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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
+ **W.P.(C) 17116/2022**

M/S. RENEW HANS URJA PRIVATE LIMITED ..... Petitioner

Through: Mr Sujit Ghosh with Ms Mannat  
Waraich, Mr Shubh Dixit, Ms Ananya  
Goswami and Ms Anshika Agarwal,  
Advocates.

versus

CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS &  
ORS. .... Respondents

Through: Mr Satish Kumar, Sr. Standing  
Counsel for respondent nos.1 and 2.  
Ms Nidhi Raman, CGSC with Ms  
Charu Modi, Advocate for respondent  
no.3.

**CORAM:**

**HON'BLE MR JUSTICE RAJIV SHAKDHER**

**HON'BLE MS JUSTICE TARA VITASTA GANJU**

**ORDER**

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**15.12.2022**

[Physical Hearing/Hybrid Hearing (as per request)]

**CM APPL. 54339/2022**

1. Allowed, subject to just exceptions.

**CM APPL. 54340/2022**

2. Allowed, subject to the petitioner filing legible copies of the annexures, at least three days before the next date of hearing.

**W.P.(C) 17116/2022 and CM APPL. 54338/2022** [*Application filed on behalf of the petitioner seeking interim relief*]

3. This writ petition is directed against a part of the notification bearing no.54/2022-Customs dated 19.10.2022 [i.e., Sl. No. 2(ii)] and the communication dated 21.11.2022 issued by respondent no.2.

4. Mr Sujit Ghosh, who appears on behalf of the petitioner, submits that, apart from anything else, a perusal of the communication dated 21.11.2022 would show that the benefit of the concessional rate of customs duty available to the petitioner for importing equipment for the purpose of its solar power project, has been denied on account of a purported retrospective amendment to the Project Import Regulations, 1986 [in short, “1986 Regulations”].

4.1 It is Mr Ghosh’s contention that the sponsoring authority had recommended that the benefit of Customs Notification No.50/2017 dated 30.06.2017 would enure to the petitioner. In this behalf, Mr Ghosh has, *inter alia*, drawn our attention to the following part of the communication dated 23.09.2022:

*“As per Provision of Customs Notification No. 50/2017 Customs dated 30.06.2017 as amended from time to time, as per Customs Tariff Heading No. 98.01, under Sr. No. 597 (iii) for Goods required for setting up of any Solar Power Project are eligible for Concessional rate of Customs duty benefits.*

*In view of the above, it is stated that Goods mentioned in **Annexure - I** required for setting up of 600MW Solar Power Project of M/s. Renew Hans Urja Private Limited ("**RHUPL**") in and around Village - Pratapura Masuria, Tehsil - Sankra. Dist-Jailsamer. Rajasthan - 345001 through Renew Solar Energy (Jharkhand One) Private Limited. ("**RSEJPL**"), may be considered for facility provided under the Customs Notification No. 50/2017 Cus. dated 30.06.2017 as amended from time to time, as per Customs Tariff Heading No. 98.01, under Sr. No. 597 (iii).”*

4.2. Furthermore, our attention has been drawn to the communication dated 12.10.2022 emanating from the Government of India, Ministry of Finance, Department of Revenue, concerning “Registration of Power Project

for Import of goods for initial setting up of 600 MW solar power project at Village-Pratapura Masuria, Tehsil - Sankra. Dist-Jailsamer. Rajasthan”. Mr Ghosh, in particular, has drawn our attention to paragraph 3 of the said communication. For the sake of convenience, the same is extracted hereafter:

*“3. As per recommendation of the Pr. Secretary, Energy Department, Government of Rajasthan, the above items have been registered under project import having licence registration No.9900869051 dated 30.09.2022 under the Project Import Regulations, 1986. You are advised quote the said reference F.No. VIII(16)10)BGKT/PI/2022-23 and Project Registration No. 9900869051 dated 30.09.2022 in all your future correspondence with this office.”*

4.3. Mr Ghosh says that upon receipt of this communication, a right was vested in favour of the petitioner to import registered items for execution of the solar power project to import items at a concessional rate of duty, which, according to the respondents, stands withdrawn with the issuance of the impugned notification dated 19.10.2022. [See annexure P1, appended on page 51 of the case file].

5. It is Mr Ghosh’s contention that, even if the aforesaid notification is taken on its face value, it states, in no uncertain terms, that it was designed to come into force on 20.10.2022.

6. It is, thus, submitted by Mr Ghosh that the registration of the solar power project, which occurred prior to the said date, will continue to have the benefit of the concessional rate of customs duty.

6.1. Mr Ghosh says that, at present, the petitioner is required to pay customs duty at the rate of 5%.

7. We may note that, based on the earlier regime, the petitioner has taken certain steps. *Inter alia*, the petitioner has furnished a continuity bond amounting to Rs. 1,844,54,55,273/- and apart from that, also furnished a bank guarantee, as stipulated, worth Rs. 1 crore.

7.1. Both the continuity bond and the bank guarantee, according to Mr Ghosh, are alive.

8. Mr Satish Kumar, who appears on behalf of the respondents no.1 and 2, says that the petitioner has not fulfilled the stipulated eligibility criteria for being accorded the concessional rate of duty.

8.1 It is Mr Kumar's submission that, at this stage, no interim order can be passed in favour of the petitioner, even if the matter, otherwise, would require consideration.

9. Mr Ghosh, in response to this submission of Mr Kumar, says that insofar as the instant writ petition is concerned, the letter of credit for imported material has to be established in and about March-April 2023. As regards other connected matters are concerned, Mr Ghosh says that in some of them, the letter of credit has to be established in February-March 2023.

10. Given the aforesaid, we are of the view that the petitioner has set up a *prima facie* case. In case no interim protection is granted, the entire process of import is likely to get derailed. Although letters of credit have to be established in this particular case between March and April 2023, and in some other connected matters relating to group companies, have to be established in February-March 2023, the uncertainty as to whether or not the petitioner would be entitled to a concessional rate of duty would perhaps delay the execution of the project at hand.

10.1. The balance of convenience, thus, to our minds, is in favour of the petitioner because in case the petitioner was to fail in the instant writ petition, it would have to pay duty at the tariff rate and not at the concessional rate. Therefore, at the end of the day, this aspect of the matter has only a financial impact either way, *qua* which, a suitable direction can be issued.

10.2. In any event, as noticed above, the petitioner has submitted a continuity bond for a large sum of money, along with a bank guarantee.

11. Thus, having an overall view of the matter, we are inclined to direct that no precipitate action be taken against the petitioner at the stage of import. This would, however, not create any equity in favour of the petitioner.

11.1. It is ordered accordingly.

12. Issue notice.

12.1. Mr Kumar accepts notice on behalf of the respondent nos.1 and 2, while Ms Nidhi Raman accepts notice on behalf of the respondent no.3.

13. Counter-affidavit will be filed within four weeks.

13.1. Rejoinder thereto, if any, will be filed before the next date of hearing.

14. List the matter on 26.04.2023.

15. We make it clear that in case the petitioner was to fail in the writ petition, it will pay the differential customs duty. An affidavit in that behalf will be filed within the next ten days.

**RAJIV SHAKDHER, J**

**TARA VITASTA GANJU, J**

**DECEMBER 15, 2022 / tr**  
W.P.(C) 17116/2022

[Click here to check corrigendum, if any](#)  
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