

S.MURUGAPPAN

ADVOCATE, HIGH COURT

ASSISTED BY:

K.NANCY, B.COM., B.L. (HONS.),
M.S.HARSHA PRABHU, L.L.M.

CONSULTANTS:

GST, CUSTOMS, FOREIGN TRADE LAWS,
FOREIGN EXCHANGE MANAGEMENT ACT.

OPINION

1. **QUERIST:**

M/s. Prozeal Infra Engineering Private Limited,
B-Wing, 406-A, Zodiac Square,
Opp. to Gurudwara,
Bodakdev, S.G Highway
Ahmedabad – 380 059.

2. **FACTS:**

The querist, among other things, undertakes Solar EPC work and it has set up solar plants at various locations in India. In this regard, it is stated by them that solar modules and other components are being imported for use in the projects being set up by them for use by their customers.

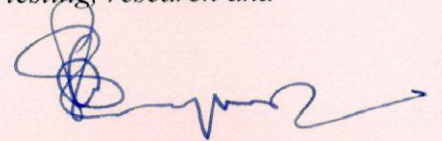
3. **QUERY:**

In this connection, the querist would like to know whether the import of these goods can be made under EPCG scheme on behalf of its customers. If it is possible to import these goods under the scheme, the querist also would like to know what will be the best mechanism to get the customs duty exemption benefits.

4. **OPINION:**

- 4.1 The complete details of EPCG scheme for import of machinery for the purpose of use in production and export of goods or services are given in Chapter 5 of the Foreign Trade Policy. The relevant Chapter 5 is attached as **Annexure-I** to this opinion. As per para 5.01 of the above chapter, it can be seen that under the scheme, capital goods for pre-production, production and post-production at zero customs duty can be imported. These are to be used for production and export of goods or in export of services by the actual user. The goods which are permitted to be imported under the scheme include 'capital goods' as defined in Chapter 9. Capital goods include such capital goods in CKD / SKD condition also. The definition of 'capital goods' in Chapter 9 is given in para 9.08 and this reads as follows:

9.08 "*Capital Goods*" means any plant, machinery, equipment or accessories required for manufacture or production, either directly or indirectly, of goods or for rendering services, including those required for replacement, modernisation, technological up-gradation or expansion. **It includes packaging machinery and equipment, refrigeration equipment, power generating sets, machine tools, equipment and instruments for testing, research and development, quality and pollution control.**



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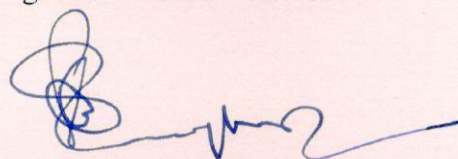
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Capital goods may be for use in manufacturing, mining, agriculture, aquaculture, animal husbandry, floriculture, horticulture, pisciculture, poultry, sericulture and viticulture as well as for use in services sector.

The relevant extracts are attached as **Annexure-II** to this opinion.

- 4.2 From the above, it can be seen that apart from machinery which are actually used in production of goods, the definition of 'capital goods', will cover packaging machinery, refrigeration equipment, equipment and instruments for testing and also power generating sets.
- 4.3 In the conventional sense usually generating sets refer to gensets that are operated by using diesel. With the advent of clean energy and renewable energy sources and their technologies, solar power generating plants are also being put up.
- 4.4 In its simplest form, a solar power generator will have portable solar panels, solar charge controller, solar battery and an inverter. Where large scale production of solar power is involved, photo voltaic power stations known as solar parks or solar farms or solar power plant involving large scale grid connected photo voltaic power plants are installed. It is noticed that the querist is engaged in setting up solar power generation products and depending upon the customer's requirement these can be on land or mounted on terrace / buildings.
- 4.5 By taking into account the above and the fact that the customers will be using the solar power generator for **their captive use only**, it is to be taken that the solar power generating equipment will be covered within the scope of 'capital goods' and as such, will be eligible for import under EPCG scheme.
- 4.6 It is presumed that the querist will be importing only the essential components such as modules / controller etc. and in setting up the generating equipment or executing the EPC contracts there will be local material addition and fabrication also will be involved.
- 4.7 It is to be noted that the capital goods can be imported in CKD / SKD condition also as already noted. However, in the present case, depending upon the components being imported only, it can be concluded whether the solar power generation equipment is imported in CKD / SKD condition. It may be kept in mind that even if it is incomplete, if the goods imported have the essential character of the finished goods, then the same can be treated as 'incomplete article' as per the Interpretative Rules to the Customs Tariff Schedule and accordingly, if the major part of the plant is imported then whether such importation will constitute 'capital goods in SKD' can be examined.



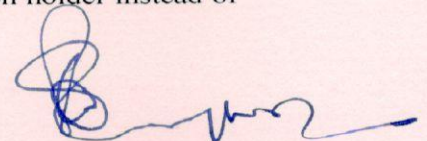
4.8 Keeping that aside, it may be noted that there are two options available for the querist to import these components and set up the plant in the customer's place. Since the querist is not the actual user but their customers are the actual users, one option will be to incorporate the solar power generating equipment in the EPCG authorisations issued to them. Since the authorisations will be in their name, the documents for clearance also need to be filed in the customers' name and therefore, in this context the querist will not be able to clear the goods by themselves directly from customs. Therefore, to overcome this procedural difficulty either the querist can sell these goods on high-seas to the end customer to enable the end customer to file bill of entry with customs and use the EPCG authorisation given to them and consequently clear the goods by availing duty exemption. Alternatively, the goods can be bonded at the time of import by the querist. Then these can be sold within customs bond to the end user and the end customer can file the bill of entry and clear the goods by using the authorisation issued to them. In both cases it is to be noted that the end user will have access to the price details of the components procured by the querist. In case, that is not an issue, then the querist can follow this option of importing the goods and selling them to the end customer before they are cleared from customs. **For this process, it is to be noted that their EPCG authorisation should have the product viz. solar power generating equipment in CKD / SKD included and the imported components should constitute capital goods in CKD/SKD form.**

4.9 In case, the components to be imported cannot be treated as capital goods since substantial local value addition and inclusion of local parts/materials are more than, the only option that can be followed by the querist will be to manufacture the equipment and then supply to the end user as an **indigenous alternative**. In this connection, para 5.07 of Chapter 5 referred to above which reads as follows is to be noted.

“5.07 Indigenous Sourcing of Capital Goods and benefits to Domestic Supplier

A person holding an EPCG authorisation may source capital goods from a domestic manufacturer. Such domestic manufacturer shall be eligible for deemed export benefits under paragraph 7.03 of FTP and as may be provided under GST Rules under the category of deemed exports. Such domestic sourcing shall also be permitted from EOUs and these supplies shall be counted for purpose of fulfilment of positive NFE by said EOU as provided in Para 6.09 (a) of FTP.”

4.10 In this process, the end customer of the querist will have the solar power generating equipment included in the list in the EPCG authorisation but they have to approach the DGFT authorities to permit indigenous sourcing of this equipment in terms of para 5.07. In such a case, direct import by the end customer will be disabled and it will be open to the supplier of the solar power generating equipment to supply it to the end customer by availing the benefits as stipulated in Chapter 7 of the Foreign Trade Policy. Supply of the equipment produced indigenously to an EPCG authorisation holder instead of

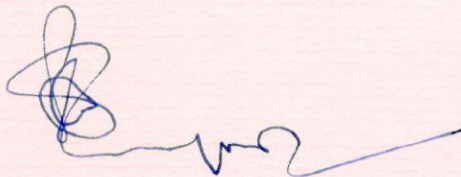


direct import by the authorisation holder from abroad will come under the category of “**deemed exports**”. In such a situation, the querist will be the deemed exporter and as per para 7.03 of Chapter 7 they will be eligible for the following benefits.

- “(a) *Advance Authorisation / Advance Authorisation for annual requirement /DFIA.*
- (b) *Deemed Export Drawback.*
- (c) *Refund of terminal excise duty for excisable goods mentioned in Schedule 4 of Central Excise Act 1944 provided the supply is eligible under that category of deemed exports and there is no exemption.”*

Extracts from Chapter 7 are attached as **Annexure-III** to this opinion.

- 4.11 Thus, the querist will be able to obtain advance authorisation for import of components for manufacture of the solar power generating equipment and then supply them to the end customer. Such components can be directly imported by the querist under advance authorisation to be obtained by them and then after assembly of the solar power generating equipment, they can be supplied to the end customer. Upon supply / installation of the equipment and receipt of payment for the supply made, the obligations on the querist under advance authorisation will be complete.
- 4.12 In respect of other local components utilised and the IGST paid, the querist will have the option to claim drawback/refund from the DGFT authorities as provided in Chapter 7.
- 4.13 Thus depending upon the facts and other factors that are to be taken into account, the querist can adopt any one of the above options.



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Disclaimer:- The above opinion is provided based on the information and documents made available to us by the querist and further based on the laws and rules prevalent as on date and the understanding of such provisions by the author and is meant for the private use of the person to whom it is provided without assuming any liability for any consequential action taken based on the views expressed here.