

Solar power generating companies eligible to claim benefits under MOOWR scheme – Delhi HC

9 May 2024



Summary

The Delhi High Court (HC) has struck down instructions restricting solar power-generating plants from availing benefits under the Manufacture and Other Operations in Warehouse Regulations, 2019 (MOOWR Scheme). The HC analysed relevant provisions under the Customs laws and held that these sections facilitate duty deferment on imported capital goods for manufacturing purposes, even if the goods are not consumed or integrated into the final product. The HC also held that the law does not require capital goods to transform themselves; they are only connected to or contribute to the manufacturing process or operations in the warehouse. Accordingly, the HC set aside the notices issued to the petitioners alleging cancellation of licenses issued under the scheme and held that they are eligible to avail benefits under the scheme.

Facts of the case

- Acme Heergarh Powertech Private Limited (the petitioner), a solar power generating company, applied for licenses to set up two private bonded warehouses to undertake manufacturing operations under the MOOWR scheme.
- The petitioner entered a power purchase agreement with the Maharashtra State Electricity Distribution Company Limited (MSEDCL).
- The board, vide an instruction dated 28 June 2022, issued directions to the officers that the solar power generating units, which are operating from designated warehouses and are clearing electricity for home consumption, would not be eligible under the MOOWR regulations.
- A show cause notice (SCN) was issued thereafter, alleging that the petitioner would not be eligible to claim benefits under the MOOWR scheme.
- The petitioner challenged the SCN by filing a writ petition. Pursuant to it, the HC granted an interim stay on the SCN.

Issue before the Delhi HC:

- Whether solar power generation could be said to be an operation or activity permissible under Section 65 of the Customs Act, 1962 (Customs Act), and consequently, whether solar power generating companies are eligible to claim duty deferment benefit on the capital goods imported under the MOOWR scheme?

Petitioner's contentions:

- The petitioner contended that the instruction was not issued in compliance to Section 151A of the Customs Act. The proviso prohibits the CBIC from issuing instructions requiring a Customs officer to make a particular assessment or decide a case in a particular manner.
- Further, the petitioner submitted that the instruction deprives the Customs authorities of their statutory discretion in assessing and granting licenses. The directions issued, vide the instruction, are equivalent to controlling the quasi-judicial function of the Customs officers, which is impermissible.
- The petitioner noted that the license granted under the MOOWR regulations is a judicial act as it involves an investigation, inquiry, and verification by

the customs officer before granting the license.

- The petitioner further contended that Section 65 of the Customs Act permits manufacturing operations within a warehouse and does not exclude any particular industry, including solar power generation.
- Unlike the one-year limit for any other goods, the Customs Act does not impose a maximum time limit for capital goods to be retained in a warehouse.

Respondent's contentions

- The respondents contended that solar power developers were misusing the MOOWR regulations to avoid customs duty and GST on imported solar cells and modules.
- The respondents interpreted the term 'in relation to', which is used in Section 65, and submitted that the term implies that the manufacturing process or other operations must be carried out on the 'warehoused goods' themselves.
- The imported goods in the present case are the imported solar panels and cells. Therefore, the petitioners are not eligible to claim the benefit of Section 65 and MOOWR regulations because no manufacturing process or other operations are carried out on the imported solar panels and cells, and sunlight is not an imported or warehoused good.
- Section 65 requires the warehoused goods to undergo a manufacturing process or other operations to claim the benefit. The petitioners merely use the imported solar panels and cells to convert sunlight into solar energy without any manufacturing process.

Delhi HC's observations and judgement [W.P. No. 10537 of 2022, order dated 6 May 2024]

- **Instruction interferes with the discretionary powers provided to authorities:** The power to cancel a license requires the proper officer to independently examine and exercise discretion in determining whether the licensee has violated any provisions. However, the impugned instruction directed the licensing authorities to mandatorily review and take necessary follow-up action to cancel all permissions granted to solar power-generating units. The HC held that this amounts to an impermissible interference with the quasi-judicial discretionary powers conferred on the licensing authorities.
- **Instruction issued is not valid:** The HC held that the Board cannot issue directions or circulars that bind subordinate authorities in the discharge of their quasi-judicial functions or dictate the exercise of their powers. Further, the HC interpreted the power provided under Section 151A and noted that the power was granted to ensure uniformity in assessment practices and provide guidance to quasi-judicial authorities. The proviso to Section 151A does not permit issuing instructions requiring an officer to make a particular assessment or dispose of a case in a specific manner. Therefore, the instructions issued were invalid.
- **Interplay between Sections 61 and 65 of the Customs Act:** The HC analysed the term 'Capital goods' and noted that these goods are not necessarily required to get consumed or form part of the resultant goods during the manufacturing process because these are durable assets that aid in production.

Further, the HC analysed Sections 61 and 65 of the Customs Act and observed that these provisions facilitate the duty deferment on imported capital goods to aid the manufacturing process, even if the imported goods are not consumed or integrated into the final product.

- **Interpretation of the phrase ‘in relation to’ used in Section 65:** Section 65 of the Customs Act does not require the capital goods to transform themselves but only that they are connected to or contribute to the manufacturing process or operations in the warehouse.
- **Applicability of MOOWR scheme:** The HC reviewed a contemporaneous policy announcement, circulars, and FAQs, which provides that the MOOWR scheme was meant to apply to both imported capital goods and inputs for further processing, without any exclusion based on the nature of the resultant goods and the duty deferment on imported capital goods was without any time limitation, and duty would be payable only when the capital goods themselves are cleared into the domestic market, not when the finished goods are cleared.
- **Principle of purposive interpretation not applicable:** The HC emphasised that purposive interpretation should be resorted to only in exceptional cases, and courts cannot modify express legislative language or decline to apply a statutory provision simply because it leads to undesirable results. The HC observed that in the present case, the

language of Sections 61 and 65 of the Customs Act was unambiguous. Therefore, the HC held that there is no basis for resorting to purposive interpretation in the present case, as the statutory language was unambiguous, and the respondents’ arguments were based on policy considerations rather than statutory anomalies or inconsistencies.

- **Writ petitions are allowed:** The court allowed all the present writ petitions in favour of petitioners, quashed the impugned instruction and the SCNs, and held that the petitioners were eligible to avail benefits under the scheme.

Our comments

The MOOWR scheme was introduced to provide duty-free import of goods for the purpose of carrying manufacturing in the warehouse. However, the solar industry faced challenges in availing this benefit pursuant to the CBIC’s instruction stating that solar power-generating units are not eligible to avail of the benefit under the said scheme.

With the court’s decision, the solar industry can now avail of the benefits under the MOOWR scheme. However, while this is a welcome decision, it is imperative to see whether the department challenges this further. Hence, the industry needs to be cautious while availing the benefits under the scheme.

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