

Jumbo Trumpets...

Directive v/s Discretion: the uphill battle for quasi-judicial independence

Acme Heergarh Powertech Pvt. Ltd. vs. CBIC & Anr.2024 (5) TMI 480

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A common issue of applicability of MOOWR (Manufacturing and Other Operations in Warehouse Regulations), 2019 ran through all the Writ Petitions that were taken up together for hearing. The Petitioners import and warehouse solar power generation units, solar panels, solar modules etc. to harness sunlight and thereby generate electricity as the final product. They all sought benefit of the MOOWR scheme. But on the basis of the learned ASG Mr. N. Venkataraman's submissions and for the larger benefit of the trade, the issue was expanded so as to exhaustively interpret the full purview of the MOOWR scheme and the relevant provisions of the Customs Act, 1962 (hereinafter, the Act).

2 The MOOWR Regulations came into effect from 1st October 2019. They apply to persons undertaking manufacture and other operations in a private warehouse in terms of Sections 58 and 65 of the Act. The scheme facilitates the warehousing of imported raw materials/capital goods for manufacturing or other operations. It is beneficial since applicable Customs duty can be deferred until the goods are cleared for home consumption or export.

3.0 On 09.07.2022, the Board issued Instruction No.13/2022-Customs regarding inapplicability of MOOWR to the warehousing of solar power generation units to persons such as the Petitioners. It explained that electricity generated through solar power does not fulfil the conditions of MOOWR. The instruction relied upon Regulation no. 15 which mandates that "resultant goods" must be put under a one-time lock during removal from the warehouse and evidently, this cannot be done for electricity. Moreover, electricity cannot be warehoused either.



Additionally, since the Board had not used its powers under Regulation 20 to exempt such solar generated electricity from the contours of the MOOWR conditions, Regulation No. 15 squarely applied to such units and failure to fulfil its mandate meant that the benefit of the MOOWR scheme could not be availed. On this basis, the Board directed Commissioners to not only review permissions already granted and take due action but also to deny permission to such units in the future.

3.1 The Petitioners challenged the instruction as their licences under S.58 could potentially be revoked on account of the Board's directive to jurisdictional Commissioners. They asked a fundamental question: Could the CBIC's instruction be valid when it aimed to restrict a Commissioner's discretion and mandate them to act in a certain manner?

3.2 In examining the applicable legal provisions, the High Court underlined the proviso to S. 151A of the Act, under which the instruction had been issued.

151-A. Instructions to officers of customs.—*The Board may, if it considers it necessary or expedient so to do for the purpose of uniformity in the classification of goods or with respect to the levy of duty thereon or for the implementation of any other provisions of this Act or of any other law for the time being in force, insofar as they relate to any prohibition, restriction or procedure for import or export of goods, issue such orders, Instructions and directions to officers of customs as it may deem fit and such officers of customs and all other persons employed in the execution of this Act shall observe and follow such orders, Instructions and directions of the Board:*

**Provided that no such order, Instructions or directions shall be issued—
(a) so as to require any such officer of customs to make a particular assessment or to dispose of a particular case in a particular manner; or**



(b) so as to interfere with the discretion of the Principal Commissioner of Customs or Commissioner of Customs (Appeals) in the exercise of his appellate functions.

3.3 The Court found that the Act itself proscribed the Board from limiting a Commissioner's discretion in a matter, especially so when the Commissioner acts in a quasi-judicial capacity. The Court accepted the submission that when a license is issued by a Commissioner, it is done so after due investigation and thus, the process of issuing a license is quasi-judicial in nature. Thus, any cancellation of license too would have to be a quasi-judicial process. Resultantly, the affected party would have to be given an opportunity to represent themselves before any adverse action is taken against them. However, the impugned instruction effectively predetermined the result of any review of the Petitioners' licences as it had already declared that such licences shall not be issued to solar power generation units; rendering the quasi-judicial discretion of a Commissioner redundant in practice.

3.4 The brazen stand of the Board to unilaterally knock off the benefit of the scheme to certain units was found to be in contravention of the powers of the Commissioner to cancel licences under S. 58B of the Act after following due procedure of law. In fact, without any record of the Petitioners contravening provisions of the Act or the conditions of the licenses issued to them, the cancellation so envisaged only on the force of the Board's instruction was held to be untenable in law.

3.5 Commissioners must act within the ambit of law but on the force of independent decision-making, as per the facts and circumstances of the case in hand. In *Orient Paper Mills Ltd. vs. Union of India* 1969 (1) SCR 245, the Supreme Court decisively upheld the independence of quasi-judicial authorities as against any external directives/instructions:



8. *If the power exercised by the Collector was a quasi judicial power as we hold it to be that power cannot be controlled by the directions issued by the Board. No authority however high placed can control the decision of a judicial or a quasi judicial authority. That is the essence of our judicial system. There is no provision in the Act empowering the Board to issue directions to the assessing authorities or the Appellate Authorities in the matter of deciding disputes between the persons who are called upon to pay duty and the department. It is true that the assessing authorities as well as the Appellate Authorities are judges in their own cause; yet when they are called upon to decide disputes arising under the Act they must act independently and impartially. They cannot be said to act independently if their judgment is controlled by the directions given by others. Then it is a misnomer to call their orders as their judgments; they would essentially be the judgments of the authority that gave the directions and which authority had given those judgments without hearing the aggrieved party...*

3.6 Thus, finding the impugned instruction abjectly in violation of the settled principle of quasi-judicial independence, the Hon'ble Delhi High Court struck it down.

4.0 Further, on the question of the scope of the MOOWR scheme, it was held that S.61 and S. 65 of the Act cannot be read to be limited only to those goods which ultimately become a part of the final products through manufacturing or other processes; as was argued by the learned ASG. In no way can the statutory language in the relevant Sections be read to include only some types of manufacturing while alienating others on the ground that the imported capital goods must necessarily transform into the final output at the end of the processes in the warehouse. Solar panels and modules no bar!



4.1 In the Court's own words:

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. ...

The representations made by the respondents neither restricted the scheme with reference to a particular category of goods nor did they limit or confine the applicability of the scheme to a particular genre of manufacturing activity that could be legitimately undertaken.

4.2 In light of the exhaustive study that the Court undertook in this case, solar power generation units were held to be within the ambit of the MOOWR scheme. The scheme in itself was held to not be particularly restrictive in nature in terms of the businesses it covered in its sweep.

5.0 Venturing a step further, the High Court undertook an investigation of the purported intent behind the Board's instruction. The Department had alleged that the Petitioners actions skew the Indian market of solar panel manufacturers and the instruction was in fact a well-intentioned balancing act. But the Court stuck its ground on the rule of strict interpretation and simply answered to the effect of 'That may be so'! It was held that the Department's practical experience cannot hinder the golden rule of interpretation of statutes. Even if the Indian market is affected by the Petitioners' claim to import benefits under the scheme, the same cannot permit a misreading of the law to exclude such businesses when no such intention comes through from the literal wording of statutory provisions.

5.1 Resultantly, the power of the Board to issue instructions under S. 151A of the Act cannot be used as a tool to twist the law as the Department wishes. As bonafide as the Department's intention may be, the due procedure of law would mandate that a Commissioner act independently and without external pressure while functioning in a quasi-judicial capacity.



5.2 The granting and cancellation of licenses under the MOOWR scheme directly affect fundamental and ancillary civil rights of business owners who are citizens of India. The Government cannot blow hot and cold and encourage business but also come down strongly on those who lay legitimate claim to available benefits only because it creates ripples in the market. A more robust and full-fledged policy that protects domestic interests may be required to address the issue.

5.3 Until then, the law would prevail as it is and the bureaucrats who implement it must be allowed to function freely. ***After all, a bureaucrat with only namesake power is also disadvantageous to the country.***

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