



SOLAR POWER DEVELOPERS ASSOCIATION

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SPDA/DG/2021/277

March 05, 2021

Sub: Representation for introduction of Dispute Resolution/Settlement Scheme for Safeguard Duty levied on import of PV Solar Panels/ Modules

Hon'ble Shri R K Singh ji ,

Greetings from Solar Power Developers Association.

On behalf of Solar Power Developers (SPDs), we draw your kind attention to introduce a Dispute Resolution/Settlement Scheme to encourage SPD/ Importers of solar modules, who are liable to pay safeguard duty by self-declaring their unpaid duty/tax dues, by incentivizing through exemption/waiver of interest and penalty.

The imposition and levy of safeguard duty (SGD) on import of solar panels was implemented vide final findings F. No. 22/1/2018 – DGTR dated 16.07.2018 issued by the Directorate General of Trade Remedies and r/w Notification No. 01/2018 – Customs (SG) dated 30.07.2018.

The said imposition and levy of SGD was challenged by the SPDs in Hon'ble High Court of Orissa and Hon'ble High Court of Orissa vide its order dated 27.08.2018 observed that Notification dated 30.07.2018 has been issued with utter disregard to order of this court dated 23.07.2018. In the same order it has also been observed that as per the affidavit filed by Govt. of India (GOI), the GOI will not implement the Notification dated 30.07.2018 until further orders of the Supreme Court of India.

In compliance with the above said order, GOI has issued Instruction No. 12/2018 dated 13.08.2018 issued by the Under Secretary to GOI, Ministry of Finance, Department of Revenue, Tax Research Unit, which has directed the Custom Authorities to "not to insist on the payment of safeguard duty till further directions from the board and said goods namely solar cells whether or not assembled in modules or panels would, in respect of said safeguard duty, be assessed provisionally on furnishing of simple letter of undertaking/ bond by the concerned person."

Based on the above instructions, the SPDs and/or their supply contractors got their shipments cleared under provisional assessment without payment of duty and by submitting the PD Bonds against the payment of SGD.

Subsequently, Union of India (UOI) filed Special Leave Petition (SLP) No. 24009-10/2018 before the Hon'ble Supreme Court (SC) and the Hon'ble SC vide order dated 10.09.2018 stayed the interim order passed by the Hon'ble HC of Orissa.

Former

- Deputy National Security Advisor, Govt. of India
- Defence Secretary, Govt. of India
- Secretary Defence Production, Govt. of India
- Secretary Ministry of Health, Govt. of India
- Director General, Sports Authority of India

Thereafter the Ministry of Finance, GOI, issued another Instruction No.14/2018 dated 13.09.2018 whereby withdrawing their earlier Instruction No. 12/2018 dated 13.08.2018 with immediate effect.

The SPDs/supply contractors approached various High Courts, which allowed the clearance of goods on a provisional basis subject to furnishing of Bond for either for entire SGD amount or Bond for 50% of SGD amount and for the balance 50% in BG/ cash. Based on these orders, the SPDs/ Supply contractors got the solar modules cleared on submitting of the Bonds.

At present, all these Bonds submitted by the SPDs and/or their supply contractors are appearing as a liability in their financial statements since the solar modules were cleared on provisional basis for which the interest is continuously accruing on the said SGD amount.

As a result of the imposition & Levy of the SGD, some of the hardship being faced by the SPDs and Supplier contractors, which are as under:

- The SGD was levied on import of all PV Modules imported w.e.f 1st July 2018 without making and differentiation between projects which were already won by under the bids, under execution projects and the projects which would be won after levy of SGD.
- Wherever the SGD was deposited either in full or in part by the Supply contractor/ SPDs, the same was deposited from the equity contribution of the promoters as no project lender has funded the payment of SGD. The funding cost of the equity ranges between 14 % - 16%.
- Although the SGD was allowed as a pass-through under change in law provisions of the Power Purchase Agreement (PPA), it took between 12-15 months for SPDs to get this levy of SGD declared as the change in law from Central & State regulators (CERC & SERC).
- Even after the declaration of levy of SGD as change in law, SPDs started getting the reimbursements after 5-6 months from the date of order of the regulator and in many cases, there were also instances where the spread was over the period as long as 13 (thirteen) years from the date of orders by regulators.
- The SPDs are also not allowed carrying cost on Safeguard Duty by the regulators till the date of their respective order directing the intermediaries or Discoms to start reimbursement of carrying cost incurred by them on account of Safeguard Duty.
- In cases where the reimbursement of SGD is spread over periods of as long as 13 (thirteen) years from the date of orders by regulators, the rate of interest allowed by the regulator ranges between 8.75%-10.41%, however, cost of lending from banks /financial institutions is ranging from 12%-14%.
- SPDs are carrying this liability in their financial statements and as a majority of the SPDs are taking funding from overseas investors and financial institutions, these pending liabilities, disputes, and litigations cause undue hardship to SPDs in getting the overseas funding.

- Uncertainty regarding timelines to reach conclusion in all pending disputes, petitions and court orders concerning levy and payment of SPDs.
- The dues from various DISCOMS and other government bodies are due and stuck for several months are unknown and SPDs and/or their contractors want to overcome these uncertainties.

The above has caused great hardship including undue financial stress to the SPDs and their supply contractors both big & small and further causing irreparable loss/damage due to piling of insurmountable disputes, litigation, and loss of confidence.

Majority of the developers and/or their supply contractors are ready and willing to come forward for the release/discharge/ cancellation of the Bonds by depositing full duty amount of Safeguard Duty provided interest amount and/or penalty would be waived-off. This will aid in cleaning their financial statements and overcome the uncertainties in relation of SGD due to pending disputes, petitions, and court orders.

Hence keeping in view, the above hardships, the GOI should consider introducing a Settlement/Amnesty scheme, where SPDs and/or their supply contractors can pay overdue safeguard duty with a full waiver of interest and penalties, this would also help the government to collect huge pending duty amount.

The Scheme if announced, would help the government in meeting financial targets and recovering duties from assesses(s), settle various litigations pertaining to stay of demand by the courts, cases under investigation & arrears of confirmed demand and will also help the SPDs and/or their supply contractors in saving interest and penalty amount on the delayed payment of duty which is attributable to litigation and pandemic impact.

Moreover, this will also prompt the SPDs and and/or their supply contractors to pay the principal amount of duty outstanding within the window allowed under the scheme. This will facilitate to reduce burden on the Courts, as one will witness huge withdrawal of proceedings challenging the show-cause notices, demand notices, assessments etc. as these cases invariably drag on for years, burdening the taxpayers especially those in the micro, small and medium enterprises (MSME) sector.

At this juncture, it would not be out of place to mention that the Government had earlier also introduced a scheme for the Customs, Excise and Service Tax Amnesty Schemes especially the '*Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 (SV scheme)*' which was enacted by Chapter V of the Finance Act, 2019. This Scheme was welcomed by businesses and achieved great success and accordingly resulted in huge amount of recovery of Indirect tax which was stuck in litigation.

The success of SV Scheme is quite evident from the fact that within a short span of only 4 months, around 1.90 lakh applications were received and had garnered over INR 39,000 crores in tax revenue which crossed the Government's target.

After great success in SV Scheme, Government also introduced the Vivad se Vishwas Scheme (VsV Scheme) for Income tax dues, when nearly INR 9.41 lakh crores were stuck in pending tax litigation (of about 4.83 lakh direct tax cases), under which an amount more than INR.72,000 crores have been collected.

Similarly, if the scheme under custom law will be floated then it would be highly helpful and lucrative for both the industry players and the government especially in these challenging times when both i.e. the revenue and the industry are facing tough times in meeting their financial targets approx. Rs 4000 Cr of Safeguard Duty is stuck in litigation which may be collected by the Government immediately on the introduction of scheme as SPDs are eagerly waiting for such kind of scheme so that they may buy mental peace by resolving such pending dispute and concentrate on productive issues of the business.

Request:

We, therefore, humbly request you in the interest of both industry and nation to announce a scheme that would enable the assesses(s) to disclose and pay the duty amount without interest and penalty. Also, scheme if announced, will result in voluntary disclosure and prompt payment of the duty and withdrawal of litigations and proceedings pending in various courts challenging the validity, levy and assessment of safeguard duty on solar panels imported by the solar power developers and/or their supply contractors.

We look forward for your consideration and in case you require further information, we will be happy to provide.

With warm regards

Yours Sincerely,



Shekhar Dutt

To,
Shri R K Singh
Hon'ble Minister of State (IC)
Ministry of Power and New and Renewable Energy
Shram Shakti Bhawan
New Delhi