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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 1878/2024 & CM APPL. 28782/2024 (by petitioner for directions)

ACME HEERGARH POWERTECH PRIVATE LIMITED ..... Petitioner

Through: Mr. Sujit Ghosh, Sr. Adv. with Ms. Mannat Waraich & Ms. Ananya Goswami, Advs.

versus

COMMISSIONER OF CUSTOMS (PREV.) & ANR. ..... Respondents

Through: Mr. Satish Aggarwala, SSC with Mr. Gagan Vaswani, Adv.

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\+ W.P.(C) 4548/2024 & CM APPL. 28795/2024 (by petitioner for directions)

AVAADA SUNRAYS ENERGY PRIVATE LIMITED ..... Petitioner

Through: Mr. Sujit Ghosh, Sr. Adv. with Ms. Mannat Waraich & Ms. Ananya Goswami, Advs.

versus

ASSISTANT COMMISSIONER OF CUSTOMS, GROUP VA & ANR. ..... Respondents

Through: Mr. Satish Aggarwala, SSC with Mr. Gagan Vaswani, Adv.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

O R D E R

% **14.05.2024**

1. These writ petitions have been preferred seeking the following reliefs:

"W.P.(C) 1878/2024

(i) That this Hon'ble Court be pleased to issue a writ in the nature of Certiorari or any other writ, order or direction quashing the Impugned Letter dated 30.01.2024 as being in contravention of interim orders of this Hon'ble Court as well as Section 28(l)(a) of the Customs Act and also being in violation of principles of natural justice and without jurisdiction and in complete conflict with the detailed procedure as laid down under the Pre-Notice Consultation Regulations, 2018;

(ii) That this Hon'ble Court may be pleased to issue a writ in the nature of Prohibition or any other writ order or direction directing the Respondent No. 1 and any other officers of customs to refrain from continuing with the proceedings in relation to recovery of customs duty, being in violation of the interim orders of this Hon'ble Court and thereby without jurisdiction.

(iii) That this Hon'ble Court may pass such further orders and direct such other consequential reliefs, including costs of this Petition, as this Hon'ble Court may deem fit and proper in the nature and circumstances of the case."

"W.P.(C) 4548/2024

(i) That this Hon'ble Court be pleased to issue a writ in the nature of Certiorari or any other writ, order or direction quashing the Impugned Letter dated 04.03.2024 as being in contravention of interim orders of this Hon'ble Court as also being in violation of principles of natural justice and without jurisdiction;

(ii) That this Hon'ble Court may be pleased to issue a writ in the nature of Prohibition or any other writ order or direction directing the Respondent No. 1 and any other officers of customs to refrain from continuing with the proceedings in relation to recovery of customs duty, being in violation of the interim orders of this Hon'ble Court and thereby without jurisdiction.

(iii) That this Hon'ble Court may pass such further orders and direct such other consequential reliefs, including costs of this Petition, as this Hon'ble Court may deem fit and proper in the nature and circumstances of the case."

2. We note that the principal challenge to the applicability of the Manufacture and Other Operations in Warehouse (No.2) Regulations, 2019 ["**MOOWR Regulations**"] to solar generation units duly warehoused in terms of Section 65 of the Customs Act, 1962 ["**Act**"] was at the relevant time pending consideration in W.P.(C) 10537/2022 and the connected batch of petitions.

3. That batch came to be ultimately allowed in terms of the judgment of this Court dated 06 May 2024 rendered on **ACME Heergarh Powertech Private Limited vs Central Board of Indirect Taxes and Customs & Anr.** [2024 SCC Online Del 3360].

4. The relevant paragraphs of the aforesaid decision read as under:-

> "**138.** On a conjoint reading of Sections 61 and 65, we note that the statute not only contemplates the warehousing of capital goods but also those which may not fall in that category and in that sense be described as non-capital goods. It is only in the case of such goods that the period for which those may be warehoused can stretch up to the stage of their consumption and clearance from the warehouse. The aspect of consumption is one which is spoken of only in respect of goods which are non-capital in nature. The period of warehousing insofar as capital goods is concerned is not connected or correlated to consumption as is manifest from a reading of Section 61(1)(a). Capital goods can remain in a warehouse till they are ultimately cleared therefrom. The same leads one to the irresistible conclusion that capital goods once imported could be validly and legitimately placed in a warehouse and thus be exempt from the payment of duties and taxes till they are cleared from those facilities.
>
> **139.** In our considered opinion, Section 65 clearly stops short of making an exception or excluding a certain category of manufacturing activities from its ambit. It also fails to exclude from its application the manufacture of intangible goods in explicit terms. Section 61 clearly envisages both capital and non-capital goods being imported and housed in a warehouse for the purposes of manufacturing activity being undertaken in terms of permissions granted under Section 65 of the Act. The statute enables capital goods being housed in the warehouse till such time as they may be

cleared for home consumption. While Section 61, prior to the 2016 amendments envisaged the maximum retention period to be five years, post amendment, that stipulation came to be substituted with the Legislature permitting the retention of those goods without any maximum time frame operating. The clear and unambiguous scheme which thus emerges from a reading of Sections 61 and 65 is of the importer being enabled to bring into the country capital goods which may be utilized in connection with manufacture or other operations in a licensed warehouse and the resultant goods alone being subjected to tax.

140. The Circular of the Board, the FAQs', the declarations of intent appearing on the "Invest India" portal unerringly point towards capital goods being capable of being warehoused for an indefinite period of time and the duty element thus getting deferred till the time those goods are ultimately cleared for entry into the domestic zone. We find ourselves unable to read Sections 61 and 65 as contemplating only such capital goods which themselves undergo a process of manufacture or those which may get consumed in the resultant product. Acceptance of that submission would amount to placing an extremely narrow construction on the words "*manufacturing process or other operations*". The words "*other operations*" must be acknowledged as representing the legislative intent to be the undertaking of an activity which may not necessarily answer to the attributes of manufacturing as generally understood. As observed hereinbefore, the use of that expression in fact is intended to expand the scope of the applicability of Section 65.

141. The fact that capital goods so imported were placed in a distinct category is also evident from the promotional material which appears on the "Invest India" portal as well as the 01 October 2019 Circular issued by the first respondent. As is manifest from a reading of the aforesaid circular, the first respondent had in unequivocal terms held out that units operating under Section 65 would be entitled to import capital goods without prescribing a determinate point. Similar is the position which comes to the fore when one views the FAQs which were framed and which unambiguously spoke of the duty deferment being without any time limitation. Those FAQs declared that duty on the imported capital goods would be payable only once they are cleared from the warehouse or are moved into the domestic market. This was further explained with the respondents taking the unequivocal position that the duty on the capital goods does not get incorporated in the finished goods. The MOOWR Regulations themselves were explained to be one relating to deferment of duty with it being held out that both BCD and IGST on imports would stand deferred and that such deferment would be without any time limitation.

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161. Viewed in light of the above, we come to the firm conclusion that neither Section 61 nor Section 65 can be justifiably construed as incorporating an inherent or implied exclusion of solar power generation. The material that was placed for our consideration cannot possibly be interpreted as indicative of an intent of a particular type of self-consuming capital goods alone being intended for import. Neither the statutory provisions nor the contemporaneous material embodies an underlying policy intent for capital goods themselves being worked upon in the warehouse and constituting a part of the resultant goods. In fact, and to the contrary as we have found, the primary objective of the scheme was to give a fillip to domestic manufacturing albeit with the aid of imported capital goods. On an overall conspectus of the above, we find ourselves unable to accede to the submissions addressed by the learned ASG.

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P. FINAL DETERMINATION

180. Accordingly, and for all the aforesaid reasons, we allow the present writ petitions. The impugned Instruction of the Board dated 09 July 2022 insofar as it mandates review of existing licences and taking of "*follow-up*" action is hereby quashed. For reasons aforenoted, we also quash the SCNs' dated 13 July 2022 [W.P. (C) 10537/2022, W.P. (C) 10835/2022, W.P. (C) 10836/2022, W.P. (C) 10840/2022, W.P. (C) 10844/2022, W.P. (C) 10853/2022, W.P. (C) 10837/2022] and 12 December 2022 [W.P. (C) 1507/2023]. As noted above, we allow W.P. (C) 10838/2022 and quash the impugned order dated 19 July 2022 for reasons aforenoted. W.P. (C) 12386/2022 shall stand disposed of in accordance with the directions laid down in para 178 of this judgment. We leave it open to the respondents to proceed further in accordance with law."

5. In view of our judgment rendered on the aforesaid facts, learned counsel appearing for the respondents fairly concedes that the impugned letters of 30 January 2024 [W.P.(C) 1878/2024] and 04 March 2024 [W.P.(C) 4548/2024] would not sustain. We note that the aforesaid impugned letters were itself premised on the inapplicability of MOOWR Regulations and which aspect has since then been answered in favour of the writ petitioners in *ACME Heergarh*.

6. We, accordingly allow the instant writ petitions for reasons recorded in our judgment in *ACME Heergarh*, as prayed for by the

petitioners in CM APPL. 28782/2024 [W.P.(C) 1878/2024] and CM APPL. 28795/2024 [W.P.(C) 4548/2024]. The impugned letters of 30 January 2024 and 04 March 2024 shall consequently stand set aside.

7. All pending applications shall also stand disposed of. The next date of hearing fixed in the matters i.e. 29.07.2024 stands cancelled.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

MAY 14, 2024/kk