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

\+ W.P.(C) 9371/2024

GREENKO AP01 IREP PRIVATE LIMITED .....Petitioner

Through: Mr. Sujit Ghosh, Senior Advocate with Ms. Mannat Waraich, Ms. Ananya Goswami & Mr. Jaywardhan Goswami, Advocates.

versus

ASSISTANT COMMISSIONER OF CUSTOMS & ORS. .....Respondents

Through: Ms. Anushree Narain, Senior Standing Counsel with Mr. Ankit Kumar, Advocate.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU
HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

O R D E R

% 30.09.2024

CM APPL. 57489/2024 (for directions)

1. This is an application filed by the petitioner, *inter-alia,* praying that the directions be issued to respondent no. 1 to provisionally allow the petitioner to use the goods, to carry out preparatory work towards setting up of its solar power project without the payment of custom duty.

2. The petitioner has filed the above-captioned petition impugning the letters dated 24.06.2024 (hereafter *the impugned letters*) issued by the Commissioner of Customs (Preventive), Vijayawada whereby the petitioner's application seeking Customs Private Bonded Warehouse

License along with the permission for manufacturing and other operations under Sections 58 and 65 of the Customs Act, 1962 for the proposed warehouse facility of 700 Megawatts AC Solar Power Project was rejected. It is pertinent to note that the said Solar Power Project is located at Pinnapuram Village, Panyam Mandal, Kurnool, Andhra Pradesh.

3. The learned counsel appearing for the respondents submits that since both the petitioner as well as the officer, who has issued the impugned letters are located in the state of Andhra Pradesh, it would be apposite to relegate the petitioner to seek its remedies from the Courts within the said jurisdiction.

4. Mr. Ghosh, learned senior counsel appearing for the petitioner countered the aforesaid contention. He referred to the decision in ***Kusum Ingots & Alloys ltd. v. Union of India: (2004) 6 SCC 254*** and on the strength of this decision, submitted that even if a part of the cause of action has arisen within the National Capital Territory of Delhi, this Court would have the jurisdiction to entertain the present petition. He has also referred to the decision of this Court in ***Sterling Agro Industries Ltd. v. Union of India & Ors***: ***2011 DEL 3162***, and submitted that the petitioner's cause of action arises from a judgment rendered by this Court, whereby the Instruction No. 13/2022-Customs dated 09.07.2022 (hereafter *the instructions*), on the basis of which the rejection letters have been issued, was set aside.

5. We are not persuaded to accept the contentions advanced by the learned senior counsel.

6. The principal cause of action of the petitioner for approaching this Court, is the rejection letters which are impugned in the present writ petition. The fact that the said letters may be premised on the instructions,

which have been set aside by a judgment of this Court, does not have a sufficient ground for this Court to entertain the present petition. The question involved is not so much as to maintainability of the petition but whether in the given circumstances, it is apposite for this Court to entertain the petition, considering that the authority, which has issued the impugned letters is located in the state of Andhra Pradesh.

7. The contention that the judgment in ***ACME Heergarh Powertech Private Limited v. Central Board of Indirect Taxes and Customs & Anr.: 2024:DHC:3615-DB,*** which has set aside the instructions, was rendered by this Court, therefore, it is apposite for this court to entertain all the petitions against the actions that are premised on those instructions or raise issues regarding the interpretation of Manufacturing and Other Operations in Warehouse (No. 2) Regulations, 2019, is unpersuasive.

8. In view of the above, we do not consider it apposite to entertain the present petition.

9. It is noted that this petition was adjourned on earlier occasions on the ground that the Special Leave Petition (SLP) preferred by the Revenue against the decision in ***ACME Heergarh Powertech Private Limited v. Central Board of Indirect Taxes and Customs & Anr. (supra)*** is pending before the Hon'ble Supreme Court. This court was informed that the said SLP was likely to come up before the Hon'ble Supreme Court shortly. However, since we find merit in the Revenue's contention that the present petition is not required to be entertained as both the petitioner and the authority which issued the impugned letters are located in the state of Andhra Pradesh, the above-captioned petition is dismissed along with the present application.

10. It is clarified that nothing stated in this order should be construed as our expression of opinion on the challenge as raised by the petitioner in this petition.

11. The hearing scheduled on 04.11.2024 is cancelled.

VIBHU BAKHRU, J

SWARANA KANTA SHARMA, J

SEPTEMBER 30, 2024

AT

Click here to check corrigendum, if any