



## ***Aadrikaa Law Offices (ALO)- IDT Tax / Arbitration / Litigation***

**Date: 18.09.2025**

### **CESTAT Delhi Emphasized that 100% Export-Oriented Units (EOUs) are exempt from safeguard duty**



*This Article has been written by Shri Ravi Shekhar Jha, Advocate based in New Delhi. The views expressed are based on his interpretation of the law. He can be reached at his email id [intelconsul@gmail.com](mailto:intelconsul@gmail.com) or on his Mobile +91-9999005379.*

In a landmark decision, the Customs, Excise & Service Tax Appellate Tribunal (CESTAT), New Delhi, has ruled in favor of M/s Alpex Solar Pvt. Ltd., a 100% Export-Oriented Unit (EOU), exempting them from the imposition of safeguard duty under Section 8B(2A) of the Customs Tariff Act, 1975. This judgment, delivered on September 16, 2025, sets a significant precedent for EOUs across India.

#### **Background of the Case**

Alpex Solar Pvt. Ltd., engaged in the manufacturing and export of solar panels, imported Multi Silicon Solar Cells from Taiwan in 2018. The company filed Bills of Entry at a nil rate of Basic Customs Duty (BCD) and paid IGST at 5%, availing exemptions under Notification No. 24/2005-Cus. However, in March 2019, the Special Investigation and Intelligence Branch observed that the company had not paid safeguard duty at 25%, imposed under Notification No. 1/2018-(SG). A show-cause notice was issued, alleging that the goods imported were of Taiwanese origin, which did not qualify for exemption under Notification No. 19/2016-Cus (NT).

The Principal Commissioner of Customs confirmed the demand for safeguard duty, IGST interest, and penalties, leading Alpex Solar Pvt. Ltd. to challenge the order before CESTAT.

## Key Arguments

### 1. Appellant's Stand:

- Represented by Advocate, Alpex Solar argued that as a certified 100% EOU, they were exempt from safeguard duty under Section 8B(2A) of the Customs Tariff Act, 1975.
- The goods were imported for manufacturing purposes within the EOU premises and were not cleared into the domestic tariff area, making the safeguard duty inapplicable.
- The company also challenged the penalty imposed under Section 112(a) of the Customs Act.

### 2. Revenue's Stand:

- The Revenue contended that the goods originated from Taiwan, which is not listed as a developing country eligible for exemption under Notification No. 19/2016-Cus (NT).
- They argued that the Bills of Entry were filed under the Non-EOU category, making the safeguard duty applicable.

## CESTAT's Observations

The Tribunal, comprising Hon'ble Judicial Member and Hon'ble Technical Member, meticulously analyzed the provisions of Section 8B of the Customs Tariff Act. Key observations included:

- **Exemption for EOUs:** Section 8B(2A) explicitly exempts 100% EOUs from safeguard duty unless the goods are cleared into the domestic tariff area or used in manufacturing goods for domestic clearance. Since Alpex Solar's imports were confined to their EOU premises, the safeguard duty was deemed inapplicable.
- **Irrelevance of Country of Origin:** The Tribunal clarified that the origin of goods (Taiwan) was irrelevant in this case, as the exemption under Section 8B(2A) supersedes the conditions of notifications issued under subsections (1) and (2) of Section 8B.
- **Status of EOU:** The Tribunal dismissed the Revenue's argument regarding the Bills of Entry being filed under the Non-EOU category, emphasizing that the appellant's status as a 100% EOU was undisputed and supported by government certification.

## Conclusion

The Tribunal set aside the impugned order, ruling that Alpex Solar Pvt. Ltd., as a 100% EOU, was exempt from safeguard duty. The appeal was allowed with consequential benefits.

**Source: CESTAT Delhi**

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**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL**  
**NEW DELHI**  
**PRINCIPAL BENCH – COURT NO. III**  
**CUSTOMS APPEAL NO.50175 OF 2021**

[Arising out of Order-in-Original No.30/2020/U.G./Principal Commissioner dated 10.08.2020 passed by the Principal Commissioner of Customs, Air Cargo Complex (Import), New Customs House, Delhi West Commissionerate, New Delhi]

**M/s. Alpex Solar Pvt. Ltd.**  
 231-232, Westend Marg,  
 Kohinoor Enclave, Saidulajab,  
 Near Garden of Five Senses,  
 New Delhi-110 030.

**...APPELLANT**

Versus

**PRINCIPAL COMMISSIONER OF CUSTOMS,**  
**Air Cargo Complex (Imports),**  
 New Customs House, Near IGI Airport,  
 Plot No.2B, 3<sup>rd</sup> Floor, EIL Annexe,  
 New Delhi-110 037.

**...RESPONDENT**

**APPEARANCE:**

Shri Vidushi Shubham, Advocate for the appellant  
 Shri S.K. Ray, Authorised Representative for the Revenue.

**CORAM:**

**HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)**  
**HON'BLE MR. P. V. SUBBA RAO, MEMBER (TECHNICAL)**

**FINAL ORDER NO. 51295/2025**

**DATE OF HEARING: 27.08.2025**  
**DATE OF DECISION: 16.09.2025**

**BINU TAMTA:**

1. M/s. Alpex Solar Pvt. Ltd.<sup>1</sup> has challenged the Order-in-Original<sup>2</sup> confirming the imposition of safeguard duty alongwith IGST interest and penalty under the provisions of the Customs Act, 1962.

2. The appellant, a 100% EOU is engaged in the business of import-export and manufacturing related to solar modules used in the generation of

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<sup>1</sup> The Appellant

<sup>2</sup> No.30/2020/U.G./Principal Commissioner dated 10.08.2020

solar energy. Most of the parts viz solar celis, solar glass, back sheet, junction box etc are imported from China, Korea, Malaysia and Taiwan and few are purchased from the local market, that after manufacturing of solar panels, they export them mainly to USA, UK, Yemen, Dubai etc and also sell the same in the domestic market, that in the course of the same business, they have imported Multi Silicon Solar Cell (Photovoltaic solar Cell) CTH 85414011 and filed Bills of Entry<sup>3</sup> No.7425274 dated 30.07 2018 and 7929763 dated 06.09.2018 through their CHA at prescribed 'Nil' rate of BCD by availing the benefit of S. No. 23 of Notification No. 24/2005-Cus dated 01.03.2005 and discharged their liability of IGST @ 5%, that since there was no safeguard duty applicable on the import of raw material by EOU, they filed Bills of Entry without payment of any safeguard duty which was duly assessed and cleared by the Department @ 0% of Safeguard duty.

3. Sometime in March, 2019 on scrutiny of the Bill of Entry, the Special Investigation and Intelligence Branch observed that the appellant had not paid the Safeguard duty @ 25% imposed vide notification No. 1/2018-(SG) dated 30.07.2018, therefore, issued summons and recorded statement of their Director Sh. Ashwani Sehgal on 18.04.2019 wherein he stated that they are 100% EOU; that goods were imported on 100% EOU: that correct description and quantity was described in the Bills of Entry, that full and final payment was made to M/s Samsung C and T Corporation, Seoul, South Korea which is listed in Exemption notification No. 19/2016-Customs (NT) dated 05.02 2016 and hence the Bills of Entry were not liable to payment of Safeguard duty.

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<sup>3</sup> B/E

4. Show cause notice dated 2.3.2020 was issued on the ground that the appellant had not paid the safeguard duty and differential IGST as the goods imported were of Taiwan origin, which is not included in the list of developing countries under Notification No.19/2016-Cus (NT) dated 05.02.2016 and, therefore, no exemption can be granted. Secondly, the appellant filed the B/E under Non-EOU category for home consumption without fulfilling the procedure as envisaged in Rule 5 of Customs (Import of Goods at concessional Rate of Duty) Rules, 2017<sup>4</sup>. On adjudication, the demand was confirmed *inter alia* observing as under:-

"**17.6** In view of above discussions. I hold that because notification No. 19/2016-Customs (NT) dated 05.02.2016 was in force on the given dates, no exemption from Safeguard duty can be extended to the imports originating from Taiwan I am of the opinion that the cardinal principle of interpretation is that while interpreting any statutory provisions no words or phrase should be rendered otiose or redundant Once it is proved that the goods have not originated from any of the notified countries, the issue raised by ASPL becomes bereft of any merits so as to warrant any interference on any of the legal aspects concerning the validity of SCN. Therefore the imports made by ASPL against the two Bills of Entry mentioned in the SCN are liable to Safeguard duty."

5. Being aggrieved, the appellant has preferred the instant appeal.

6. Heard Ms. Vidushi Shubham, learned Counsel for the appellant and Shri S.K. Ray, learned Authorised Representative for the Department.

7. Ms. Vidushi Shubham representing the appellant argued that the appellant being 100% EOU were not liable to pay safeguard duty on the imported articles as the same is exempted under the provisions of Section 8B of Customs Tariff Act, 1975<sup>5</sup>. The next submission of the learned counsel

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<sup>4</sup> IGCR

<sup>5</sup> CTA

is that the benefit of IGCR are available to importers, who intend to claim exemption from payment of customs duty. However, she clarified that the appellant has claimed exemption from BCD as per Notification No.24/2005-CUS dated 01.03.2005. Learned Counsel has also challenged the imposition of penalty under Section 112(a) of the Act.

8. Per contra, Shri S.K. Ray representing the Revenue submitted that the Notification No.1/2018-CUS dated 30.07.2018 levying safeguard duty is not applicable to the importers of the goods from the countries which are notified as developing countries under Notification No.19/2016-CUS (NT) dated 05.02.2016. The list provided in the Notification No.19/2016-CUS (NT) does not specify Taiwan as one of the country eligible for exemption from levy of safeguard duty and hence, the appellant is liable to pay the same.

9. Learned Authorised Representative for the Revenue also submitted that so far as the provisions contained in Section 8B of CTA and notification No. 52/2003-Cus dated 31.03.2003 are concerned, the fact remains that the same will be applicable in those cases where the B/E are filed under EOU category, In the instant case, it has been placed on record that B/E have been filed under Non-EOU category, a fact which stands corroborated from the statement dated 18.04.2019 tendered voluntarily by their Director Shri Ashwani Sehgal and accordingly, he prayed that the appeal be dismissed.

10. To appreciate the controversy of leviability of safeguard duty, it is essential to consider the provisions of Section 8B of CTA as prevalent at the time of presentation of B/E, (prior to substitution by Finance Act, 2020, dated 27.03.2020) which is reproduced herein:-

## **"8B. Power of Central Government to impose safeguard duty**

(1) If the Central Government, after conducting such enquiry as it deems fit, is satisfied that any article is imported into India in such increased quantities and under such conditions so as to cause or threatening to cause serious injury to domestic industry, then, it may, by notification in the Official Gazette, impose a safeguard duty on that article:

PROVIDED that no such duty shall be imposed on an article originating from a developing country so long as the share of imports of that article from that country does not exceed three per cent or where the article is originating from more than one developing countries, then, so long as the aggregate of the imports from developing Countries each with less than three per cent. import share taken together does not exceed nine per cent of the total imports of that article into India:

PROVIDED FURTHER that the Central Government may, by notification in the Official Gazette, exempt such quantity of any article as it may specify in the notification, when imported from any country or territory into India, from payment of the whole or part of the safeguard duty leviable thereon.

(2) The Central Government may, pending the determination under sub-section (1), impose a provisional safeguard duty under this sub-section on the basis of a preliminary determination that increased imports have caused or threatened to cause serious injury to a domestic industry:

PROVIDED that where, on final determination, the Central Government is of the opinion that increased imports have not caused or threatened to cause serious injury to a domestic industry, it shall refund the duty so collected:

PROVIDED FURTHER that the provisional safeguard duty shall not remain in force for more than two hundred days from the date on which it was imposed.

**(2A) Notwithstanding anything contained in sub-section (1) and sub-section (2), a notification issued under sub-section (1) or any safeguard duty imposed under sub-section (2), shall not apply to articles imported by a hundred per cent. export-oriented undertaking or a unit in a special economic zone unless,**

**(i) specifically made applicable in such notifications or such impositions, as the case may be; or**

**(ii) the article imported is either cleared as such into the domestic tariff area or used in the manufacture of any goods that are cleared into the domestic tariff area and in such cases safeguard duty shall be levied on that**

**portion of the article so cleared or so used as was leviable when it was imported into India.**

Explanation: For the purposes of this section, the expressions "hundred per cent. export-oriented undertaking", and "special economic zone" shall have the meanings assigned to them in Explanation 2 to sub-section (1) of section 3 of Central Excise Act, 1944 (1 of 1944)."

11. The entire scheme of imposing safeguard duty has been provided under the various clauses of section 8B. Clause (1) empowers the Central Government to impose safeguard duty by issuing notification on being satisfied that any article imported in such increased quantity which may cause or threaten to cause serious injury to domestic industry. The first proviso says that no safeguard duty shall be imposed on an article originating from a developing country subject to certain conditions specified. The second proviso further provides that the Central Government by virtue of a notification exempts such quantity of an article when imported from any country or territory into India from payment of the whole or part of the safeguard duty. Further, clause (2) requires the Central Government to apply provisional safeguard measures pending the determination under subsection (1) on the basis of preliminary determination and in the event of final determination, if the Central Government is of the opinion that the increased imports have not caused any serious injury to the domestic industry, it shall refund the safeguard duty so collected. Proviso 3 in terms sets the life of the safeguard duty to be not more than 200 days from the date on which it was imposed. Clause 2A, which is relevant in the facts of the case, starts with a non-obstante clause, i.e. notwithstanding the provisions of subsection (1) and subsection (2), the safeguard duty shall not apply to articles imported by 100% EOU or a unit in a special economic zone, unless it is made applicable by notification or the article imported is

either cleared into the domestic tariff area or used in the manufacture of goods that are cleared into the domestic tariff area. It is only in these two situations that the safeguard duty shall be levied on that portion of the article, so cleared or so used as was leviable when it was imported into India. The Explanation to Section 2A specifies that for the purpose of this section, the expression "hundred percent export oriented undertaking" and "special economic zone" shall have the meanings assigned to them in Explanation 2 to subsection (1) of Section 3 of Central Excise Act, 1944. The legislative intent of sub-section 2A in Section 8B is not to levy safeguard duty on EOUs and a unit in SEZ by providing specific status to the 100% EOUs to be beyond the imposition of safeguard duty notwithstanding any notification issued in terms of subsection (1) or (2) of section 8B. Therefore, the notification No.1/2018 dated 30.07.2018 issued in exercise of powers conferred by subsection (1) of section 8B of CTA providing for imposition of safeguard duty on the goods falling under the heading 8541 or tariff item 8541 4011 of the First Schedule to the CTA, is not applicable in case of 100% EOU by virtue of the main substantive subsection 2A of section 8B.

12. We find that the Certificate dated 29.09.2015 issued by Government of India approved the appellant as 100% Export Oriented Unit set-up in Noida Special Economic Zone, entitling the unit to top priority treatment from all concerned Central and State Government Departments, and other organisations in all matters relating to the project. The Revenue has not disputed the status of the appellant as 100% EOU. The appellant continued to be 100% EOU till the final exit order dated 23.11.2023, allowing the appellant to exit from the 100% EOU scheme and, therefore, the green card issued to the unit was cancelled. Thus, it is an admitted position that the appellant was 100% EOU at the relevant time when the goods were

cleared. In that view of the matter, the appellant is entitled to special treatment, whereby no safeguard duty can be imposed on them without any reference to the notifications issued under the provisions of Section 8B. Only two conditions under which safeguard duty could have been imposed on 100% EOU have been specified in the sub-section itself and it is not the case of the Revenue that the appellant falls within those conditions. Hence we are of the considered view that the appellant being 100% EOU cannot be subjected to the levy of safeguard duty.

13. The Revenue has raised twofold contentions, firstly the country of origin in the case of goods imported is Taiwan, which do not fall in the list of developing countries provided in the Notification No.19/2016-Cus dated February 5,2016 and, therefore, the appellant would not be exempted in terms of first proviso to subsection (1) of Section 8B, which bars imposition of safeguard duty on an article originating from a developing country, subject to the conditions specified therein. The fallacy in the argument of the Revenue is that they have completely ignored that the appellant is a certified 100% EOU on which no safeguard duty can be imposed notwithstanding anything contained in subsection (1) and subsection (2) or any notification issued therein. The Section itself provides that once a unit importing the goods is 100% EOU, no safeguard duty can be imposed unless specifically made applicable in such notification or the article imported is either cleared into the domestic tariff area or used in the manufacture of any goods that are cleared into the domestic tariff area. We do not find that the notifications relied on by the Revenue, in any manner, covers 100% EOUs or the goods imported are diverted to the domestic tariff area. The goods released from customs area had entered the EOU unit premises of the appellant and were

not released in the domestic tariff area. For the reasons, we conclude that no safeguard duty can be levied on the appellant.

14. The other contention of the Revenue is that the B/E and the Airways bill filed by the appellant was under the category of Non-EOU and the benefit can only be granted in respect of 100% EOU. Mere mentioning in the B/E or Airways bill does not change the status of the appellant to be Non-EOU. The relevant document in this regard is the certificate approving the appellant unit as 100% EOU by Noida SEZ under Green Card No.291 for manufacturing of solar panel and solar Junction boxes at the factory located in Surajpur Industrial Area, Greater Noida. It is not disputed that goods were examined, cleared and entered the 100% EOU premises for manufacturing.

15. The reliance placed by the learned Counsel for the appellant on the decision of the Bombay High Court in **Hero Cycles Ltd versus Union of India**<sup>6</sup> answering the question that if the petitioner on account of an inadvertent error chose not to apply for the benefit, would that result in denial of the benefit, observed, "In our opinion that by itself would not be answer as a duty is cast on the authority to assess the goods and impose duty according to law, which includes a statutory notification, if duty cannot be demanded is otherwise not payable. Once there be a power to assess, there is a corresponding duty to assess according to law. The fact that the petitioner has paid the duty under mistake of law and or in the instant case by oversight, cannot result in being assessed to duty, which was otherwise not payable. In our opinion, this will be a case of manifest injustice and on the face of it erroneous". The said decision has been affirmed by the

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<sup>6</sup> 2009 (240) ELT 490 (Bombay)

**Supreme Court** in the case of **Union of India Vs. Hero Cycles Ltd.**<sup>7</sup> as the appeal filed by the Government was dismissed. This decision answers the contention of the Revenue.

16. **Conclusion:**

i ) The appellant being 100% EOU unit is exempted from payment of safeguard duty as per section 8B(2A) of Custom Tariff Act, 1975 and the same cannot be made applicable by virtue of Notification, No. 1/2018.

ii ) Once the safeguard duty is not applicable, the issue that the goods have originated from Taiwan, a country which is not under the list of developing countries given exemption has no relevance, and the appellant cannot be non-suited on that account.

17. We do not find any merits in the impugned order and the same is hereby set aside. The appeal is allowed with consequential benefits, if any.

[ Order pronounced on 16<sup>th</sup> September, 2025 ]

**(BINU TAMTA)**  
**MEMBER (JUDICIAL)**

**(P. V. SUBBA RAO)**  
**MEMBER (TECHNICAL)**

Ckp.

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<sup>7</sup> 2010 (252) ELT A-103 (SC)