus holding that the solar inverters and other goods under consideration supplied by the petitioner are subjected to GST at the rate of 5%*
>
> *c) To issue order(s) or directions in the nature of Mandamus holding that the goods supplied by the Petitioner does not constitute mixed supply of goods and services attracting GST at the rate of 18%;*
>
> *d) To issue order(s) or directions in the nature of Mandamus holding that ITC cannot be denied to the Petitioner for the fault of the supplier;*
>
> *e) To issue order(s), directions, writ(s) or any other relief as this Hon'ble Court deems it fit and proper in the facts and circumstances of the case in the interest of justice."*

In W.P.No.11788/2025, petitioner seeks for the following reliefs:-

" a) To issue order(s), directions, writ(s), in the nature of Certiorari quashing the impugned Order-in-Appeal No. GST/AP. No.184/2024-25 dated: 28.02.2025 enclosed as Annexure-A, passed by Respondent No.1;

b) To issue order(s) or directions in the nature of Mandamus holding that the solar inverters and other goods under consideration supplied by the petitioner are subjected to GST at the rate of 5%;

c) To issue order(s) or directions in the nature of Mandamus holding that the petitioner is eligible to ITC availed on repair and maintenance services;

d) To issue order(s) or directions in the nature of Mandamus holding that petitioner has rightfully claimed eligible refund of accumulated ITC on account of inverted duty structure;

e) To issue order(s) or directions in the nature of Mandamus holding that ITC cannot be denied to the petitioner for the fault of the supplier.

f) To issue order(s), directions, writ(s) or any other relief as this Hon'ble Court deems it fit and proper in the facts and circumstances of the case in the interest of justice."

In W.P.No.16708/2025, petitioner seeks for the following reliefs:-

" a. To issue order(s), directions, writ(s) in the nature of Certiorari quashing the impugned Order-in-Appeal No. GST/AP. No. 640/2024-25 dated 27.03.2025 enclosed a

Annexure-A, passed by Respondent No. 1 to the extent prejudicial to the interest of the Petitioner,

b. To issue order(s), directions, writ(s) in the nature of Mandamus holding that the Notification No. 56/2023-Central Tax dated 28.12.2023 enclosed as Annexure-S is ultra vires to Section 168A of the Central Goods and Services Tax Act, 2017;

c. To issue order(s), directions, writ(s) in the nature of Certiorari quashing the Order-in-Original No. DCCT (A)-6.1/DGSTO-6/2024-25 dated 23.08.2024 enclosed 85 Annexure-B, passed by Respondent No.2 as barred by limitation;

d. To issue order(s) or directions in the nature of Mandamus holding that the solar inverters and other goods under consideration supplied by the Petitioner are subjected to GST at the rate of 5%;

e. To issue order(s) or directions in the nature of Mandamus holding that demand of tax and penalty on account of discharge of tax in wrong head of the GST is not sustainable as the entire situation is revenue neutral;

f. To issue order(s) or directions in the nature of Mandamus holding that the Petitioner is not liable to pay tax on the towards the exports of services since the Petitioner has realized export proceeds;

g. To issue order(s) or directions in the nature of Mandamus holding that the Petitioner has rightly availed ITC as per the provisions of GST Law;

h. To issue order(s) or directions in the nature of Mandamus or any other writ holding that the impugned

proceedings under Section 73 of the CGST/KGST Act initiated in light of Notification issued under Section 168A of the CGST/KGST Act is without jurisdiction;

i. To issue order(s) or directions in the nature of Mandamus to set aside the interest and penalty confirmed in the impugned order by Respondent No.1;

j. To issue order(s), directions, writ(s) or any other relief as this Hon'ble Court deems it fit and proper in the facts and circumstance of the case in the interest of justice."

2. The petitioners and respondents in all the three petitions are the same and since common questions of law and fact arise for consideration in all the three petitions, they are taken up together and disposed of by this common order.

3. The Petitioner is engaged in the manufacture and sale of switchgear, Industrial Electronic Controllers, Drives, electrical goods and related parts and accessories. During the relevant period, the Petitioner has undertaken the sale/ supply of the solar inverters classifiable under Chapter 85 of the Harmonized System Nomenclature (HSN). The Petitioner undertakes supply of solar inverters which are predominantly used for solar power projects, industries and/or large residential complexes where solar power grid system is used as a source of power. According to them, the

goods supplied by the Petitioner are either solar power-based devices or forms of a solar power generating system which are covered within the ambit of Sl. No.234 of Notification No.1/2017-CT(R) dated 28.02.2017 are discharged by the Petitioner at concessional rate of 5%. The said contention is disputed by the respondents who contend that the goods supplied by the petitioner were covered as 'general electrical devices' under Chapter Heading 8504 and GST @ 18% was leviable upon the subject goods.

4. After conducting audit enquiry and issuing intimations to the petitioner, the respondents issued show cause notices to the petitioners under Section 73 of the KGST Act, alleging that the subject goods supplied by the petitioner which were electrical invertors fell under the Entry 'general electrical devices' under Chapter Heading 8504 and GST @ 18% was leviable upon the petitioner on the subject goods. The petitioner submitted replies and produced documents etc., and contended that the subject goods supplied by the petitioner comprising of solar invertors were meant to be used for solar power projects, industries and/or large residential complexes where solar power grid system is used as a

source of power and that the subject goods supplied by the petitioner are either solar power – based devices or form part of a solar power generating system which are covered within the scope and ambit of Sl.No.234 of Notification No.1/2017–CT(R) dated 28.02.2017 which stipulates GST at concessional rate of 5% which had been discharged by the petitioner and the demands made in the show cause notice by the respondents on account of erroneous and incorrect classification were liable to be dropped.

5. The respondents proceeded to pass the impugned orders-in-original confirming the demand of GST on supply of solar invertors and other accessories by the petitioners at 18% and rejecting the claim of the petitioner whose appeals were also dismissed by the appellate authority, aggrieved by which, petitioners are before this Court by way of the present petitions for the tax /financial periods from July 2017 to March 2018, April 2018 to March 2019 and April 2019 to March 2020 as enumerated hereunder:-

Sl. No.	**Particulars**	**WP No. 9686/2025**	**WP No. 11788/2025**	**WP No. 16708/2025**
1.	Period of Dispute	July 2017- March 2018	April 2018 – March 2019	April 2019 – March 2020
2.	Impugned Order-in-appeal No. and date	GST/AP. No. 11/2024-25 dated 29.01.2025	Order-in-appeal No. 184/2024-25 dated 28.0.2025	GST/AP. No. 640/2024-25 dated 27.03.2025

3.	Tax Demanded on supply of Solar Inverters and other accessories	Rs. 36,87,16,706/-	Rs.58,39,30,336/-	Rs.24,67,36, 294/-
4.	**Total Tax Demanded**	**Rs. 37,10,20,536/-**	**Rs.61,37,04,338/-**	**Rs.25,77,96, 388/-**

6. The respondents have filed their statement of objections and contested the petition, in pursuance of which, the petitioner has filed a rejoinder reiterating its contentions and disputing and denying the various allegations and claim made by the respondents.

7. Heard learned Senior counsel for the petitioner and learned HCGP for the respondents and perused the material on record.

8. In addition to reiterating the various contentions urged in the petition and referring to the material on record, learned Senior counsel for the petitioner submits that the subject solar invertors supplied by the petitioner were covered by Entry No.234 of Schedule-I of the Notification dated 28.06.2017 which prescribed GST rate for certain renewable energy devices and parts for their manufacture at 5% including the subject solar invertors which were used for manufacture of solar power based devices and solar

power generating system and the respondents committed an error in classifying the subject goods as 'general electrical devices' under Chapter Heading 8504, thereby proposing to levy GST at 18% which is not applicable to the subject goods. It was therefore submitted that the impugned orders passed by the respondents deserve to be set aside. In support of his submissions, learned Senior counsel places reliance upon the following judgments:-

(i) CCE vs. Hewlett Packard India Sales Pvt. LTd., - 2007 (215) ELT 484(SC);

(ii) Commissioner of Customs, Bangalore vs. Aditya Birla Nuo Ltd., - 2021 (378) ELT 42(KAR);

(iii) State of Haryana vs.Dalmia Dadri Cement Ltd., - 2004 (178) ELT 13 (SC).

9. Per contra, learned HCGP for the respondents would reiterate the various contentions urged in the statement of objections and submits that there is no merit in the petitions and the same are liable to be dismissed.

10. I have given my anxious consideration to the rival submissions and perused the material on record.

11. A perusal of the material on record will indicate that the working of the inverters supplied by the Petitioner is by taking in the

variable direct current, or 'DC' output, from a solar panel and transforms it into alternating 120V/240V current, or 'AC' output. The solar energy from the sun is absorbed by the solar panels [or photovoltaic ("PV") cells), which are made of semiconductor layers of crystalline silicon or gallium arsenide. These layers are a combination of both positive and negative layers, which are connected by a junction. When the sun shines, the semiconductor layers absorb the light and sends the energy to the PV cell. This energy runs around, and bumps electrons lose, and they move between the positive and negative layers, producing an electric current known as DC. Once this energy is produced, it is either stored in a battery for later use or sent directly to an inverter. When the energy gets sent to the inverter, it is in DC format. However, current at home/ offices/ industries needs to be in AC. The inverter grabs the energy and runs it through a transformer, which is then converted into an AC output. The solar inverter supplied by the Petitioner has sole functionality of being used as part of the solar power grid system. The presence of solar panels, battery, controller is integral for the working of the inverters as it cannot be used for normal household usage like a regular electrical

converter. In the present case, for the solar inverter to be working the input must be in the form of solar energy which is absorbed by the solar panels.

12. In this context, it is an undisputed fact as borne out from the material on record that the petitioner in W.P.No.9686/2025 has supplied solar invertors to M/s.Palace Solar Energy Pvt. Ltd., for the purpose of manufacture of solar power based devices and solar power generating system as can be seen from the purchase orders, invoices etc., produced by the petitioner; similarly, in W.P.No.11788/2025, petitioner has supplied solar invertors to M/s.Mahindra Susteen Pvt., Ltd., for the purpose of manufacture of solar power based devices and solar power generating system as can be seen from the purchase orders, invoices etc., produced by the petitioner; so also, the petitioner in W.P.No.16708/2025, has supplied solar invertors to M/s.Oryx Solar Energy Project for the purpose of manufacture of solar power based devices and solar power generating system as can be seen from the purchase orders, invoices etc., produced by the petitioner.

13. The aforesaid documents will indicate that the subject goods have been supplied by the petitioner to the purchaser for

Charanka Solar Power located in Gujarat, which is a 15 MW solar PV plant project in Charanka, Gujarat, India, for Husk Power Uttar Pradesh Project, India, and for Oryx Solar Energy project which has projects at multiple locations in India and outside India.

14. Entry No.234 of Schedule-I of the Notification No.1/2017-CT(R) dated 28.06.2017 prescribes GST rate for certain renewable energy devices and parts for their manufacture at 5%. The relevant portion of the Schedule-I of the said Notification is reproduced below as:

Sl. No.	**Chapter/ Heading / Sub- Heading / Tariff Item**	**Description Of Goods**
234.	84, 85 or 94	Following renewable energy devices & parts for their manufacture i. Bio-gas plant **ii.Solar power based devices** **iii.Solar power generating system** iv. Wind mills, Wind Operated Electricity Generator (WOEG) v. Waste to energy plants/ devices vi. Solar lantern/ solar lamp vii. Ocean waves/ tidal waves energy devices/ plants viii. Photo voltaic cells, whether or not assembled in modules or made up into panels **Explanation**: if the goods specified in the entry are supplied, by a supplier, along

		with supplies of other goods and services, one of which being a taxable service specified in the entry at S. No. 38 of the Table mentioned in the notification No. 11/2017-Central Tax (Rate), dated 28th June, 2017 [G.S.R. 690(E)], the value of supply of goods for the purposes of this entry shall be deemed as seventy per cent. of the gross consideration charged for all such supplies, and the remaining thirty per cent. of the gross consideration charged shall be deemed as value of the said taxable service.

15. According to the above entry, the goods covered under Chapter 84, 85 and 94 are covered within the ambit of the Exemption Notification, subject to the condition that they are either energy devices per-se or are parts which are used in the manufacture of Solar power based devices or Solar power generating system, amongst others in terms of explanatory notes to Chapter Heading 8504, a device which converts AC into DC is an electric inverter and therefore, the Petitioner under Chapter Heading 8504 has been supplying solar inverters to its purchasers. It is therefore clear that a perusal of the Exemption Notification, the

benefit of the concessional rate of GST is available for renewable energy devices and parts for their manufacture.

16. It is also relevant to state that on a perusal of the aforesaid rate entry, it is clear that solar power generating system as a whole is covered under the said entry; the phrase 'system' indicates that it would consist of various individual machines which would function together to provide the desired output result. The word 'system' has been defined under the Fourth Edition of Black's Law Dictionary as follows-

> *"SYSTEM- Orderly combination or arrangement, as of particulars, parts, or elements into a whole; especially such combination according to some rational principle; any methodic arrangement of parts."*

17. In the case of ***CCE vs. Hewlett Packard India Sales Pvt. Ltd., - 2007 (215) E.E.T. 484 (S.C.),*** the Apex Court that the meaning of the word 'System' was explained with reference to operating system of the computer and it has been held that the pre-loaded operating system recorded in the hard drive of the computer is an integral part of the computer, without which, the computer cannot open and work and has been classified as operating system under entry relating to computer itself as hereunder:-

*"**5.** A short question which arises for determination in this civil appeal is : Whether operating systems (software) which controls the working of the computer and which is preloaded in the laptop (notebook) is classifiable as a separate entity under CTH 85.24 at 'nil' rate of duty or as an integral part of the laptop under CTH 84.71 at the appropriate rate of duty.*

***6.** To answer the above question CTH 85.24 and CTH 84.71 need to be quoted:*

CTH 85.24:

"Media recorded with sound or similar recording, whether or not presented together with the apparatus for which they are intended or assembled with constituent parts of machines of heading 84.69 to 84.72 (e.g. disc packs) are in all cases to be classified in this heading."

CTH 84.71

> *"Automatic data processing machines and units thereof; magnetic or optical reader, machines for transcribing data on to data media in coded form and machines for processing such data, not elsewhere specified or included."*

***7.** The Department has classified the laptop as a machine in CTH 84.71 and has demanded duty on the assessable value determined by deducting the software value from the total value of the laptop whereas the assessee has classified the software loaded Hard Disk Drive (for short, 'HDD') under CTH 85.24 separately from the laptop and has claimed the benefit of Notification No. 21/2002-Cus. dated 1.3.2002.*

8. *To answer the above controversy meaning of the words software, hard disk and platter need to be noted (See: Computer Dictionary by Microsoft - Fifth Edition at pp.489, 246 and 408 respectively):*

> *"Hard disk. A device containing one or more inflexible platters coated with material in which data can be recorded magnetically, together with their read/write heads, the head-positioning mechanism, and the spindly motor in a sealed case that protects against outside contaminants. The protected environment allows the head to fly 10 to 25 millionths of an inch above the surface of a platter rotating typically at 3600 to 7200 rpm; therefore, much more data can be stored and accessed much more quickly than on a floppy disk. Most hard disks contain from two to eight platters. See the illustration. Also called: hard disk drive. Hard disk drive n. See hard disk Platter. One of the individual metal data storage disks within a hard disk drive. Most hard disks have from two to eight platters. See the illustration. See also hard disk Software. Computer programs; instructions that make hardware work. Two main types of software are system software (operating systems), which controls the workings of the computer, and applications, such as word processing programs, spreadsheets, and databases, which perform the tasks for which people use computers. Two additional categories, which are neither system nor application software but contain elements of both, are network software, which enables groups of computers to communicate, and language software, which provides programmers with the tools they need to write programs. In addition to these task-based categories, several types of software are described based on their method of distribution. These include packaged software (canned programs), sold primarily through retail outlets;*

> *freeware and public domain software, which are distributed free of charge; shareware, which is also distributed free of charge; although users are requested to pay a small registration fee for continued use of the program; and vaporware, software that is announced by a company or individuals but either never makes it to market or is very late. See also application, canned software, freeware, network software, operating system, shareware, system software, vaporware, Compare firmware, hardware, liveware."*

9. *On the basis of the above dictionary meanings it becomes clear that a software is a computer programme. It consists of instructions that make hardware work. There are two types of softwares, namely, system software which controls the working of the computer and application software such as word processing programmes, databases etc., which perform the tasks for which we use computers. In addition, we now have network software which enables groups of computers to communicate, and language software which provides programmers with the tools with which they write programmes. We also have what is called as packaged softwares which are sold through retail outlets. In the present case, the respondent imported laptops containing preloaded HDD. The said drives were preloaded with operating systems (software) which, as stated above, controls the working of the computer. The value of the laptop depends on the operating system, which is preloaded. The computer cannot open without the operating system. The laptop without an operating system is like an empty building. At this stage, it may be clarified that the operating system can also be imported as a packaged software which is like an*

accessory and which in the present case is classified by the department under CTH 85.24. However, a preloaded operating system recorded on HDD is an integral part of the laptop (unit). Such preloaded operating system on the HDD forms an integral part of the laptop. It is important to note that laptop as a stand alone unit is classifiable under CTH 84.71. A laptop is a small portable Personal Computer (in short 'PC'). It runs either on battery or electricity. Laptop has a screen and a small key board. Most of the laptops run on the same software as their desk top counterparts. Most of the laptops accept floppy disks, CD ROM Drives, External or Internal Modem etc. A notebook computer is a laptop. It is a machine. A CD or a floppy disk is a peripheral.

10. *Applying the above tests to the facts of the present case, we are of the view that preloaded operating system recorded in HDD in the laptop (which is the item of import) forms an integral part of the laptop. What was imported in the present case was a laptop as a stand alone item (unit). Present dispute relates to the transaction value of the unit. An importer who buys a laptop containing an operating system pays for the laptop as a unit. As stated above, without the operating system, like Windows, the laptop cannot work. The computer cannot open without operating system. In the present case, the respondent has not only imported laptops, it has also imported HDDs on which the operating system was recorded (packaged software) which has been classified by the Department under CTH 85.24. However, when a laptop is imported with in-built preloaded operating system recorded on HDD the said item forms an integral part of the*

laptop (computer system) and in which case the Department is right in treating the laptop as one single unit imported by the respondent. The Department has rightly classified the laptop as a unit under CTH 84.71, quoted above."

18. The aforesaid facts and circumstances make it clear that a combination of elements or parts, which function together to render a desired output would be construed to be as constituents of a system. In common parlance, a solar power generating system is usually made up of four components: solar panels, inverters, controller and batteries. The details of the said components is given as below:

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

*b. **Inverters**: The electricity produced in a solar panel is DC. The electricity we get from the grid supply is AC. It is required to Install an inverter to convert DC of solar system to AC of same level as grid supply. In the 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 the grid tie system, the solar panel is directly connected to inverter and this inverter then feeds the grid with same voltage and frequency power.*

*c. **Controller**: It is not desirable to overcharge and under discharge a lead acid battery. Both overcharging and under discharge can badly damage the battery system. To avoid both these situations a controller is required to attach to the system to maintain flow of current to and from the batteries.*

*d. **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 the variations of sunlight intensity can be avoided in solar power system and an uninterrupted uniform power supply is maintained.*

19. Accordingly, I am of the view that the subject solar inverters, which convert direct current produced by the panels into alternate current for use are an integral part of the solar power generating system and thus, would be covered within the ambit of Sl.No.234 of the Notification No. 1/2017-CT (R) as being part of solar power generating system.

20. A perusal of the aforesaid Notification will indicate that the same extends the benefit of the concessional rate of tax to specified renewable energy devices and parts for their manufacture and that the benefit is not restricted only to people who are

supplying the entire solar power generating system on their own accord, but also includes supply of parts, such as the present case.

21. Section 2(72) of the CGST Act, defines the terms 'manufacture' as extracted below:

> *"(72) "manufacture" means processing of raw material or inputs in any manner that results in emergence of a new product having a distinct name, character and use and the term "manufacturer" shall be construed accordingly;"*

22. A plain reading of the definition of the expression 'manufacture' means processing or raw materials or inputs in any manner, which results in emergence of a new product having a distinct name, character or use and consequently, I am of the view that the solar inverters supplied by the Petitioner herein are an integral part of the solar power-based devices and solar power generating system. As stated supra, the solar inverters, along with other parts of the device or system, as the case may be, are "assembled" together to form the said solar power-based device or solar power generating system and that manufacture in any manner, as given in the definition above, can be construed to include assembly or parts, as well.

23. In the instant case, the material on record clearly establishes that the conditions of the definition of 'manufacture' are fulfilled as hereunder:

(i) Solar inverter is a part which is assembled along with other parts;

(ii) The said assembly results in emergence of a new product;

(iii) The said emerging products have a distinct name, character and use.

24. The Respondents have contended that as per the Circular No. 163/19/2021-GST dated 6.10.2021, only goods which are specifically designed as parts of Solar Power Generating System are eligible for the concessional rate of GST at the rate of 5%. Generic goods which are commonly used in other industries will attract the standard rate of GST, regardless of its usage in solar plants. In this regard, it is pertinent to note that the aforesaid Circular provides clarification of the applicability of GST rates on Solar PV Power Project and that the issue that was clarified by way of this Circular was in the context of Notification No. 24/2018-Central Tax (Rate) dated 31.12.2018, wherein it has been indicated that GST on specified renewable energy projects was to be paid in terms of 70:30 ratio for goods and services, respectively, from 31.12.2019, which is based on Explanation introduced under Entry

234. Further, the Circular does not provide any clarification on the eligibility of concessional rate of GST and as such, the said contention cannot be accepted.

25. The Respondents have contended that the Petitioner has not provided any proof indicating that the supply of solar inverters by them is used as parts of the solar power generating system and that in the absence of the same, the Petitioner cannot avail benefit of the Exemption Notification. As stated supra, the petitioner has produced Invoices, purchase orders, bills etc., which clearly establish that the subject solar invertors supplied by the petitioner are used as parts for manufacture of solar power based devices and solar power generating systems. In the case of ***Commissioner of Customs, Bangalore, v. Aditya Birla Nuvo Ltd. 2021 (378) E.L.T. 42 (Kar.),*** wherein the Respondents have confiscated the goods of the Petitioner alleging that had violated conditions of the exemption notification by using the imported material for making trousers Instead of full sleeve shirts which were sold in the domestic market, this Court went on to interpret the term 'required to manufacture' mentioned in the exemption notification and held that the phrase 'required to manufacture' as stated in the

exemption notification contemplates possible or intended use and not actual use and thus, the material need not be directly used in the manufacture of resultant product and proof of actual use is not a condition attached to the exemption Notification and the intention of the Notification is to ensure that such inputs should not be sold or transferred in the market.

> *"6. We have considered the submissions made by learned counsel for the parties and have perused the record. Before proceeding further, we deem it appropriate to refer to clause (vii) and relevant extract of clause (viii) of Notification No.30/1997-Cus dated 01.04.1997 and clarification issued vide Circular dated 30.06.1997-Cusdated16.09.1997,which reads as under:*
>
> > *(vii) Exempt materials shall not be disposed of or utilized in any manner except for utilization in discharge of export obligation or for replenishment of such materials and the materials so replenished shall not be sold or transferred to any other person.*
> >
> > *(viii) that in relation to an Advance Licence issued to a Merchant Exporter -*
> > *(a) the name and address of the supporting manufacturer is specified in the said licence and the said certificate and the one required to be executed by the importer in terms of condition (ii) shall be executed jointly by the Merchant Exporter and the supporting manufacturer binding themselves jointly and severally to comply with the conditions specified in this Notification; and*
> > *(b) exempt materials are utilized in the factory of such supporting manufacturer in terms of in terms of condition (vii).*

2. Instances of this type are being raised giving the impression that the staff in the Custom Houses are not aware of or are not implementing Board's instructions contained in Circular Nos.4/93 dated 04.03.1993, 1/94 dated 05.01.1994 and 34/94, dated 12.12.1994 and Member (customs) letter F.No.605/373/96-DBK,dated16.01.1997. These instructions clearly spell out that correct interpretation of the words 'raw materials required for use', does not mean that raw- materials must be physically incorporated. It was also clarified with the help of examples that inputs may be allowed even if they are not exactly those used in the export product but provided the inputs are commercially known to be useable in the product exported.

3. Further, it appears that at the stage of logging of Par-II of DEEC Book, the exporters have, in some cases, been asked to establish that the entire quantity of raw materials, mainly fabric, was used in the manufacture of Garment entered for export. Attention in this regard is invited to Exemption Notification Nos.30/97 and 31/97 both dated 01.04.1997 (QBAL), Para (V) of both the Notifications only requires that the exporter must discharge his export obligation by exporting the "resultant products" which are specified in Part (E) of Duty Entitlement Exemption Certificate. The part (E) specified both the quantity and FOB value of export products which has to be exported as also the quality and technical characteristics of the export product .So long as the exported product meets the requirements indicated in Part (E) of DEEC Book, Customs House should not go into any extraneous questions pertaining to the size of the Garment and utilization of total quantity of fabric permitted for import in Part-I-C of DEEC Book. The satisfaction of Assistant Commissioner at the stage of logging is not doubt with regard to the conditions specified in Exemption Notification, but it must be exercised without asking for information which goes beyond the ingredients specified in the Exemption Notification and in the format of DEEC Book appended to the Notification.

7. Now we may advert to the first issue whether the respondent has violated the actual use condition as envisaged under Section Notification 30/1997. It is pertinent to note that none of the terms and conditions of Notification No.30/1997 envisage physical incorporation of imported material in the goods that are exported towards fulfillment of export obligations. The aforesaid Notification grants exemption from the whole of the custom duty and whole of the additional duty to the 'materials' imported against an Advance Licence subject to conditions stipulated therein. The word 'material' has been defined in Explanation II to mean raw materials, components, intermediates, consumables, computer software and parts required for manufacture of resultant product specified in Part E of the said certificate. It is also pertinent to note that phrase 'required to manufacture' as stated in the Notification contemplates possible or intended use and not actual use as clarified in Circular No.36/97 dated 16.09.1997. Thus, the material need not be directly used in the manufacture of resultant product and proof of actual use is not a condition attached to the exemption Notification. The aforesaid position has been explained in the Circular 36/1997-Cus dated 16.09.1997 which was issued specifically in the context of difficulties faced by garment exporters as the custom field formations were insisting that nexus between export product and duty free material imported was required to be established. The imported goods need not be physically used in the manufacture of goods that are exported. Condition (vii) of Notification No.30/97-Cus

permitted discharge of export obligation either by usage of imported duty free material or by replenishment material. The only requirement as per condition No.(vii) is that such inputs should not be sold or transferred in the market. In other words, the replenished inputs can be used in manufacture of other products and not necessarily incorporate in export of goods. Thus, from the aforementioned reasons, it is evident that the respondent has not violated the conditions of the Notification No.30/97-Cus and has rightly imported the material and has discharged its export obligations. The tribunal therefore, in the impugned order has rightly held the Circular to be applicable in the case of the assessee.

8. From perusal of clause 3.4 and 3.45 of export importpolicy1997-2002,itisevidentthatlicenceholder is free to get in the material processed through not just supporting manufacturers specified in the licence but also through other job workers as imported goods and exported goods are properly accounted for. This requirement has been duly fulfilled by the respondent inasmuch as there has been a proper account of imported material as well as exported goods details of which were furnished to the officer which were duly accepted. Therefore, there is no violation of actual user condition.

9. In the instant case, the licensing authority competent to grant licences allowed the respondent to import polyester / cotton blended fabrics without payment of duty against the export of men's shirts. The Directorate General of

Foreign Trade has issued the advance licence for duty free import after due Notification that materials can be used for production of export goods. The respondent fulfilled the export obligations in respect of exporting men's full sleeve shirts of specified value, which was examined by Joint Director of Foreign Trade and Export Obligation Discharge Certificate (EODC) was issued. Thereafter, it is not open for the officers of the customs department to contend that the imported material cannot be used for manufacture of shirts and that respondent has not discharged its export obligation by violating the conditions of the exemption Notification. In this connection, reference may be made to decision of the Supreme Court in TITAN MEDICAL SYSTEMS supra.

10. The tribunal on the basis of meticulous appreciation of evidence on record has held that the respondent has not violated the conditions of exemption Notification No.30/97-Cus and has discharged its export obligations. It has further been held that there has been no violation of actual user condition. The findings recorded by the tribunal have been recorded after appreciation of evidence on record, by which no stretch of imagination can be said to be perverse.

11. In view of preceding analysis, substantial questions of law framed by a bench of this court are answered against the revenue and in favour of the assessee. In the result, we do not find any merit in this appeal, the same fails and is hereby dismissed."

26. It is therefore clear that in the present case, the solar Inverters supplied by the Petitioner, are intended to be used as part of the solar power generating system and the Notification does not prescribe any further condition/ mechanism by which such nexus between supply made and the purchased of the said supply is to be established in order to avail the benefit of the exemption notification.

27. The material on record also establishes that the usage of the subject solar inverters is restricted to being part of solar power generating systems and cannot be put to any other usage and consequently, it can be safely inferred and assumed that the intended usage for the solar inverters is always to be as parts of the solar power generating system. In the case of ***State of Haryana v. Dalmia Dadri Cement Ltd., - 2004 (178) E.L.T. 13 (S.C.),*** the Apex court interpreted the term 'for use'. In this case, the assessee had made sales to the Board on the basis of the certificates that the cement was required for use in the generation and distribution of electrical energy. The allegation of Department was that the assessee cannot prove that the cement was directly used for generation or distribution of electrical energy. In this

regard, it was held that the expression "for use" must mean "intended for use". If the intention of the legislature was to limit the exemption only to such goods sold as were actually used by the undertaking in the generation and distribution of electrical energy, the phraseology used in the exemption clause would have been different as, for example, "goods actually" used or "goods used". The Apex court held that if the goods were intended to be used for the said purpose, it is sufficient to claim exemption as hereunder:-

> *9. We are unable to accept the submission of Mr. Bana that, in order to get the exemption it must be shown that the goods in question, namely, the cement supplied by the assessee in this case was actually used in the generation or distribution of electrical energy. It must be noted that the important words used in the relevant provisions are "goods for use by it in the generation or distribution of such energy" (emphasis supplied by us). On a plain reading of the relevant clause it is clear that the expression "for use" must mean "intended for use". If the intention of the legislature was to limit the exemption only to such goods sold as were actually used by the undertaking in the generation and distribution of electrical energy, the phraseology used in the exemption clause would have been different as, for example, "goods actually used" or "goods used.".*

10. Mr. Bana, in support of his submission, drew our attention to the decision of the High Court of Madhya Pradesh in Associated Cement Co. Ltd., Kymore, M.P. v. Assistant Commissioner of Sales Tax, Jabalpur Region, Jabalpur and Anr. [1971] 28 S.T.C. 629. In that case the exemption provision was in pari materia with the exemption provision before us. It was held by the Madhya Pradesh High Court that everything sold to the Electricity Board for its use did not fall within the exemption under Section 2(j)(a)(iii) of the Act. It was only when there was direct use of the goods in the generation or distribution of electrical energy that the goods sold to the Board could fall within the exemption.

11. We may point out that this decision is not of any assistance in the case before us as the dispute in that case centered on the question whether, in order to attract the exemption, the goods supplied must be directly used in the generation or distribution of electrical energy or whether indirect use of the goods for the aforesaid purpose was enough. It appears that the Division Bench which decided that case did not consider at all the question whether the expression "for use" in the exemption clause meant "intended for use" or it meant "actually used". The same is the position regarding the decision of the High Court of Punjab & Haryana in Spedding Dinga Singh & Co. v. The Punjab State MANU/PH/0124/1968 :[1968] 22 S.T.C. 319 which dealt with the very sub-clause in question which dealt with the very sub-clause in question before us.

12. We are, therefore, of the view that the real question which we are called upon to determine is whether, in the present case, the cement supplied was intended for use directly in the generation or distribution of electrical energy. If it was so intended, the exemption was attracted but not otherwise. The certificates which we have referred to earlier issued by the Board clearly show that the intention of the Board was that the cement should be used for a purpose directly connected with the generation or distribution of electrical energy. There is no material to show that the certificates were false certificates given by the Board, having another use in mind, or that they were fraudulently obtained by the assessee in collusion with the Board. The mere fact that some of the cement supplied was, in fact, used by the Board for activities not directly connected with the generation or distribution of electrical energy cannot make any difference regarding the availability of the exemption.

13. In view of the conclusion set out in the previous paragraph, we do not feel called upon to go into the question whether certificates granted by the Board must be regarded as conclusive in a matter of granting exemption. We may, however, point out that the certificate contemplated under Section 5(2)(a)(iv) of the Act cannot compare with the certificate in Form 'C which is a statutory certificate nor can it be regarded as completely conclusive. We are not called upon in this case to consider in what circumstance the assessing authority can go behind the certificate. It is clear that in the present case no such circumstances existed.

14. In the result, the appeals must fail and are dismissed with costs.

28. The aforesaid facts and circumstances clearly establish that subject solar inverters supplied by the Petitioner are intended to be parts of the solar power generating system and therefore, the Petitioner is eligible for exemption and consequently, I am of the considered opinion that the impugned orders passed by the respondents and all proceedings pursuant thereto, are illegal, arbitrary and contrary to the law and facts and the same deserve to be quashed.

29. In the result, I pass the following:-

ORDER

(i) W.P.No.9686/2025 is hereby allowed.

(ii) The impugned order-in-appeal at Annexure-A dated 29.01.2025 passed by the 1st respondent is hereby quashed.

(iii) W.P.No.11788/2025 is hereby allowed.

(iv) The impugned order-in-appeal at Annexure-A dated 28.02.2025 passed by the 1st respondent is hereby quashed.

(v) W.P.No.16708/2025 is hereby partly allowed.

(vi) The impugned order-in-appeal at Annexure-A dated 27.03.2025 and impugned order-in—original at Annexure-B dated 23.08.2024 passed by respondents 1 and 2 are hereby quashed.

(vii) Liberty is reserved in favour of the petitioner to file an appropriate appeal before the appellate authority / Tribunal insofar as the remaining demands which are not adjudicated in the present orders and no opinion is expressed on the merits / demerits of the rival contentions in this regard.

Sd/-
(S.R.KRISHNA KUMAR)
JUDGE

BMC/SRL