

Delhi High Court: Instruction directing Customs authorities to review and cancel licenses issued under MOOWR Scheme along with consequent show cause notice quashed

The Hon'ble High Court of Delhi ("**High Court**") in *Jakson Power Private Limited v. Central Board of Indirect Taxes and Customs and Another*, has quashed Instruction No. 13/2022-Cus dated July 9, 2022 ("**Impugned Instruction**") issued by Central Board of Indirect Taxes and Customs ("**CBIC**") as it dictated the Customs officers to review existing licenses issued under the Manufacturing and Other Operations in Warehouse Regulations, 2019 ("**MOOWR Scheme**") as well as take necessary follow up action. The High Court also quashed consequent Show Cause Notice ("**SCN**") issued to the petitioner, i.e., Jakson Power Private Limited ("**JPPL**").

Brief Facts

1. JPPL was granted a license by the Customs Authorities under the MOOWR Scheme ("**MOOWR License**") to set up a solar power generating unit within a private bonded warehouse.
2. The MOOWR Scheme is a duty deferment scheme wherein an importer is permitted to import capital goods and inputs without payment of duty, to be used in undertaking manufacturing and other operations in a private bonded warehouse. Duty is payable when the imported goods or finished goods containing the said inputs are cleared for home consumption.
3. CBIC issued the Impugned Instruction stating that the MOOWR Scheme is inapplicable to solar power generating units. The Impugned Instruction further directed the Customs officers to review the licenses already granted and take necessary follow-up action.
4. Based on the Impugned Instruction, the Customs authorities issued SCN to JPPL seeking to cancel the MOOWR License issued to JPPL.
5. JPPL challenged the Impugned Instruction and the consequent SCN before the High Court by way of a writ petition on the ground that the Impugned Instruction was issued in excess of jurisdiction provided for under Section 151A of the Customs Act, 1962 ("**Customs Act**") in as much as the Impugned Instruction supplanted the MOOWR Scheme with a foregone conclusion that MOOWR Scheme is inapplicable to solar power generating units and dictated the Customs officers to review existing licenses and take necessary follow up action.

The High Court allowed the writ petition, whereas, quashed the Impugned Instruction and consequent SCN.

Findings and analysis of the High Court

The High Court held the following while passing the judgement:

1. Impugned Instruction is issued exceeding the scope of Section 151A of the Customs Act and hence, validity of the same cannot be upheld.
2. JPPL had neither contravened any provisions of the Customs Act nor had acted contrary to any of the conditions contained in the MOOWR License since JPPL had already declared in its MOOWR application that the resulting goods would be electrical energy and that the imported capital goods were required to set up a solar power generating plant. Therefore, cancellation of MOOWR License under Section 58B of the Customs Act is doubtful.
3. SCN issued by the authorities on the basis of the Impugned Instruction was a mere formality since the Impugned Instruction effectively issued a dictate to decide a particular case in a particular manner.
4. Section 61 read with Section 65 of the Customs Act provide for importing and warehousing all kinds of goods (including capital goods, non-capital goods as well as other goods) for undertaking manufacturing or other operations in a private bonded warehouse. Capital goods, which may not be subsumed in resulting goods and are captively used in undertaking manufacturing or other operations, can be warehoused without payment of duty till these are cleared for home consumption.
5. The expressions “*manufacturing process or other operations*” and “*in relation to*” used in Section 65 of the Customs Act are intended to be expansive and must be given a wider meaning. These cannot be restricted to mean that capital goods must undergo manufacturing process. If capital goods are found to have contributed to or formed part of manufacturing, the qualifying criteria for the applicability of Section 65 of the Customs Act stands fulfilled.
6. Section 65 of the Customs Act neither excludes specific categories of manufacturing activities nor manufacturing of intangible goods, such as electricity. Therefore, the importer is being enabled under Section 61 and 65 of the Customs Act to import capital goods for setting up solar power generating units under the MOOWR Scheme, and the resultant goods alone being subjected to tax.
7. In the above regard, the High Court placed significant reliance on the MOOWR Circular, frequently asked questions, declarations of intent appearing on “Invest India” portal.

Conclusion

In light of the above analysis, the High Court allowed the petition and quashed the Impugned Instruction in so far as it mandates review of existing licenses and taking of follow-up action. The consequent SCN was also quashed.

The judgment has come as a significant relief to the solar power generating units already set up under the MOOWR Scheme in as much as it upholds the validity of their existing MOOWR Licenses. However, the judgement has to be tested for new MOOWR applications for setting up solar power generating units under MOOWR Scheme.

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