**BY E-MAIL / COURIER**

**File No.75/2023-Opinion**

11.10.2023

M/s. Redington Limited,

Block 3, Plathin, Redington Tower,

Inner Ring Road, Saraswathy Nagar West,

4thStreet, Puzhuthivakkam,

Chennai – 600 091.

Attn.: Mr. N.V. Raghuraman, Senior Manager - Imports

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Sir,

**Sub.: Opinion with regard to Import of Solar Modules and availment of Concessional Duty.**

1. With regard to your trailing mail, please find attached consolidated opinion in the case of Import of Solar Modules and availment of Concessional Duty. Annexures referred to in the opinion were sent to you earlier.

2. Also, the revised bill for this opinion for Rs.40,000/- is attached. The earlier bill bearing No.037/2023-24 dated 08.05.2023 may be treated as cancelled. Payment for the revised bill may kindly be arranged.

Yours faithfully,

**S. MURUGAPPAN**

Attached: as above.

sm/ss

**OPINION**

**1. QUERIST:**

M/s. Redington Limited,

Block 3, Plathin, Redington Tower,

Inner Ring Road, Saraswathy Nagar West,

4th Street, Puzhuthivakkam

Chennai – 600 091.

**2. FACTS:**

2.1 The querist regularly imports solar modules described as “MBB Half Cellmodule-Monocrystaline-Solar Module”. These are being classified by the querist under Heading 8541 4300 and benefit of FTA Notification No.46/2011 (Sl.No.1445) (Appendix-1) for the basic customs duty is being claimed.

2.2 These items are imported from Vietnam and Country of Origin Certificate is issued by the authorities concerned in Vietnam under ASEAN-India Free Trade Area Preferential Tariff Agreement (AIFTA).

**3. QUERY:**

 In connection with the above, the querist wants clarifications on the following.

3.1 FTA eligibility and correctness of the FTA benefit availed by the querist in respect of the product involved based on the relevant law/notification concerned and against the documents in place.  Supportive law, Circular or case laws need to be provided.

3.2 List of documents/details that are required to be collected to defend in case of any issue on this aspect in future.

3.3 Any other precautions / safe measures to be adopted by the querist in availing such FTA benefits.

3.4 The querist would like to know whether SWC (Social Welfare Cess) is exempted under FTA.

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3.5 As per the document made available by the querist, AIFTA safeguard measure appears to be applicable against goods originating in the specific country, if share of imports of the goods concerned in the importing country exceeds 3% of the total imports of the goods from other parties. The querist would like to understand the impact of the clause in the context of Solar Panel Imports from specific countries having FTA benefits.

3.6 What is the AIFTA safeguard measure referred therein? Will it be resulting in total or partial withdrawal of the FTA benefit and how it will be done?

3.7 Can such a withdrawal of benefit happen on retrospective basis?

**4. OPINION:**

4.1 The querist has made available specification details of the modules imported, commercial invoice, packing list, sample bill of entry, FTA Certificate and the supplier’s data for justifying the value addition to meet the origin criteria.

4.2 Based on the information and specification details available with regard to these modules, it is seen that the querist has claimed classification under Heading 85414300 as ‘Photovoltaic cells assembled in modules or made up into panels’. They also have claimed benefit of notification No.46/2011 against Sl.No.1445 (Appendix-1) which covers goods falling under this Heading for concessional duty under ASEAN-India Free Trade Agreement.

4.3 It is noticed that the goods are accompanied by FTA Certificate issued under ASEAN-India Free Trade Area Preferential Tariff and further documents supporting value addition and justification for treating the goods as originating from Vietnam have been provided.

4.4 Based on all these, it is seen that the querist has made the claim for concessional duty.

4.5 The specification sheets produced by the querist for the various modules, indicate that these are not mere solar cells assembled into panels. There is a junction box IP68 with three diodes. There is also an output cable. System voltage is indicated as DC 1500 volts. These are the details for LR5-72HBD 520-540M type solar panels. In respect of LR5-72HBD 530-550M also, the panel has a junction box IP68 with three diodes and an output cable and the maximum system voltage is given as DC 1500 Volts.

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4.6 Heading 8541 covers only photovoltaic cells assembled into panels, but, when these solar cells are equipped with other elements, then, they go out of 8541. In this connection, the HSN Explanatory Notes for “Photovoltaic cells”, as reproduced below, may be seen.

*“The heading also covers solar cells, whether or not assembled in modules or made up into panels. However, the heading* ***does not cover*** *panels or modules equipped with elements, however simple, (for example, diodes to control the direction of the current), which supply the power directly to, for example, a motor, an electrolyser (****heading 85.01****).*

4.7 As per the above notes, if the modules / panels are equipped with elements, however, simple with provision of supplying power directly, then, they go out of Heading 8541. The HSN indicates diodes as one example of the presence of other elements. In the present case, modules, for which, specification sheets were made available, clearly show that they are equipped with three diodes and further there is direct output of power.

4.8 In such a case, classification of such products should be under Heading 8501 as “Electric generators”. Under Heading 8501, the HSN Explanatory Notes state the following.

*“The heading also covers photovoltaic generators consisting of panels of photocells combined with other apparatus, e.g., storage batteries and electronic controls (voltage regulator, inverter, etc.) and panels or modules equipped with elements, however simple (for example, diodes to control the direction of the current), which supply the power directly to, for example, a motor, an electrolyser.*

*In these devices, electricity is produced by means of solar cells which convert solar energy directly into electricity (photovoltaic conversion)”.*

4.9 Further, as per the supplier / manufacturer’s declaration and brochure, the panels under reference contain only bypass diodes. In the Trinasolar’s Installation Manual, in para 12, the following is stated.

“**12. BYPASS DIODES AND BLOCKING DIODES**

Partial shading of an individual module can cause a reverse voltage across the shaded PV module. Current is then forced go through the shaded area by the other modules. **When a bypass diode is wired in parallel with the series string, the forced current will flow through the diode and bypass the shaded PV module**, thereby minimizing module heating and array current losses.

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Currently, Trina Solar PV modules are equipped with bypass diodes in the junction box. The diode type is SB3040DY, (rated 40V PIV minimum, 16A minimum, 3 provided). Do not try to open the junction box to change the diodes even if it malfunctions.”

4.10 From the above information, it is clear that the current flow is controlled by the diode to bypass the shaded PV module, thereby minimizing the module heating and current loss.

4.11 The HSN explanatory notes specifically states that heading 8541 does not cover panels or modules equipped with elements, however simple (for e.g., diodes **to control the direction of the current**). Since in the present case, it appears that the bypass diode is required to achieve the above purpose, in our view, it will meet the conditions for exclusions from 8541.

4.12 At the same time, it is noticed that in 2018, WCO issued a classification ruling for solar modules with junction boxes. It is stated that in the junction box there is one bypass diode **to protect the cells**. Two connection solar cables of a length of 900 mm and having solar connectors are also connected to the terminals of the strings inside the junction box. That particular product based on the description mentioned above was sought to be classified under 8541 40 by the WCO.

4.13 It appears that based on the above ruling, CBIC came out with instructions bearing No.8/2008 dated 06.04.2008 (which is not available in the public domain) clarifying that solar panel or modules equipped with bypass diodes are to be classified under 8541 and solar panels or modules equipped with blocking diodes are to be classified under 8501 and further solar panels or modules equipped with blocking diodes and bypass diodes are to be classified under 8501.

4.14 Therefore, in the light of the above instruction and the clarification provided by the suppliers / manufacturers, it can be treated that these solar modules will fall under 8541 of the Schedule to the Customs Tariff Act. Consequently, the benefit claimed by the querist under Free Trade Agreement notifications will be permissible.

4.15 However, it is to be noted that it appears that SIIB carried out tests on the solar panels imported earlier and confirmed that the subject solar panels are capable of supplying power directly to an external load, such as DC motor / bulb.

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4.16 Thus, it becomes a question of correct determination of the functions of the product imported in each consignment. Upon tests that may be carried out by the customs, if it is established that the presence of diode meets the conditions stipulated in the CBIC instructions issued in 2018, then, the benefit under FTA can be claimed.

4.17 With regard to availing Free Trade Agreement benefits apart from country of origin certificate showing the description as well as classification under the Indian Customs Tariff, the manufacturer is required to provide detailed information in terms of CAROTAR Rules 2020 notified under Notification No.81/2020 (Cus.) (N.T.) dated 21.08.2020. Subject to the satisfaction of the customs department on the information provided in the forms and certificate, benefit of concessional duty will be extended by the customs authorities.

4.18 With regard to Social Welfare Surcharge basic, Customs Duty applicable in terms of notification 46/2011 mentioned above, (If at all, the above notification applies to these goods) when the goods are accompanied by appropriate country of origin certificate is nil. Consequently, Social Welfare Surcharge, which is calculated at 10% of the basic customs duty also will be nil.

4.19 With regard to AIFTA safeguard measure, Article 8 of AIFTA refers to Non-Tariff Measures. In terms of this Article in Sub-Clause 1, it is provided that,

 *“1. Each Party shall:*

 *(a) not institute or maintain any non-tariff measure on the importation of goods from the other Parties or on the exportation or sale for export of goods destined for the territory of the other Parties, except in accordance with its WTO rights and obligations or other provisions in this Agreement; and*

*(b) ensure the transparency of its non-tariff measures allowed under subparagraph (a) and their full compliance with its obligations under the WTO Agreement with a view to minimising possible distortions to trade to the maximum extent possible”.*

4.20 The details of the safeguard measures that can be initiated and restrictions that will be applicable are contained in detail in Article 10 of the Agreement. Extracts of Article 10 of the Agreement are enclosed to this opinion as **Annexure-1**.

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4.21 From the above Article, it will be clear that each trading partner is entitled to initiate safeguard measures as permitted under WTO Rules. Such measures are in terms of Section 8B of Customs Tariff Act (safeguard duty) and can include Anti-Dumping Duty in terms of Section 9A, protective duties in terms of Section 7 and countervailing duties in terms of Section 9 of the aforesaid Act depending upon the type of injury that may be caused to the domestic industry and subject to the provisions regarding imposition of the above duties as contained in the Customs Tariff Act. Investigations can be initiated by the Designated Authority in India. Safeguard Duty / Anti- Dumping Duty and other duties as mentioned above can be imposed subject to compliance with the requirements of this Article.

4.22 When such measures are undertaken, the importers as well as suppliers will have a chance and opportunity to make their representations before finalization of the measures.

4.23 It also may be noted that any such safeguard measure by way of imposition of the above duties will be prospective and will not apply retrospectively. In cases where provisional safeguard measures are applied, then, when final safeguard duty / anti-dumping duty is imposed, such duties can be made retrospective and applicable from the date of imposition of provisional duties. In other words, the retrospective application will be limited to the date from which the provisional duties are charged.

4.24 As a matter of fact, with regard to initiation of safeguard measures and levy of safeguard duty as well as anti-dumping duty, investigations were initiated by the Directorate General of Trade Remedies and writ petitions were filed in various High Courts challenging such imposition of safeguard duties.

4.25 The Government of India came up with periodical instructions with regard to the scope of safeguard duty levy and where litigation issues are to be handled. Finally, the Directorate General of Trade Remedies issued a Notification Termination Order dated 09.11.2022. In terms of this order, on the basis of representations made by local manufacturers, the Government withdrew the investigation into imports of Solar Cells whether or not assembled into Modules or Panels originating in or exported from China People’s Republic, Thailand and Vietnam. A copy of the Notification Termination Order dated 09.11.2022, as referred to above, is enclosed to this opinion as **Annexure-2**.

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4.26 Therefore, in the absence of levy of such duties, as of now, either provisional or final, the imports being made will not attract any such duties till these duties are imposed.

**S. MURUGAPPAN**

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**Disclaimer:-** The above opinion is provided based on the information and documents made available to us by the queriest 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.