



## SOLAR POWER DEVELOPERS ASSOCIATION

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**SPDA/DG/2021/279**

**March 07, 2021**

Sub: Request to issue necessary clarification on the key GST issues being faced by Solar Industry.

*Honble Smt Sitharaman ji ,*

Greetings from Solar Power Developers Association.

On behalf of the Solar Power Developers (SPDs), we seek necessary clarifications to be issued from CBIC and/or the Ministry of Finance on the following key GST issues being faced by the Solar Industry.

**1. GST rate on Solar power Generating Systems (SPGS) for the period 1st July 2017 to 31st Dec 2018:**

Under GST Regime, a concessional rate of 5% was prescribed vide S.No. 234 of Notification 1/2017-Central Tax (Rate) to Solar Power Generating System (SPGS). Since SPGS was not defined under the current GST Law, the ambiguity in applicability of GST rate on Supply of SPGS has become a contentious issue.

To avoid unwarranted litigations and seeking clarity on the above issue, various Supplier of SPGS filed applications to the Authority of Advance Ruling (AAR) under the GST Law in different States. However, different AAR across various States had divergent interpretation and views wherein, some AAR had considered supply of SPGS as works contract and accordingly decided 18% rate of GST on the gross amount of contract irrespective of method of contracting i.e., whether single contract or separate independent contract for supply and service. In other cases, some AAR had decided that in case of where two independent contracts for Supply of Goods and Supply of Services were executed than GST @ 5% will be applicable on Contract of goods and GST @ 18% will be applicable on Contract of service. Multiple views for different AAR across states distorted the situation and made SPGS Supplier helpless.

Considering the need of hour and putting an end to the litigation and controversies which had been arisen due to divergent ruling of AAR, the GST Council, in its 31 meeting clarified the matter by issuing Notification no. 24/2018-Central Tax (Rate) through which explanation has been inserted after Entry 234 in Notification 1/2017 and it has been clarified that Supply of SPGS will be divided in two parts i.e. 70% of the gross value of the contract will be treated as goods and GST @ 5% will be applicable on it and remaining 30% value of the Contract will be treated as service and GST @ 18% will be applicable on it. Relevant portion of notification is reproduced herein below for ease of reference:

*'Explanation: If the goods specified in this 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*

Former

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*supplies, and the remaining thirty per cent of the gross consideration charged shall be deemed as value of the said taxable service.'*

Notification no. 27/2018-Central Tax (Rate) (hereinafter referred to as 'Notification 27')

New entry has been inserted in Notification 11/2017 wherein GST rate of 18% has been prescribed for services provided by way of construction, engineering or installation of solar power-based devices, solar power generating systems etc. under Chapter 9954 or 9983 or 9987. Relevant extract of Notification 27 is reproduced below for ease of reference:

*'Service by way of construction or engineering or installation or other technical services, provided in relation of setting up of following, - (a) Bio-gas plant (b) Solar power-based devices (c) Solar power generating system (d) Windmills, Wind Operated Electricity Generator (WOEG) (e)Waste to energy plants / devices (f) Ocean waves/tidal waves energy devices/plants.*

*Explanation: - This entry shall be read in conjunction with serial number 234 of Schedule I of the notification No. 1/2017- Central Tax (Rate), published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) dated 28th June 2017 vide GSR number 673(E) dated 28th June 2017.'*

However, now GST authorities are asking supplier of SPGS to pay the GST @ 18% on the gross value of Contract by considering the Supply of SPGS as a work contract in the cases where the contract of Supply of SPGS have been executed before 01.01.2019 i.e. date of Notification on the presumption that the clarification issued by the GST Council is prospective to be considered applicable on the Contracts executed on or after 01.01.2019 without appreciating that being clarificatory, this notification must have retrospective effect i.e. from the date of implementation of GST i.e. 01.07.2017). It is also important to mention herethat if the department do not apply this clarification on the old executed contracts then the purpose of this exercise will neither bring clarity in the law to put an end to the piling litigation nor it would be fair to the Supplier of SPGS to charge GST Rate of 18% on gross amount of contract in the situation where Government had clarified his intention by issuing a notification to charge 5% GST on 70% the portion of the Gross value of contract of Supply of SPGS. Had the Department issued a show-cause notice to Supplier of SPGS for charging GST @18% on gross value of contract which were executed before 01.01.2019 then huge illegitimate GST Liability will be imposed on the Supplier of SPGS which will surely distort the real intention of Government and detrimental to the intent of Government of ease of doing of business. In the given circumstances, immediate action by way of issue of necessary clarification from Government is required wherein it should be clarified that applicability of Notification No 24/2018 is retrospective so that the real purpose of issuing this timely notification may be served.

## **2. GST on Corporate Guarantees issued by Holding/Ultimate holding companies of SPDs in favor of lenders of SPDs:**

In the solar industry business, Government of India/ State Governments/Government Agencies float tenders for supplying of electricity at pre-defined rate for a pre-defined period to them and after the completion of pre- defined period, solar plant will be transferred to them. Different projects across the states are being floated by various government agencies and accordingly, to bid a project, it is mandatory to incorporate a specific company. Due to this unique business requirement of Solar Industry, different companies are under one group have to be incorporated for different Solar Projects and if project will be awarded to the company then to fulfil its fund requirement loans from various banks and financial institutions have been availed.

The Solar Power Developers (SPDs) are primarily taking the Term Loans for development of their Solar Power Projects from Rural Electrification Corporation of India (REC), Power Finance Corporation of India (PFC) and Indian Renewable Energy Development Agency Limited (IREDA).

As per the standard financing conditions of these financing institutions, the holding company and/or ultimate holding company of SPDs are required to issue a Corporate Guarantee (CG) in favour these financing institutions which are valid for either the construction period of the Solar Projects of the SPDs or sometimes beyond the construction period also. It is imperative to mention

here that as per the specific conditions of lender, the Holding Companies and/or Ultimate holding companies are not allowed to charge any Corporate Guarantee Commission either from these financing institutions or from the respective SPDs. Accordingly, these Holding and /or Ultimate Holdings companies are not charging any Corporate Guarantee Commission for CGs being issued by them in favour of the financing institutions.

It is also worth mentioning here that by issuing these kinds of Corporate Guarantees, holding company is not supplying any services to group company. Issuing these Guarantees are Shareholder activity which means that these guarantees have been issued only due to reason that holding company is having ownership in other group company and accordingly considered as Quasi Capital in nature which represent the mode of ownership contribution. Further, these Guarantee do not cost anything to Holding Company.

However, now GST authorities are taking different interpretation and issuing notices and doing search and surveys on the office premises of these Holding and/or Ultimate Holding companies by asking them to pay the GST on the deemed CG commission value which is not lawful. These guarantees are being issued due to the nature of the business of Solar Industry and are capital contribution and no services are being provided by holding company, accordingly, there would not be any GST on issuance of these Guarantees.

It would not be out of place to mention here that based on above mentioned facts, neither the SPDs nor these holdings companies have considered this GST cost while bidding for the projects. This GST liability @ 18% on deemed CG commission will have a major cost increase impact on SPDs that would be recovered by SPDs under 'change in law' from their power off-takers.

**Request:**

As this recovery by SPDs from power off-takers will in turn increase the price of electricity which will be borne ultimately by the consumers of electricity. Therefore, it is our humble submission to kindly issue a clarification that

1. the Notification No 24/2018 will be applicable on the Supply of SPGS Contracts for the period 1st July 2017 to 31st Dec 2018 also
2. No GST will be applicable on CGs being issued by Holding and/or Ultimate Holding Companies of SPDs in favour financial institutions.

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

Thanking you.

*With warm regards*

Yours Sincerely,



**Shekhar Dutt**

To,  
**Smt. Nirmala Sitharaman**  
**Hon'ble Minister of Finance**  
**Ministry of Finance**  
**North Block New Delhi**