

# International Renewable Energy Certificates downloaded in electronic form qualify as intangible goods not leviable to customs duty – Customs AAR

4 September 2024

## Summary

The Customs Authority for Advance Rulings (AAR) has held that International Renewable Energy Certificates (I-RECs) imported in electronic form are intangible goods. Accordingly, due to the absence of any mechanism for levying customs duty on intangible goods under the Customs law, I-RECs, in electronic form, cannot be subjected to customs duty. The AAR has further clarified that the I-RECs, when imported in a physical form, qualify as documents of title. Thus, IT will be classifiable under Tariff item 4907 00 90 of the first Schedule to the Customs Tariff Act, 1975.

## Facts of the case

- M/s United Breweries Limited (the applicant) approached the Customs AAR to understand the classification and customs duty applicability on International Renewable Energy Certificates (I-RECs) when imported into India.
- I-RECs are certificates that represent proof that 1 megawatt-hour (MWh) of electricity has been generated from a renewable energy source and fed into the grid. They are issued by accredited entities and traded globally to support renewable energy projects.

## Issues raised before AAR

- Whether I-RECs, when imported in electronic form, are intangible goods taxable under the Customs Act, 1962 (Customs Act) and subject to customs duties?
- Should I-RECs be imported in physical form under the Customs Act?
- Are I-RECs classifiable as goods under the Customs Tariff Act, 1975 (CTA) when imported in physical form?

## Customs AAR's observations and judgement [CAAR/Mum/ARC/100/Mumbai, dated 19 July 2024]

- **I-RECs are intangible goods:** Based on the test laid down by the SC in the case of Tata Consultancy, the AAR held that the I-RECs imported in electronic form qualify as intangible goods, as they have utility, are transferrable, and can be possessed.
- **Not subject to customs duty:** Due to the absence of any mechanism to levy customs duty on intangible goods under the Customs law, the I-RECs imported in electronic form cannot be subject to customs duties under the Customs Act.
- **I-RECs in physical form are goods leviable to customs duty:** The AAR clarified that the I-RECs imported in physical form qualify as the document of title conveying the right/ownership to the bearer to 1 MWh electricity generated from

renewable energy sources. Therefore, the I-RECs in electronic form are classifiable as goods under Heading 49.07 and would attract customs duties.

- **Legal consistency:** The ruling provided by the AAR ensured consistency with past judgements by various High Courts and Tribunals that have held that software downloaded electronically and not imported into physical media does not attract customs duties.

## Our comments

The Supreme Court, in the case of Oracle India Pvt. Ltd., has held that in the absence of a mechanism for levy/collection of duty on intangible goods under the Customs Act, electronically downloaded software is not leviable to Customs duty.

Following the above precedence, various judicial forums have held that the software downloaded electronically from abroad and not imported on any physical media does not attract customs duty.

The present ruling aligns with the above judicial precedence and clarifies the implications in case of importing I-RECs electronically under the customs law. An analogy may be drawn in the case of the electronic import of similar documents of title conveying right/ownership, such as carbon credit certificates, IPRs, trademarks, etc.

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