



SOLAR POWER DEVELOPERS ASSOCIATION

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Sub: Representation on behalf of the Solar Power Developers seeking waiver of interest demanded by Custom Authorities on assessment of Safeguard Duty("SGD") and also enabling facility in Customs portal for accepting part payment of SGD.

Dear Shri Ajit Kumar,

Greetings from Solar Power Developers Association.

At the outset, we appreciate the various proactive steps and relief measures announced by the Government of India to face this tough time of global crisis due to the outbreak of COVID-19. The Government has also come up with lot of relief packages for almost all sections of the society to provide support during these uncertain times. Due to various proactive steps and relief measures of Government, the Indian economy is improving rapidly, and we are confident that economy will rebound under the great and visionary leadership of the Hon'ble Prime Minister.

We are writing on behalf of our members to bring to your kind notice about the demand of interest on settlement of Safeguard Duty payable on the import of solar modules by Customs authorities from the Solar Power Developers. The said interest is being demanded while challenge to the notification imposing safeguard is sub-judice before Supreme Court and different High Courts.

Background

The Directorate General of Safeguards (DGS) initiated safeguard investigation into imports of solar modules/ panels on 5.12.2017 based on a petition filed by Indian Solar Manufacturers Association (ISMA). On 16.07.2018, the DGTR issued the final findings/ recommended, whereby imposing of duty of 25%, to be liberalized progressively, on the imports of subject goods.

The said final findings/ recommendations of the DGTR was challenged by some solar power developers before the Hon'ble Orissa High Court in Writ Petition (Civil) No. 12817 of 2018. The Hon'ble Orissa High Court vide order dated 23.07.2018, passed an interim order staying the final findings and the publication of the notification for imposition and levy of the Safeguard Duty.

However, the said recommendations were adopted by the Government of India, dated 30.07.2018 issued by the Department of Revenue, Ministry of Finance, Government of India.

That in order to give effect to the interim order passed by the Hon'ble Orissa High Court, Department of Revenue, Ministry of Finance, Government of India vide notification/ instruction dated 13.08.2019 notified that payment of Safeguard Duty shall not be insisted and developers shall be allowed the release of the solar modules based on provisional assessment of bills of entry and on furnishing a letter of undertaking/ bond.

In the meanwhile, the interim order passed by the Hon'ble Orissa High Court was challenged by Government of India before the Hon'ble Supreme Court of India vide SLP(C) No. 24009-24010/ 2018. On 10.09.2018, the Hon'ble Supreme Court while staying the operation of the interim also stayed further proceedings before the Hon'ble Orissa High Court. Thereafter, the matter relating to the assessment and levy safeguard duty became sub-judice and is presently pending adjudication before the Hon'ble Supreme Court. -

Thereafter, in view the stay order by Hon'ble Supreme Court, Ministry of Finance issued another instruction no. 14/2018 dated 13.09.2018 wherein it has been directed to the Custom Authorities to finalise provisional assessment made in view of earlier instruction 13.08.2018.

Levy of Interest Under section 28AA

In view of the Instruction No. 14/2018 dated 13.09.2018, the Custom Department has been issuing demand notices to solar power developers who were previously assessed provisionally and got their goods released on submission undertaking/bond. In the said notices, the custom authorities are also demanded payment of interest @ 15% under section 28AA of Custom Act.

Majority of the Solar Power generators have approached various High Courts by way of Writ petition challenging the notification levying and imposing Safeguard Duty. Nevertheless, considering the cost of litigation, time involved and to buy mental peace, the Solar Industry wish to settle the dispute by payment of entire Safeguard Duty on import of solar modules. However, the Custom Department is demanding interest @ 15% on Safeguard Duty payable based on the final assessment.

It is pertinent to mention here that due to the demand of Interest by Custom Department while the matters being pending before the Hon'ble Supreme Court/ High Court, the Solar Power generators are unable to take any decision for payment of Safeguard Duty and resultantly huge fund/ revenue of the Government is stuck in litigation which may be realized by Government immediately, if the interest demand is waived/ not imposed by the Custom Department.

It is noteworthy to mention here that while the matter w.r.t levy and imposition of safeguard duty is sub-judice, any demand for payment of interest on SGD, which is itself in dispute, is harsh in nature and is not justifiable.

It is also pertinent to mention here the fact that Safeguard Duty had been imposed with an objective to protect the interest of the local module manufacturers, and it was a No-Fault duty in nature. Therefore, demanding interest on such duty where no fault of importer/ solar power developer is involved, is not justifiable.

We also wish to submit that Industry is already experiencing significant recession due to slowdown in economy in past few quarters and now situation worsened with outbreak of global pandemic COVID-19. Under these times of crisis, it is difficult for any business to sustain their commercial activities due to lack of funds. The businesses are facing severe working capital stress and under these circumstances, demand of this kind of Interest will lead to great trouble for business in the revival.

The Solar industry is yet to recover from lockdown, and such kind of interest demanded will further worsen the situation and is against the initiative of Hon'ble Prime Minister for creating a fair and healthy business climate for improving 'Ease of Doing Business in India'

Furthermore, the development and promotion of solar energy is one of the key priorities of the Government of India, and has been given a significant thrust through various fiscal and other incentives, in order to meet the ambitious target of 100 GW of solar energy capacity by 2022. The Hon'ble Prime Minister has consistently emphasised on the need for improvement in "Ease of Doing Business" and hence, the need of the hour is to improve the investment climate in the country. Demand of these kind of Interest by Custom Department will attract unnecessary litigation which would result in additional cost and delay in setting up of project, which is undesirable in this time of crisis.

Without prejudice to above, we wish to submit that various developers are keen and willing to pay the principal amount of Safeguard Duty, however, the 'Custom Portal', is neither accepting partial payments nor payment of the SGD without interest.

In this regard, we respectfully submit that if Customs portal allows part payments of SGD, then in that case the Government will be able to realize huge revenue which is presently being stalled due to demand of interest on the SGD and since the matter w.r.t. the Levy and imposition is under challenge in litigation.

It is requested that

In the light of above stated facts, we seek your kind consideration and request you to give suitable instructions for the following:

- a) That necessary instruction may be issued to Custom Department to complete the final assessment of Safeguard Duty without demanding Interest, as it will result in win-win situation for both the Government as well as Solar Industry. i.e. Government will receive huge fund inflow in the Treasury immediately from Industry on final settlement of Safeguard Duty under these testing times and Industry will also get relief from unnecessary litigation which involves huge cost and time.
- b) the portal of the custom authorities may be updated to as to enable the importers to make partial payment of the safeguard duty.

We look forward to your kind support in the matter.

Thanking you.

With warm regards

Yours Sincerely,



Shekhar Dutt

**To,
Shri M Ajit Kumar
Chairman
Central Board of Indirect Taxes & Customs
Government of India.**