

**THE AUTHORITY ON ADVANCE RULINGS
IN KARNATAKA
GOODS AND SERVICES TAX
VANIJYA THERIGE KARYALAYA, KALIDASA ROAD
GANDHINAGAR, BENGALURU - 560 009**

Advance Ruling No. KAR ADRG 33 / 2018

Dated : 31st December , 2018

Present:

1. **Sri. Harish Dharnia,**
Additional Commissioner of Central Tax, Member (Central Tax)
2. **Dr. Ravi Prasad M.P.**
Joint Commissioner of Commercial Taxes Member (State Tax)

1.	Name and address of the applicant	M/s Nuetch Solar Systems Private Limited, BM Shankarappa Industrial Estate Road, Sunkadakatte, Bengaluru-560 091
2.	GSTIN or User ID	29AABCN6398L1ZO
3.	Date of filing of Form GST ARA-01	03.07.2018
4.	Represented by	Sri Vijay Rajesh, Advocate
5.	Jurisdictional Authority - Centre	The Commissioner of Central Tax, South Commissionerate, Bengaluru
6.	Jurisdictional Authority - State	LGSTO-80, Bengaluru
7.	Whether the payment of fees discharged and if yes, the amount and CIN	Yes, discharged fee of Rs.5,000/- under CGST Act and Rs 5,000/- under SGST Act vide CIN No. CNRB18062900002848 dated 04.06.2018

ORDER UNDER SUB-SECTION (4) OF SECTION 98 OF CENTRAL GOODS AND SERVICES TAX ACT, 2017 AND UNDER SUB-SECTION (4) OF SECTION 98 OF KARNATAKA GOODS AND SERVICES TAX ACT, 2017

1. M/s Nuetch Solar Systems Private Limited, BM Shankarappa Industrial Estate Road, Sunkadakatte, Bengaluru-560091, having GSTIN number 29AABCN6398L1ZO, have filed an application for Advance Ruling under Section 97 of CGST Act, 2017, KGST Act, 2017 & IGST Act, 2017 read

with Rule 104 of CGST Rules 2017 & KGST Rules 2017, in form GST ARA-01 discharging the fee of Rs.5,000/- each under the CGST Act and the KGST Act.

2. The Applicant, a Private Limited Company, registered under the Goods and Services Act, 2017, claims to be an innovative Solar Thermal Energy Company, focused on providing energy solutions by using Concentrated Technology & into the business of Solar Water Heaters (SWH) from last 26 years. The Applicant imports Vacuum Tubes (Evacuated Tube Collector / Vacuum Tube Collector) for manufacture of Solar Water Heater.

3. The Applicant contends that the Solar Evacuated Tube Collector (ETC) is a part of Solar Water Heater and is used specifically for the particular function i.e. heating the water. They further contend that Solar Power based devices are products powered by sunlight, either directly or through electricity generated by solar panels, which produce renewable energy for the said devices. Therefore Solar Water Heater is a Renewable Energy Device and the product in question (ETC) is a part of Solar Power based Device.

4. The Applicant submits that Solar 'Power' means Solar Energy, which is incidental in many forms of energy, predominantly Heat (Thermal) Energy and Light (Photo) Energy. Therefore Solar Power Devices are classified as Solar Thermal (eg. Solar Water Heater) devices and Solar Photovoltaic Devices. They further submit that Solar 'Power' does not mean Solar 'Electricity' as the Sun does not give the Electricity directly, but the solar power based devices use solar energy as their input.

5. They further submit that the Solar Power based Devices need Solar Panels to convert light energy and the ETC is one such mode of panels. The Solar Water Heater works on "Black body heat absorption principle". The energy generated by this device is used to heat water and not for any other home consumption and no other form of energy or device is required as an intermediary between this device and heating. Therefore the applicant claims the said device as Solar Power based Device.

6. The Applicant claims the classification of the instant product "ETC" under 8419 19 and thereby claims the benefit of Sl.No.234, Schedule-I of Notification No.1/2017 Integrated Tax (Rate) dated 28.06.2017, effective

from 01.07.2017. In view of the above, the applicant sought advance ruling in respect of the following question:

Whether Evacuated / Vacuum Tube Collectors (VTC) falls under Chapter 84 of HSN which is covered in Sl. no 234 of Schedule -I under notification 1/2017 IGST rate dated 28-06-2017 ?

PERSONAL HEARING: / PROCEEDINGS HELD ON 18.07.2018.

7. The Applicant authorized Sri. Vijay Rajesh, Advocate and the said authorized representative appeared for personal hearing proceedings on 18.07.2018, before this authority and submitted that the ETC tubes are imported for manufacture of solar water heaters & the tubes are also traded locally. They furnished the copy of Bill of Entry bearing number 6523523 dated 25.05.2018 evidencing the import of said ETC tubes wherein the said tubes were classified under tariff heading 84199910.

7.1 The Applicant contends that ETC tubes are parts of Solar Power based devices and hence should be covered under Sl.No.234 of Schedule I of Notification No.1/2017 Integrated Tax (Rate) dated 28.06.2017 and should be charged at the rate of 5% IGST. They further submit that the ETC tubes are basically devices which carry out the process of heating the cold water and are not merely part of the solar device in the sense of nuts and bolts of the storage tank. They further contend that their product (ETC tubes) does not fall under Sl.No.121 of Schedule - IV, attracting the GST at the rate of 14%, as the said entry is for the water heaters other than solar water heater & system.

7.2 The Applicant, in response to the query raised in the hearing, vide their letter dated 05.12.2018 submitted the following additional submissions.

- a) The Solar evacuated tube collector is a part of solar water heater and is used specifically for the particular function and in terms of Section notes, of Section XVI, which covers chapters 84 and 85, it is very clear that parts, if suitable for use solely or principally with a particular kind of machine are to be classified with the machine of that kind. Therefore the ETC tubes are classifiable under Chapter 84 heading 19. Further explanatory notes to Chapter 84 clarifies

that solar water heater is included in the chapter whether used for industrial or domestic purposes.

- b) In view of the above, solar water heating systems using vacuum tubes made of borosilicate glass with special coating to absorb the solar energy, which are called as Evacuated Tube Collector System (ETC), have to be classified under Chapter 84 heading 19 of Section XVI of Customs Tariff Act 1975.

7.3 The Applicant, therefore, concludes that their product ETC tubes are parts of solar devices and therefore it is a solar power based device & hence they are entitled to the benefit of concessional rate of GST @ 5% in terms of Sl.No.234 of Notification No.01/2017-Integrated Tax (Rate) dated 28.06.2017, effective from 01.07.2017.

FINDINGS & DISCUSSION:

8. We have considered the submissions made by the Applicant in their application for advance ruling as well as the submissions made by Sri. Vijay Rajesh, Advocate, the authorized representative, during the personal hearing. We have also considered the issues involved on which advance ruling is sought by the applicant and relevant facts of the issue involved.

8.1 The Applicant, filed the instant application dated 03.07.2018 for advance ruling, seeking clarification as to ***Whether Evacuated / Vacuum Tube Collectors (VTC) falls under Chapter 84 of HSN which is covered in Sl. no 234 of Schedule -I under notification 1/2017 IGST rate dated 28-06-2017 ?***

8.2 The Applicant, in the instant case, presumes that their product falls under Chapter 84 and hence claims the benefit of the concessional rate in terms of the aforesaid notification. Therefore the issues to be decided are (i) The correct / right classification of the product "ETC" and (ii) Whether the said product is entitled for the concessional rate as per Sl. No. 234 of Schedule-I of Notification No.1/2017 Integrated Tax (Rate).

8.3 The first part of the question on which the Applicant sought advance ruling is ***Whether Evacuated / Vacuum Tube Collectors (VTC) falls under Chapter 84 or not?***

The Applicant claims the classification of their product ETC under chapter 84 of Section XVI of Customs Tariff Act 1975, which deals with the machinery & mechanical appliances etc., and parts & accessories of such articles. Section Note 5 of the said section specifies that the expression "machine" means any machine, machinery, plant, equipment, apparatus or appliance cited in the headings of Chapter 84 or 85. Chapter 84 heading 19 covers, among others, instantaneous or storage water heaters, non-electric. The solar water heater and system (domestic type) has been classified under heading 8419 19 20 and the parts of instantaneous or storage water heaters (domestic type) are covered under heading 8419 90 10. The product "ETC" in the instant case is part of the solar water heater system, which basically comprises of the said tubes and an insulated tank. Therefore we are of the opinion that the instant product merits to be a part of solar water heater systems under the chapter heading 8419.

8.4 The second part of the question is whether the product of the applicant is entitled for concessional rate under Sl.No.234 of the Notification supra or not.

The notification No.1/2017-Integrated Tax (Rate) dated 28.06.2017, effective from 01.07.2017, under Sl.No.234 of Schedule I, notifies the Integrated Tax of 5% in respect of the following goods falling under Chapter 84 or 85.

Following renewable energy devices & parts for their manufacture

- (a) Bio-gas plant
- (b) Solar power based devices
- (c) Solar power generating system
- (d) Wind mills, Wind Operated Electricity Generator (WEOG)
- (e) Waste to energy plants / devices
- (f) Solar lantern / solar lamp (g) Ocean waves/tidal waves energy devices /plants

8.5 In view of the above, to claim the concessional rate of 5%, the product must satisfy the conditions namely (i) It must fall under either Chapter 84 or 85, (ii) It must be a Solar Power based device (renewable energy device) or part thereof. Therefore we proceed to discuss whether the product "ETC" is a Solar Power based device or part thereof or not, as the product falls under Chapter 84.

8.6 The product "Evacuated Tube Collector" is an arrangement of concentric tubes made of borosilicate glass closed at both ends after

evacuating the medium i.e air, between the tubes. The outer surface of the inner tube specially is coated with copper and aluminum to absorb the solar energy. The vacuum between the concentric tubes acts as the best insulator to minimize the heat loss from the inner tube. The coated inner tube absorbs the solar energy and the tube gets heated. The heat energy of the tube is transferred to the water thereby heating it. The hot water on upper side becomes lighter and moves upwards into the tank. The cold water, which is heavy, comes downwards. The solar water heater consists of 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. Thus the solar water heater in question does not appear to be a 'Solar Power Based Device'. Now it is pertinent to understand the term 'Power' as used in the term 'Solar Power Based Device'.

8.7 The term 'Power' has not been defined either in the GST Acts or explained in the Chapter / Section Notes of Customs Tariff. Therefore we place reliance on 'The Electricity Act' 2003' to delve into the definition / meaning of the term 'Power'. In this regard our attention goes to Sl.No.50 of Part-I of "The Electricity Act' 2003", wherein the term 'Power System" is defined as under:

"Power System' means all aspects of generation, transmission, distribution and supply **of electricity** and includes one or more of the following namely :-

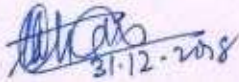
- a) Generating stations;
- b) Transmission or main transmission lines;
- c) Sub-stations;
- d) Tie-lines;
- e) Load dispatch activities;
- f) Mains or distribution mains;
- g) Electric supply - lines;
- h) Overhead lines;
- i) Service lines;
- j) Works;

It is thus very clear, from the above, that the term 'Power' means electricity and therefore the term 'Solar Power' means the electricity generated from solar energy. Therefore 'Solar Power based Devices' would be such a 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. In the instant case the product ETC does not generate electricity at any stage and hence can not be construed as either Solar Power based device or part thereof. Therefore the product "ETC" is not entitled for concessional rate of 5% IGST under SL.No.234 of Schedule-I of the Notification 01/2017-Integrated Tax(Rate) dated 28.06.2017, effective from 01.07.2017.

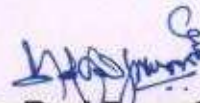
9. In view of the foregoing, we rule as follows

RULING

The product Evacuated Tube Collector (ETC) though falls under Chapter 84 heading 19 but is not covered under SL.No.234 of Schedule-I of the Notification 01/2017-Integrated Tax(Rate) dated 28.06.2017, effective from 01.07.2017, & hence not entitled for concessional rate of 5% IGST.



(Harish Dharnia)
Member



(Dr. Ravi Prasad M.P.)
Member

Place : Bengaluru,
Date : 31.12.2018

To,

The Applicant

Copy to :

The Principal Chief Commissioner of Central Tax, Bangalore Zone, Karnataka.

The Commissioner of Commercial Taxes, Karnataka, Bengaluru.

The Commissioner of Central Tax, Bangalore South Commissionerate, Bengaluru.

The Asst. Commissioner, LGSTO-80 ,Bengaluru.

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