



सीमाशुल्क अग्रिम विनिर्णय प्राधिकरण

CUSTOMS AUTHORITY FOR ADVANCE RULINGS

नवीन सीमाशुल्क भवन, बेलार्ड इस्टेट, मुंबई - ४०० ००१

NEW CUSTOM HOUSE, BALLARD ESTATE, MUMBAI - 400 001

ई-मेल/E-MAIL: cus-advrulings.mum@gov.in

The 6th of July ,2022

Ruling No. CAAR/Mum/ARC/21/2022

In

Application No. CAAR/CUS/APPL/42/2022-O/o Commr-CAAR-MUMBAI

Name and address of the applicant	:	M/s Aquila Solar Power Pvt Ltd, Level 1, N Heights, Plot No 38, Phase 2, Siddiq Nagar, HITECH City, Hyderabad, Telangana, -500081
Commissioner concerned	:	The Principal Commissioner of Customs, Nhava Sheva-V, Jawaharlal Nehru Customs House, Nhava Sheva, Tal: Uran, Dist: Raigad, Maharashtra – 400707
Present for the application	:	Shri P.Vinay Kumar; Shri Anoop Kalavath; Mrs. Komal Samapth; Shri Darshan Salva;
Present for the Department	:	None

Ruling

M/s. Aquila Solar Power Pvt. Ltd. (the applicant, hereinafter) has preferred an advance ruling application on 13.06.2022 with the query, 'Whether the applicant, being a private undertaking and engaged in setting up of solar power plants is eligible to import goods at concessional rate of duty under sub-heading 98010013 of the first schedule to the Customs Tariff Act, 1975 (51 of 1975) read with project Import Regulations, 1986 subject to fulfilment of conditions prescribed therein?'

2. The applicant is engaged in the business of setting up of solar power plants and generation of electricity for sale. The applicant seeks to import various equipment and raw materials such as solar cells, solar modules, solar panels, solar glass, aluminium frames etc. The applicant is planning to setup solar power plants in the state of Maharashtra with a view to boost the investments in the region. For setting up such plants, the applicant would be importing various equipment as mentioned above and they estimate that around 60% of the total capital investments would be imported from outside India.

3. In their application, the applicant has indicated that they would import the subject goods through the Nhava Sheva port. Accordingly, their application was forwarded to the Commissioner of Customs, Nhava Sheva V for comments. However, no reply has been received from the jurisdictional customs commissionerate.

4. The applicant would like to avail the concessional rate of duty provided under the project import scheme. According to the applicant, note 2 to chapter 98 of the first schedule to Customs Tariff Act



provides that the heading 9801 would apply to all goods which are imported in accordance with the regulations made under section 157 of the Customs Act. Further, sub-heading 98010013 covers 'All items of machinery including prime movers, instruments, apparatus and appliances, control gear and transmission equipment, auxiliary equipment (including those required for research and development purposes, testing and quality control), as well as all components (whether finished or not) or raw materials for the manufacture of the aforesaid items and their components, required for the initial setting up of a unit, or the substantial expansion of an existing unit, of a specified power project.'

5. Project Imports Regulations, 1986 provides for eligibility and procedural aspects for claiming assessment under heading 9801. Clause 4 of the said regulations lays down that assessment under the heading 9801 shall be available only to those goods which are imported against one or more specific contracts, which have been registered with the jurisdictional custom house in the manner specified in clause 5. Clause 5 of the said regulations provides for the procedural protocols of registration of contracts, and the salient procedural requirements are prior intimation to the proper officer at the intended port of import, specification of details like the project location, description of the articles to be manufactured, produced, mined or explored; the installed or designed capacity of the plant or project etc. The proper officer, on being satisfied that the application is in order, is required to register the contract. The application is required to be accompanied by the original deed of contract along with the import licence, if required, and an approved list of items from the Directorate General of Technical Development or the concerned sponsoring authority. The term 'sponsoring authority' has been defined under clause 3(c) of the said regulations as the authority specified in the table annexed to the regulations. The entry at sr. no. 3 of the table annexed to the said regulations provides that in respect of power plants and transmission projects (other than those specifically listed at sr. no. 2), the secretary to the state government or the union territory dealing with the subject of power of electricity would be the sponsoring authority.

6. In the above mentioned factual backdrop, the applicant is of the opinion that they fulfil all the prescribed conditions to be eligible for benefit of concessional rate of duty under heading 9801.

7. The applicants were heard on 30.06.2022 during which they explained their application in detail and requested for an early decision. No one appeared on behalf of the jurisdictional commissioner.

8. I have considered the submissions before me and have come to the conclusion that the question for determination in this case lies within a very narrow compass, namely, whether a solar power project would fall within the ambit of a power plant/transmission project which is eligible for concessional rate of customs duty under notification no. 230/1986-Cus., dated 03.04.1986, as amended. From the application for advance ruling it appears that the applicant's concerns are two fold, one - whether a private sector project would be entitled for project import benefits, and two - whether a solar power project falls within the ambit of a power plant/transmission project.

9. The applicant contends that neither the heading 9801 nor the project import regulations place any restriction on who should set up projects and that projects by any public sector undertaking, government entity or any private sector undertaking would be eligible for benefit subject to fulfilment of prescribed conditions. I can have no disagreement with the applicant on this issue. When law doesn't place any restriction it would be absolutely untenable for anyone to place any such restriction. Therefore, even though the applicant is a private sector entrepreneur, that fact would not disentitle them from any statutory benefit, if otherwise available.

10. On the other issue, i.e., whether a solar power plant would fall within the ambit of project import regulations, the applicant has advanced that the term 'power plant' has not been defined under Customs Act. The dictionary meaning of the term is, '(a) plant, including engines, dynamos, etc., and the building or buildings necessary for the generation of power, as electric or nuclear power; (b) the machinery for supplying power for a particular mechanical process or operation; (c) the engine, motor, or other power source along with related ignition, transmission, etc., components of a vehicle, aircraft, machine, etc.' The applicant has explained that a solar power plant is based on the conversion of sunlight into electricity, either directly using photovoltaics (PV), or indirectly using concentrated solar power (CSP).

