

Delhi High Court: Solar power producing units cannot be excluded from the duty deferment benefit of the Manufacture and Other Operations in Warehouse Regulations, 2019

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In a relief to solar power producing units, the Delhi High Court upheld the applicability of the Manufacture and Other Operations in Warehouse Regulations, 2019 (MOOWR) to such units. It quashed the instructions (Instructions) issued by the Central Board of Indirect Taxes and Customs (CBIC) that directed licensing authorities to review and take action against the permissions already granted to them. The licensing authorities were also refrained from granting fresh permissions.

Introduced in 2019, MOOWR is a duty deferment scheme allowing the import of capital goods and inputs for manufacturing and other operations into a customs bonded warehouse without upfront payment of customs duties. Instead, customs duties are payable only if the imported capital goods and inputs are being cleared from the warehouse for home consumption.

Several solar power producers obtained the necessary permissions to set up power production units under MOOWR and started importing capital goods, such as solar panels and other equipment for power generation, without upfront payment of customs duties. Since the only output product of these producers is electricity (which is exempt from customs duties), the solar power producers were not paying any customs duties on their production, even when such electricity was being cleared for home consumption. There was also a possibility of producers re-exporting the capital goods outside India after their use in the production of electricity, without paying any customs duties on them. Due to this, effectively, such producers would not pay any customs duties throughout the life cycle of the production of electricity by them under MOOWR.

To remediate this apparent loss of customs duties, in July 2022, the CBIC issued Instructions stating 'electricity' to be outside the scope of MOOWR. The CBIC noted that MOOWR required all goods being removed from the warehouse for export to be affixed with a one-time-lock. However, the nature of electricity makes it impossible to affix such a lock on the means of transport through which it is being removed from the warehouse. Consequently, CBIC reasoned that electricity would fall outside the scope of MOOWR because of the inherent inability to satisfy the prescribed

The Delhi High Court has held the benefits under the Manufacture and Other Operations in Warehouse Regulations, 2019 to apply to solar power producing units. The instructions of the Central Board of Indirect Taxes excluding such units from availing of these benefits and the show cause notices issued by licensing authorities following these instructions were struck down.

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condition. Accordingly, CBIC directed the licensing authorities to review the already granted permissions and to stop granting fresh permissions. Following these Instructions, the licensing authorities started issuing show cause notices to the solar power producers holding permissions under MOOWR.

Aggrieved by the Instructions and the consequent notices issued by the licensing authorities, a few solar power producing units challenged them before the Delhi High Court. The Court quashed the Instructions, noting that Section 61 (duration of warehousing) and Section 65 (under which MOOWR had been notified) of the Customs Act, 1962 (**Act**), cannot be interpreted in a manner that excludes solar power producing units from MOOWR. The Court also noted that it was not a case where permissions had been obtained by suppressing or misrepresenting facts. The solar power producing units had disclosed in their applications that they would be importing capital goods for setting up power generation facilities and producing electricity.

The key observations and findings of the Court are as under.

1. Cancellation of permission under MOOWR can only be done as per Section 58B (cancellation of permission for setting up warehouses) of the Act which requires the permission holder to have either violated the provisions of the Act or any other statutory provision. However, the Instructions pre-judge the issue without allowing any scope for independent application of mind by the licensing authorities and direct the cancellation of these permissions.

The Court held that CBIC is not empowered to issue any instructions that influence subordinate authorities in the discharge of their quasi-judicial functions or otherwise restrain them from independent decision making, thereby dictating the exercise of their powers.

2. Section 151A of the Act, under which the Instructions were issued, only allows the issuance of broad policy directives concerning the working of the Act to ensure uniformity in assessment practices and provide guidance to quasi-judicial authorities. Accordingly, by issuing the Instructions that dictate instead of guide the licensing authorities, the CBIC had gone beyond its advisory and clarificatory mandate.
3. The procedural requirements under MOOWR, such as fixing of input-output ratio on the import of capital goods and inputs, cannot be imposed on such activities where they do not apply to exclude them from the scope of the duty deferment scheme itself. The Court also rejected the CBIC's contention that MOOWR only allows benefits in relation to those capital goods which are to be processed further and would be contained in the output product.
4. The CBIC's function is to interpret statutory provisions as per the guiding principles of interpretation, and such interpretation cannot be influenced by inequitable results or experiences such as '*possible commercial exploitation of exemptions*'. Accordingly, the CBIC cannot exclude the solar power producing units from MOOWR only on the possibility that they may derive undue advantage under it.

This judgment is significant for solar power producing units, especially considering their high capital expenditure. However, given the policy considerations and the contentions of the CBIC, there is a possibility of this judgment being challenged before the Supreme Court. While the outcome of this challenge is unpredictable, there appear to be reasonably good arguments to support the observations made by the Delhi High Court against the validity of the Instructions and the notices. It is also equally likely that the government may amend MOOWR to prospectively exclude solar power producing units from its scope to further its policy objectives.

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