***THE HONOURABLE SRI JUSTICE BATTU DEVANAND**

&

THE HONOURABLE SRI JUSTICE TUHIN KUMAR GEDELA

WRIT PETITION Nos.28047 of 2024 & 2 of 2025

% 20.11.2026

Between:

1. GREENKO AP01 IREP PRIVATE LIMITED.

...APPELLANT

AND

$1. THE CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS MINISTRY OF FINANCE & Others.

... RESPONDENTS.

SUBMITTED FOR APPROVAL:

THE HONOURABLE SRI JUSTICE BATTU DEVANAND

&

THE HONOURABLE SRI JUSTICE TUHIN KUMAR GEDELA

1. Whether Reporters of Local Newspapers may be allowed to see the Order? Yes/No

2. Whether the copies of Order may be marked to Law Reporters/Journals? Yes/No

3. Whether Your Lordships wish to see the fair copy of the Order? Yes/No

_____

JUSTICE BATTU DEVANAND

_____

JUSTICE TUHIN KUMAR GEDELA

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…RESPONDENTS

! Counsel for the Petitioner : M/s.CKR Associates

! Counsel for the Respondent: Ms.Santhi Chandra

< Gist:

> Head Note:

? Cases referred:

1 (2003) 6 SCC 697
2 (2006) 7 SCC 735
3 (2004) 6 SCC 254
4 (2014) 4 LLJ 683
5 AIR 2014 Karnataka 73
6 (1997) 3 ALT 492
7 AIR 2016 MAD 177

Date of reserved for orders : 22.09.2026
Date of pronouncement : 20.11.2026
Date of uploading : 20.11.2026

APHC010540792024

IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)

FRIDAY, THE 20th DAY OF NOVEMBER 2026

PRESENT

THE HONOURABLE SRI JUSTICE BATTU DEVANAND

THE HONOURABLE SRI JUSTICE TUHIN KUMAR GEDELA

WRIT PETITION Nos.28047 of 2024 & 2 of 2025

WRIT PETITION No.28047 of 2024

Between:

1. GREENKO AP01 IREP PRIVATE LIMITED, H. No. 14-478/6, Sai Nagar, Panyam Village, Kurnool District, Andhra Pradesh - 518112, Represented by its Authorised Signatory,

...PETITIONER

AND

1. THE CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS, Ministry of Finance, Department of Revenue, North Block New Delhi

2. The Assistant Commissioner of Customs, Office of the Commissioner of Customs (Preventive) Commissionerate, 55-17-3, C-14, 2nd Floor, Industrial Estate Autonagar, Vijayawada-520007

3. The Commissioner of Customs, Office of the Commissioner of Customs (Preventive) Commissionerate, 55-17-3, C-14, 2nd Floor, Industrial Estate, Autonagar, Vijayawada -520007

...RESPONDENTs

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased tomay be pleased to, a. Issue a Writ, Order or Direction and more particularly one in the nature of Writ of Certiorari, and/or any other

appropriate writ, order or direction to Quash and set aside the Impugned Instructions dated 09.07.2022 issued by the Respondent No. 1 as being in contravention of express prohibition enshrined in Section 151A of the Customs Act, 1962 and thereby in excess of jurisdiction. b. Issue a Writ, Order or Direction and more particularly one in the nature of Writ of Certiorari, and/or any other appropriate writ, order or direction to Quash and set aside the Rejection Letters dated 24.06.2024 issued by the Respondent No. 2 in as much the same has travelled beyond the provisions of the Customs Act and is in contravention of the Judgement and Order dated 06.05.2024 of the Honble Delhi High Court and thereby illegal and without any authority of law, and c. Issue a Writ, Order or Direction to Respondent no. 1 to exercise their power under Section 151A of the Customs Act to ensure uniformity in the actions of the Customs Authorities in relation to the applicability of the MOOWR Scheme to Solar Power Projects in terms of the Judgement and Order dated 06.05.2024 of this Honble Court. Issue any other writ, order or direction, which this Honble Court may deem fit and proper in the circumstances of the present case.

IA NO: 1 OF 2024

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased may be pleased to dispense with filing of Certified Copy of Impugned Instructions dated 09.07.2022 issued by the Respondent No. 1 and Rejection Letters dated 24.06.2024 issued by the Respondent No. 2 in the interest of justice and pass

IA NO: 2 OF 2024

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased may be pleased to stay the operation of the Impugned Instructions issued by the Respondent No. 1 as well as provisionally allow the Petitioner to use the goods (as imported into the private bonded warehouse as set up under

Section 58 jof the Customs Act) for setting up of its solar power project, within the customs bonded area, during the pendency of the present Writ Petition, such that on disposal of the Writ Petition in its favour, it is in a position to inject power pursuant to the Power Purchase Agreements without incurring delay damages thereunder, pending the final disposal of tha present Writ Petitionand pass

IA NO: 3 OF 2024

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased pleased to stay the operation of the letter dated 17.12.2024 (Annexure 4) consequently and direct the Respondent No.1 to consider the application of the Petitioner dated 12.12.2024 and issue the necessary licences without any reference to the notification dated 16.12.2024 or to the impugned instructions and in strict compliance of the interim order dated 09.12.2024 of this Hon'ble Court

IA NO: 1 OF 2025

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased may be pleased to vacate the interim order dt. 09.12.2024 passed in lA No. 2 of 2024 in the instant writ petition No. 28047 of 2024 and pass

IA NO: 2 OF 2025

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased pleased to grant leave to the Petitioner herein to file Rejoinder affidavit to the reply filed by the Respondents, in the interest of justice

IA NO: 1 OF 2026

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased

may be pleased to list the Writ Petition i.e. Writ Petition Nos.28047 of 2024 along with Writ Petition No.2 of 2025 for urgent hearing at the earliest convenience of this Hon'ble Court in the interest of justice and to pass such other order or orders

IA NO: 2 OF 2026

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased may be pleased to modify the interim order dated 09.12.2024 passed in I.A.No. 2 of 2024 in WP.No. 28047 of 2024 at the earliest convenience of this Hon'ble High Court and pass

WRIT PETITION NO: 2 OF 2025

Between:

1. GREENKO AP01 IREP PRIVATE LIMITED, H. No. 14-478/6, Sai Nagar, Panyam Village, Kurnool District, Andhra Pradesh - 518112, Represented by its Authorised Signatory,

...PETITIONER

AND

1. THE CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS MINISTRY OF FINANCE, Ministry of Finance, Department of Revenue, North Block, New Delhi

2. The Assistant Commissioner of Customs, Office of the Commissioner of Customs (Preventive) Commissionerate, 55-17-3, C-14, 2nd Floor, Industrial Estate, Autonagar, Vijayawada-520007

3. The Commissioner of Customs, Office of the Commissioner of Customs (Preventive) Commissionerate, 55-17-3, C-14, 2nd Floor, Industrial Estate, Autonagar, Vijayawada -520007

4. Union of India, rep by its Secretary, Ministry of Finance, Department of Revenue, Government of India, North Block, New Delhi.

...RESPONDENTs

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be

pleased to a) Issue a Writ, Order or Direction and more particularly one in the nature of Writ of Certiorari, and/or any other appropriate writ, order or direction to Quash and set aside the Order/Rejection Letters, dated 17.12.2024, issued by the Respondent No. 2 b) To direct the Respondent Nos. 2 and 3 to issue License under Section 65 of the Customs Act, 1962 as per Interim Order dated 09.12.2024 in W.P. No.28047 of 2024. c) To Quash the Proviso to Section 65(1) of the Customs Act, 1962 and Notification No.86/2024-Customs (N.T.), dated 16.12.2024 for being violative of Article 14 and 19(1)(g) of the Constitution of India and pass

IA NO: 1 OF 2025

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased pleased to dispense with the rejection letter dated 17-12-2024, and to pass

IA NO: 2 OF 2025

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased pleased to stay the operation of the Order/Rejection Letters, dated 17.12.2024, issued by the Respondent No. 2 and direct the Respondent No.2 and 3 to issue the necessary licenses under Section 58 and 65 of the Customs Act, 1962 without any reference to the Notification No.86/2024, dated 16.12.2024, or to the Instruction No.13/2022, dated 09.07.2022, and in strict complicate of the interim order dated 09.12.2024 of this Hon'ble Court in W.P. No.28047/2024, in a time bound manner, pending the final disposal of the present Writ Petitionand pass

IA NO: 3 OF 2025

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased may be pleased to vacate the interim order dt. 31.01.2025 passed in lA No. 2 of 2025 in the instant writ petition No. 2 of2025 and pass

IA NO: 4 OF 2025

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased pleased to grant leave to the Petitioner herein to file Rejoinder affidavit to the reply filed by the Respondents, in the interest of justice

IA NO: 1 OF 2026

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased this Hon'ble Court may be pleased to list the Writ Petition i.e. Writ Petition Nos.2 of 2025 along with Writ Petition Nos.28047 of 2024for urgent hearing at the earliest convenience of this Hon'ble Court, in the interest of justice and to pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

Counsel for the Petitioner: CKR ASSOCIATES

Counsel for the Respondents: SANTHI CHANDRA (Sr. Standing Counsel for CBIC)

The Court made the following order:

THE HON'BLE SRI JUSTICE BATTU DEVANAND
&
THE HONOURABLE SRI JUSTICE TUHIN KUMAR GEDELA

WRIT PETITION NOs.28047 of 2024 & 2 of 2025

COMMON JUDGMENT: *(Per Hon'ble Sri Justice Battu Devanand)*

WRIT PETITION No.28047 OF 2024:

This writ petition has been filed assailing the validity of a **Central Board of Indirect Taxes and Customs** (for short "Board") Instruction, dated 09.07.2022 (for short "impugned Instructions") issued in exercise of powers conferred by Section 151A of the Customs Act, 1962 pertaining to the warehousing of imported capital goods used in the generation of solar power and the asserted inapplicability of **Manufacture and other Operations in Warehouse (No.2) Regulations, 2019 (**for short "MOOWR") framed in the backdrop of Section 65 of the Act; and to quash and set aside the rejection letter, dated 24.06.2024 issued by the 2nd respondent in as much the same has travelled beyond the provisions of the Customs Act and is in contravention of the Judgment and Order, dated 06.05.2024 of the Delhi High Court and thereby illegal and without any authority and law; and further to direct the 1st respondent to exercise their power under Section 151 of the Customs Act to ensure uniformity in the actions of the Customs Authorities in relation to the applicability of the MOOWR Scheme to Solar Power Projects in terms of the Judgment and Order, dated 06.05.2024 of the Delhi High Court.

WRIT PETITION No.2 OF 2025:

This writ petition is filed to quash and set aside the order/rejection letter, dated 17.12.2024 issued by the 2nd respondent; to direct the respondent Nos.2 and 3 to issue license under Section 65 of the Customs Act, 1962 as per the Interim Order, 09.12.2024 in W.P.No.28047 of 2024 and to quash the Proviso to Section 65(1) of the Customs Act, 1962 and Notification No.86/2024-Customs (N.T.), dated 16.12.2024.

2. The case of the petitioner in brief:

(a) On 02.02.2022 and 07.02.2022, the petitioner executed three power purchase agreements with SECI for supply of 900 MW AC aggregated solar power. The said projects are divided into two plots. Plot-1: 700 MW AC solar power plant at Sy.No.212/1 of Pinnapuram Village, Panyam Mandal, Kurnool District, Andhra Pradesh in an extent of Ac.2010.88 cents and Plot No.2: 300 MV AC solar power plant at Sy.Nos.791, 794 of Chennakapally Village, Gadivemula Mandal, Nandyal, Andhra Pradesh in an extent of Ac.973.55 cents.

(b) On 09.07.2022, CBIC issued Instruction No.13/2022-Cus. directing the Customs Officers to grant immediate review of permissions under Section 65 of the Customs Act to solar power generating units followed by necessary action and no further permissions in such cases should be granted.

(c) On 06.05.2024, in ***Ms. ACME Heergarh Powertech Pvt. Ltd. v. CBIC &*** *another*[1]*,* the High Court of Delhi quashed the Instruction No.13/2022-Cus. in its entirety as the same was in violation of Section 151 A of the Customs Act. It was further held that even on merits and in absence of any specific restrictions or the power to exclude specific manufacturing processes and other operations from the purview of Section 65, the activity of solar power generation is permissible within a MOOWR warehoused.

(d) On 24.05.2024, the petitioner filed two applications for two separate plots under Section 58 and 65 of the Act on Invest India Portal. Pursuant thereto, on 10.06.2024, the respondents carried out site visit for verification. In compliance of Section 59 (1) of the Act, the petitioner furnished triple duty bonds of Rs.2080 crores for Plot-1 and Rs.885 crores for Plot-2, which were accepted by the Customs Authorities on behalf of the President of India, thereby indicating satisfaction of the petitioner's eligibility to MOOWR Scheme.

(e) On 19.06.2024 and 23.06.2024, the petitioner reminded respondent Nos.2 and 3 to expeditiously dispose of its applications, noting that the imported goods for its projects had commenced arriving at the port. The petitioner apprised that, following the quashing of the instruction, dated 09.07.2022, there was no restriction on grant of the MOOWR License or permission to undertake operations.

[1] W.P.No.10537 of 2022 & batch

(f) On 24.06.2024, the respondent Nos.2 and 3 arbitrarily rejected the applications of the petitioner while relying solely on Instruction, dated 09.07.2022.

(g) On 23.06.2024, a proviso to Section 65 of the Act was introduced through Finance Bill, 2024 empowering the Central Government to specify manufacturing processes and other operations in relation to a class of goods that shall not be permitted in a warehouse and the same was operationalized on 23.07.2024, though specific notification restricting solar power projects was not issued.

(h) On 24.06.2024, since imported capital goods had reached the port, the petitioner applied for grant of standalone licenses under Section 58 to keep the imported goods in a customs bonded warehouse without having to make upfront duty payment. Accordingly, License No.10/2024 and License No.9/2024 were granted under Section 58 of the Customs Act, 1962 to the petitioner by the respondent Nos.2 and 3, dated 28.06.2024.

(i) The petitioner approached the High Court of Delhi challenging the rejection letter, dated 24.06.2024, as well as Instruction, dated 09.07.2022 and the said writ petition was dismissed on account of lack of jurisdiction since the Respondent/Customs Authorities lied in the State of Andhra Pradesh.

(j) Thereafter, the petitioner approached this Court by filing W.P.No.28047 of 2024 challenging rejection of its application seeking permission under Section 65 vide letter, dated 24.06.2024 as well as Instruction, dated 09.07.2022. On 09.12.2024, this Court granted interim relief

permitting the petitioner under Section 65 to set up its solar power generating units within its warehouse subject to deposit of 15% of the payments received under the PPAs in a fixed deposit. Accordingly, pursuant to the said direction, the petitioner has deposited Rs.10,53,90,792/- till 02.09.2026.

(k) On 12.12.2024, the petitioner addressed a letter to the respondent Nos.2 and 3 to implement the directions of this Court, dated 09.12.2024.

(l) Vide Notification No.86/2024-Cus (N.T), the Central Government excluded "*Goods imported for solar power generation projects which supply electricity"* from the purview of Section 65 with effect from 17.12.2024.

(m) On 17.12.2024, while treating the letter, dated 12.12.2024 of the petitioner, as fresh application for grant of license under Section 58 and permission under Section 65 of the Act and in gross violation of Interim Order, dated 09.12.2024 passed by this Court in W.P.No.28047 of 2024, the respondent Nos.2 and 3 issued fresh rejection letter to the petitioner while placing reliance on Notification No.86/2024.

(n) Aggrieved by the said rejection order, dated 17.12.2024, the petitioner filed W.P.No.2 of 2025.

3) Heard Sri Sujit Ghosh, learned Senior Counsel appearing for the petitioner and Ms.Santhi Chandra, learned Senior Standing Counsel appearing for the respondents Nos.1 to 3.

Submissions of the learned Senior Counsel appearing for the Petitioner:

4) Learned Senior Counsel brought to the notice of this Court that the Circular No.34/2019-Cus, dated 01.10.2019, F.No.473/03/2015-LC(pt.), issued by the 1st respondent in the matter of procedure to be followed in case of manufacturing or other operations undertaken in bonded warehouses under Section 65 of the Customs Act. Para Nos.4, 5 & 16 of the said circular are as under:

> 4. It is to be noted that an applicant desirous of manufacturing or carrying out other operations in a bonded warehouse under Section 65 r/w MOOWR, 2019 must also have the premises licensed as a private bonded warehouse under Section 58 of the Customs Act. The applicants can seek a license under Section 58 and permission to operate under Section 65 synchronously, or request for permission under Section 65, if they already have a warehouse licensed under Section 58.
>
> 5. For the sake of uniformity, ease of doing business and exercising due diligence in grant of permission under Section 65, the form of application to be filed by an applicant before the jurisdictional Principal Commissioner/ Commissioner of Customs is prescribed as in Annexure A. The form of application has been so designed that the process for seeking grant of license as a private bonded warehouse as well as permission to carry out manufacturing or other operations stands integrated into a single form. The declaration to be made to satisfy Regulation, 5 of Private Warehouse Licensing Regulations 2016 and the undertaking to be made by the applicant as per Regulation 4 of MOOWR, 2019 is included in the application format (Part II). The warehouse in which Section 65 permission is granted shall also be declared by the License as the principal/additional place of business for the purposes of GST.

> 16. Board has partnered with invest India under the Department for Promotion of Industry and Internal Trade, Ministry of Commerce and Industry, Government of India to launch a The site for the promotion of the scheme and facilitation of investors. The same can be accessed at *https:/www.investindia.gov.in/bonded-manufacturing*. The micro site also hosts a digitized application that an applicant can fill online, upload the supporting documents, submit online and also print the application form.

5) Learned Senior Counsel also brought to the notice of this Court that as per Annexure A of the said circular only, the petitioner duly submitted the said applications, dated 24.05.2024 both under Section 58 and 65 of the Customs Act r/w MOOWR, 2019, seeking necessary permissions.

6) Learned Senior Counsel also brought to the notice of this Court that the letter of the petitioner addressed to the 3rd respondent, dated 12.12.2024. He reiterates that the letter of the petitioner, dated 12.12.2024 cannot be treated as an independent application, but, it is only in continuation of the original application, dated 24.05.2024, rejection of the same by way of impugned action of the 2nd respondent, dated 24.06.2024 assailed in W.P.No.28047 of 2024 before this Court and for implementation of the interim orders of this Court in I.A.No.2 of 2025 of the said writ petition, dated 09.12.2024, which are already referred in the above said order of this Court, dated 08.01.2025. The respondents are trying to take advantage of their own wrong.

7) Learned Senior Counsel would submit that the rejection letters indicate that the same have been passed without any independent application of mind and solely on the basis of contents of para 2 and 4 of the impugned

instruction, dated 09.07.2022. Aside from the fact that such a quasi-judicial order which has been passed under dictation is *per se* bad in law, even on merits the same cannot be sustained for the following reasons:

(a) The impugned instruction has already been held to be bad in law by the Delhi High Court in ACME's case (supra).

(b) Para 2 of the said instruction as relied upon deals with requirement to affix one time lock in terms of Regulation 15 of the MOOWR, which can have no application in the present case since Reg.15 deals with exports whereas, the petitioner is into domestic supplies under Power Purchase Agreements with domestic buyers; and

(c) Para 4 of the said instruction notes that the resultant electricity is also not ordinarily capable of being deposited in a warehouse. Basis this, the rejection letters have been issued. However, under Section 65 r/w Reg.14 & 15 which deal with resultant goods, there is o requirement that the resultant goods should be stored in the warehouse. Instead, the obligation to store goods in the warehouse apply to those that are entered into the warehouse for carrying out manufacture/other operations as can be seen from definition of "warehoused goods" under Section 2 (44) of Customs Act r/w Sections 59, 60 and 61 of the Customs Act and Regulations 10, 13 & 16 of the MOOWR.

8) Learned Senior Counsel submits that since the impugned rejection letter, dated 24.06.2024 is based solely on the impugned instruction, therefore, once the impugned instruction is held to be bad in law by Delhi High Court, the impugned rejection letters would also be bad in law as a sequitur.

9) Learned Senior Counsel further submits that while allowing the writ petitions in ACME's Case (supra), quashed the impugned instruction insofar as it mandated review of existing licenses and consequential follow up action. He further submits that the contention of the respondents that the entire instruction has not been quashed particularly in the context of issuance

of fresh licenses is not correct. Such a submission is *ex facie* erroneous since at Para 109, the Delhi High Court has also observed that "*we find ourselves unable to sustain the peremptory directions which stand embodied in paragraph 5 of the impugned instructions".* A careful perusal of the last line of Para 5 of the impugned instructions would indicate that there was an express direction directing that "*No further permission in such cases to be granted in terms of Section 65".*

10) Learned Senior Counsel would submit that in the event, the petitioner succeeds in W.P.No.28047 of 2024, then that would establish that as on the date of filing of the applications, dated 24.05.2024, the petitioner should have been granted permission/licenses under Section 65 of the Customs Act as sought for. Therefore, if the respondents had acted in accordance with law as per the law governing Section 65 prevalent on the date of issuance of rejection letter, dated 24.06.2024, there would have been no occasion to file the subsequent W.P.No.2 of 2025.

11) Learned Senior Counsel would further submit that the subsequent rejection letter, dated 17.12.2024, assailed in W.P.No.2 of 2025 came to be issued in the teeth of the interim order, dated 09.12.2024 passed in W.P.No.28047 of 2024.

12) Learned Senior Counsel would further submit that in any case, the letter, dated 12.12.2024 addressed by the petitioner to the respondents to give effect to the interim order, dated 09.12.2024 could not have been considered by the respondents as a fresh application and thereby seek to

reject them by applying the post amendment law. Such an action of the respondents is nothing but a sheer abuse of process of law and placing reliance on the amended law is a blatant act of trying to take advantage of their own wrong which cannot be permitted.

13) Learned Senior Counsel appearing for the petitioner would submit that prior to issuance of Notification No.86/2024, dated 16.12.2024 which is came into force w.e.f.17.12.2024, Section 65 did not contain any express or implied restrictions debarring setting up of Solar Power Projects under the manufacturing and other operations licensee scheme contemplated under the said section. Thus, the impugned rejection letter, dated 24.06.2024 denying the petitioner, the aforementioned licenses are *ex facie* contrary to law.

14) Learned Senior Counsel also brought to the notice of this Court to the License No.10/2024 and License No.9/2024 granted under Section 58 of the Customs Act, 1962 to the petitioner by the respondent Nos.2 and 3, dated 28.06.2024. The necessary bonds were also executed in favour of the respondent department for Rs.2070.00 crores and Rs.885.00 crores respectively, dated 10.06.2024. The petitioner also submitted the insurance policies for the period from 13.06.2024 to 12.06.2025 for a sum insured Rs.688,00,00,000/- and Rs.295,00,00,000/- respectively.

15) Learned Senior Counsel would submit that the petitioner has invested huge amounts in the above said projects for the generation and supply of renewable energy by entering into the power project agreements, dated 02.02.2022 and 07.07.2022 with Solar Energy Corporation of India for

supply of 900 MW AC aggregated power as stated supra and the petitioner also obtained necessary permissions under Section 58 of the Customs Act, 1962.

16) Learned Senior Counsel submits that the petitioner has got vested right by virtue of the interim orders of this Court, dated 09.12.2024 in W.P.No.28047 of 2024 for grant of necessary license under Section 65 of the Customs Act, 1962 by the respondent Nos.2 and 3. The above said amendment to the proviso to sub-section (1) Section 65 of the Act which has came into force w.e.f. 17.12.2024 cannot be made applicable retrospectively the case of the petitioner herein. In a case of either approval or rejection, the authority cannot come back to apply the amendment retrospectively.

Submissions of the learned Senior Standing Counsel for the Respondent Nos.1 to 3:

17) On the other hand, Ms.Santhi Chandra, learned Senior Standing Counsel appearing for the respondent Nos.1 to 3 submits that the applications made under Sections 58 and 65 of the Customs Act, 1962 shall be treated as separate applications and merely because the permission was granted under Section 58 of the Act, it does not *ipso facto* extend to the application under Section 65 of the Customs Act, 1962. The applications of the petitioner, dated 24.05.2024 and 12.12.2024 are to be treated for different purposes and the authorities concerned rightly not accepted the applications of the petitioner, dated 12.12.2024, in view of the amendment to the proviso of Section 65(1) of the Customs Act, 1962 which came into force on 17.12.2024.

18) Learned Standing Counsel would submit that the rejection of the petitioner's applications for the grant of a Customs Private Bonded Warehousing Lincence under Section 58 and permission for Manufacturing and Other Operations under Section 65 of the Customs Act, 1962 (MOOWR Scheme) was in accordance with the prevailing laws, regulations, in terms of CBIC's Instruction No.13/2022-Customs, dated 09.07.2022 and additionally by the latest Customs Notification No.86/2024-Customs (N.T), dated 16.12.2024 issued by the Ministry of Finance, Department of Revenue, Central Board of Indirect Taxes and Customs under sub-section (1) of Section 65 of the Act.

19) Learned Standing Counsel submits that the petitioner's applications were carefully examined in terms of the conditions laid down in the MOOWR regulations. The resultant product of the solar power unit, is electricity, is of a specific nature and is not warehousable. Moreover, electricity, being an intangible product, it does not meet the essential conditions prescribed under Regulations 9 and 15 of MOOWR 2019, particularly, the requirement for affixation of a one-time lock for resultant products. Consequently, solar power units cannot be considered eligible under the MOOWR Scheme, thereby, justifying the reasons and the decision was made accordingly. Therefore, the impugned Letter, both dated 24.06.2024 were issued in accordance with the guidelines prescribed under the MOOWR scheme and as per Instruction No.13/2022-Customs, dated 09.07.2022, issued by CBIC.

20) Learned Standing Counsel further submits that the Delhi High Court in its judgment, dated 06.05.2024 in WP(C) No.10537 of 2022, did not quash the entire Instructions, dated 09.07.2022 and the Delhi High Court specifically invalidated certain mandates related to the review of existing licenses and follow up actions, but other portions of the instructions remain valid and applicable. Only subsequent action on the existing ones was set aside. Moreover, it is submitted that the CBIC filed an appeal before the Hon'ble Supreme Court of India vide C.A.No.014873 of 2024 against the judgment, dated 06.05.2024 in WP(C) No.10537 of 2022. Further, the High Court of Delhi is not the jurisdictional High Court and as such, the same is not binding and the same can only be relied upon but not as binding and as such, the question of violation of the said orders does not arise.

21) Learned Standing Counsel would further submit that in the application of the petitioner, dated 12.12.2024 addressed to the 3rd respondent, the petitioner sought necessary license and permission for the total extent of 2010.88 Acres for solar power generation project when it was originally granted vide license No.10/2024, dated 28.-06.2024 for an area of 20.67 Acres only. Hence, the contention of the learned counsel for the petitioner that the letter, dated 12.12.2024 of the petitioner addressed to the 3rd respondent only be treated as the letter in continuation of the earlier proceedings, cannot be accepted and it becomes the application of the petitioner alone for consideration of the respondent Nos.2 and 3 afresh and as such, by applying the above amendment of provision of law, the respondent

authorities concerned rightly not accepted the application of the petitioner, dated 12.12.2024 vide its letter, dated 17.12.2024.

22) Having heard Mr. Sujith Ghose, learned Senior Counsel appearing for the petitioner and Ms. Santhi Chandra, learned Senior Standing Counsel appearing for the Respondents and having considered the facts and circumstances of the case and the interim orders passed by this Court at the stage of admission of these two writ petitions, we are of the view that there is no dispute with regard to the admitted facts of the case.

23) The petitioner is engaged in the business of generation supply of renewable energy. He intended to engage in setting up Solar Power Projects of 1500 MW AC in the State of Andhra Pradesh. In this regard, the petitioner entered into Power Purchase Agreements (PPAs) dated 02.02.2022 and 07.07.2022 with Solar Energy Corporation of India (for short “SECI”) for supply of 900 MW AC aggregated power. The petitioner has to commission its solar power plants on or before 15.12.2024. The petitioner made an application, dated 24.05.2024 seeking license for Customs Private Bonded Warehousing under Section 58 of the Customs Act, 1962 (for short “Act”) along with an application seeking permission for manufacturing and other operations under Section 65 of the Act, for the proposed warehouse facility of 780 MW AC Solar Power Project located at Sy.No.212/1, Pinnapuram Village, Panyam Mandal, Kurnool District, Andhra Pradesh. The petitioner also submitted another application, dated 24.05.2024 for the proposed warehousing facility of 300 MW AC Solar Power Project located at Sy.Nos.791, 794 of Chennakkapally

Village, Gadivemula Mandal, Nandyal, Andhra Pradesh. These two applications were rejected by the 2nd respondent on 24.06.2024 by following the Board's Instruction No.13/2022-Customs dated 09.07.2022 stating that no permission under Section 65 of the Act should be granted for warehousing of imported capital goods viz., solar panels/solar modules and related accessories etc. to generate electricity (from sunlight) as resultant goods for home consumption.

24) Aggrieved by the rejection letters of the 2nd respondent dated 24.06.2024, the petitioner filed W.P.No.28047 of 2024. At the stage of admission, a Division Bench of this Court passed interim order in I.A.No.2 of 2024 dated 09.12.2024 by following the judgment of the Delhi High Court in **ACME Heergarh Powertech Private Limited v. CBIC & Another** [W.P.(C) No.10537 of 2022 and batch].

25) The operative portion of the interim order inI.A.No.2 of 2024, dated 09.12.2024 is extracted hereunder:

> "11. In that view of the matter, we deem it appropriate to stay the operation of the impugned proceedings dated 24.06.2024 produced as Annexure-P1, subject to the condition that this interim order shall remain in operation till any orders that may be passed by the Hon'ble Apex Court in the pending SLP (C) No.20274-20281 of 2024 preferred by the Central Board of Indirect Taxes and Customs. There shall be a direction to the State Bank of India, Jubilee Hill Branch, Hyderabad, to deduct a sum equivalent to 15% of the payment received under the PPAs dated 02.022022 and 07.07.2022 and retain the said sum in a fixed deposit until further orders from this Court.
>
> 12. Subject to the above conditions, the petitioner is permitted to install the equipment, generate power and supply the same for home consumption.

> 13. It is made clear that this interim order will not entitle the petitioner to seek for refund of any amounts that have been paid under protest. All payments made and received shall be subject to final orders."

26) In the light of the interim order, dated 09.12.2024 passed by a Division Bench of this Court in W.P.No.28047/2024, the petitioner submitted a letter to the 3rd respondent dated 12.12.2024 for grant of license and permission under Sections 58 and 65 of the Act referring their earlier application dated 24.05.2024 along with all requisite documents. On 16.12.2024, the Government of India issued the Notification No.86/2024-Customs (N.T.), New Delhi, notifying that the goods imported for solar power generation projects which supply electricity not permissible in a warehouse. In the light of the said notification, dated 16.12.2024, the application submitted by the petitioner on 12.12.2024 has been rejected by the 3rd respondent as communicated by the 2nd respondent in the letter, dated 17.12.2024.

27) The said rejection letter, dated 17.12.2024 is under challenge in W.P.No.2 of 2025 along with prayer as under.

28) But, at the admission stage of the writ petitions, a Coordinate Bench of this Court in its order, dated 08.01.2025 recorded as hereinunder:

> "Quashing of the proviso to Section 65(1) of the Customs Act, 1962 and Notification No.86/2024-Customs (N.T.), dated 16.12.2024 are not pressed in this writ petition though it was mentioned in the main prayer."

29) In view of the above, we are not dealing with the said prayer in the present writ petition.

30) The issues to be considered in these two writ petitions are as under:

W.P.No.28047 of 2024:-

(1) The judgment of the Delhi High Court in **ACME Heergarh Powertech Private Limited v. CBIC & Another** [W.P.(C) No.10537 of 2022 and batch] is applicable to the case of the petitioner as contended by the learned Senior Counsel for the petitioner or not?

(2) Whether is it correct as contended by the learned Senior Standing Counsel for the respondents that the judgment of the Delhi High Court in **ACME Heergarh Powertech Private Limited v. CBIC & Another** [W.P.(C) No.10537 of 2022 and batch] is not applicable to the pending applications seeking for fresh licenses and the relief granted by the Delhi High Court is a limited?

W.P.No.2 of 2025:-

(1) Whether the 3rd respondent can reject the applications submitted by the petitioner, dated 12.12.2024 against to the interim order passed by this Court on 09.12.2024 in W.P.No.28047 of 2024?

(2) Whether the Notification No.86/2024-Customs (N.T.), dated 16.12.2024 is applicable to the application, dated 12.12.2024 of the petitioner and rejection of the same by order, dated 17.12.2024 by the 3rd respondent is in accordance with law or not?

Consideration, reasons and findings:

31) To answer the issues in W.P.No.28047 of 2024, the submissions of the respective counsels recorded in the preceding paragraphs can be considered without repeating the same herein.

32) Admittedly, in a batch of writ petitions in *ACME Heergarh Powertech Private Limited v. CBIC & Another* [W.P.(C) No.10537 of 2022, the validity of the Instruction, dated 09.07.2022 issued by the Central Board of Indirect Taxes and Customs (for short "CBIC") has been assailed before the Delhi High Court. By judgment, dated 06.05.2024, a Division Bench of Delhi High Court having considered the submissions of the respective parties and relevant laws and by following the settled case law of the Apex Court rendered a reasoned and detailed judgment with regard to the applicability of the Instruction, dated 09.07.2022.

33) For better appreciation, the following relevant paragraphs of Judgment in *ACME Heergarh Powertech Private Limited v. CBIC & Another* [W.P.(C) No.10537 of 2022 are extracted hereinunder:-

> 1. These batch of writ petitions assail the validity of a Central Board of Indirect Taxes and Customs1 Instruction dated 09 July 2022 [which hereinafter and for the sake of brevity shall be referred to as the "impugned Instruction"] issued in exercise of powers conferred by Section 151A of the Customs Act, 19622 pertaining to the warehousing of imported capital goods used in the generation of solar power and the asserted inapplicability of the Manufacture and other Operations in Warehouse (No.2) Regulations, 20193 framed in the backdrop of Board Act MOOWR Regulations W.P.(C) 10537/2022 and other connected matters Section 65 of the Act.
>
> 117. *Faridabad Iron & Steel Traders Association* [W.P.(C)10537/2022 and other connected matters] thus again lays emphasis on the Board clearly not having or being conceived to have the power to frame directions or issue a circular which may bind subordinate authorities in the discharge of their quasi-judicial functions or otherwise influence and dictate the exercise of their powers. The impugned Instruction clearly has the effect of deterring the licensing authorities from either independently examining or considering any

contention that may be addressed or for that matter any stand that may be taken by the petitioners with respect to the generation of solar electricity under the MOOWR Regulations. Viewed in that light, it is manifest that the impugned Instruction would not sustain.

118. We find ourselves unable to uphold the validity of the impugned Instruction bearing in mind the well settled precepts of administrative law and which abhor abdication of an independent decision making power as well as a quasi-judicial authority being compelled to act under the dictates of a superior authority.

120. Undisputedly, the power to consider whether a license is liable to be cancelled under Section 58B of the Act would place the licensing authority under the obligation to examine whether a licensee had either acted in violation of the Act or contravened a statutory provision or command. In light of the impugned Instruction, the petitioners now face the inevitable specter of the license being cancelled consequent to the peremptory directions as contained in the communication of the Board. Since the directive of the Board binds the licensing authorities, the exercise of calling upon the petitioners to show cause is essentially rendered otiose and a mere formality. This, more so when the Board has already come to the definitive conclusion that solar power generation is an activity which would fall outside the ambit of Section 65 of the Act as well as the MOOWR Regulations. The Instruction thus clearly amounts to a dictate binding the licensing authority to cancel all subsisting licenses and thus falling foul of the principles noticed above.

123. The second aspect of significance which strikes us is the absence of any avowed intent imbuing Section 65 and which could be justifiably construed as an intendment to exclude a particular category of manufacturing activity from its ambit in clear or unequivocal terms. As we read Section 65, it becomes apparent that the owner of "*any warehoused goods*" ay in terms of the permission granted, store or house those goods and carry on "*any manufacturing process or other operations*". A plain reading of Section 65 suggests that a manufacturing process may be undertaken in a licensed warehouse and the same could extend to any category of goods. The provision does not use words of qualification or limitation insofar as either the nature of goods or manufacturing activity is

concerned. The aforesaid aspect is liable to be appreciated additionally in light of Section 61 extending its application to capital goods, non-capital goods as well as other goods. The said provision thus contemplates contingencies where any of the three categories of goods may be imported and housed in a warehouse for purposes which are spoken of in Section 65. The position which thus emerges is that the expanse of Section 61 and 65 cannot be W.P.(C) 10537/2022 and other connected matters recognised as being either restricted or limited to a particular or compartmentalized genre of goods or type of manufacturing activity.

124. Sub-section (2) of Section 65 principally deals with the subject of waste or refuse which may be generated in the course of manufacture or other operations. It is in that backdrop that sub-section (2) speaks of identification of the percentage of the imported goods that may be contained in the resultant goods which may be cleared for home consumption. Similar is the position which comes to the fore when one reads Regulations 14 and 15 of the MOOWR Regulations as well. Here too, the statute deals with contingencies where an importer or a licensee may remove resultant goods for home consumption. Since in the present case we are not concerned with the subject of export, Regulation 15 would clearly have no application. Regulation 14 prescribes that where a BOE for home consumption has been filed at the stage of clearance of resultant goods, the same would have to clearly indicate the ratio or the percentage of the warehoused goods which may constitute a part of the resultant goods.

139. In our considered opinion, Section 65 clearly stops short of making an exception or excluding a certain category of manufacturing activities from its ambit. It also fails to exclude from its application the manufacture of intangible goods in explicit terms. Section 61 clearly envisages both capital and non-capital goods being imported and housed in a warehouse for the purposes of manufacturing activity being undertaken in terms of permissions granted under Section 65 of the Act. The statute enables capital goods being housed in the warehouse till such time as they may be cleared for home consumption. While Section 61, prior to the 2016 amendments envisaged the maximum retention period to be five years, post amendment, that stipulation came to be substituted with the Legislature permitting the retention of those goods without any maximum time frame operating. 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.

161. Viewed in light of the above, we come to the firm conclusion that neither Section 61 nor Section 65 can be justifiably construed as incorporating an inherent or implied exclusion of solar power generation. The material that was placed for our consideration cannot possibly be interpreted as indicative of an intent of a particular type of self-consuming capital goods alone being intended for import. Neither the statutory provisions nor the contemporaneous material embodies an underlying policy intent for capital goods themselves being worked upon in the warehouse and constituting a part of the resultant goods. In fact, and to the contrary as we have found, the primary objective of the scheme was to give a fillip to domestic manufacturing albeit with the aid of imported capital goods. On an overall conspectus of the above, we find ourselves unable to accede to the submissions addressed by the learned ASG.

164. Undisputedly, the activities undertaken by the writ petitioners are in aid of the objective of the country transitioning towards renewable energy sources so to meet the targets of switching to a cleaner energy source. This is clearly an aspect which cannot possibly be doubted even by the respondents. What was however sought to be canvassed was the resultant distortion of the level playing field with the respondents alleging that the petitioners are deriving an undue advantage of the MOOWR Regulations having established a solar generation unit with the aid of duty free imports at a cost far lesser than that which a domestic producer may incur in the course of establishing a comparable generating facility. It was in the aforesaid backdrop that W.P.(C) 10537/2022 and other connected matters the learned ASG had urged us to interpret Section 65 as well as the MOOWR Regulations in a manner which would coalesce with the larger policy measures adopted by the Union.

165. While we have no reason to doubt the salutary purpose and objective underlying the framing of those measures, as a Court, we cannot be unmindful of our primary function being confined to interpret the statutory

provisions in accordance with well-defined precepts of interpretation. The construction of a statute cannot be guided or influenced by the subsequent experience of the executive or of discerned inequitable results. As we have found hereinabove, the statutory scheme underlying the MOOWR Regulations cannot be construed as seeking to exclude solar power generation in terms of permissions granted under Section 65. The contemporaneous literature also fails to lend credence to the submission of the respondents. In fact, it clearly tends to be indicative of a contrary position and the absence of an intent to exclude any particular activity of manufacture. It is this which leads us to doubt whether even the principles of purposive interpretation could be justifiably deployed.

178. Before closing the matter, we take note of an additional issue pertaining to the demand of a provisional bond for release of goods which had been raised by the respondents and stood raised in W.P. (C) 12386/2022. We had while dealing with the aforesaid issue and while considering C.M. 36603/2023 (Application for Directions) passed detailed orders on 04 August 2023. We do not deem it necessary to observe any further in this respect. The respective parties would proceed further in accordance with the directions which had been issued on this batch. Consequently, W.P.(C) 12386/2022 shall stand disposed of finally in terms of that order.

180. Accordingly, and for all the aforesaid reasons, we allow the present writ petitions. The impugned Instruction of the Board dated 09 W.P.(C) 10537/2022 and other connected matters July 2022 insofar as it mandates review of existing licences and taking of —follow-upǁ action is hereby quashed. For reasons aforenoted, we also quash the SCNs' dated 13 July 2022 [W.P.(C) 10537/2022, W.P.(C) 10835/2022, W.P.(C) 10836/2022, W.P.(C) 10840/2022, W.P.(C) 10844/2022, W.P.(C) 10853/2022, W.P.(C) 10837/2022] and 12 December 2022 [W.P.(C) 1507/2023]. As noted above, we allow W.P.(C) 10838/2022 and quash the impugned order dated 19 July 2022 for reasons aforenoted. W.P.(C) 12386/2022 shall stand disposed of in accordance with the directions laid down in para 178 of this judgment. We leave it open to the respondents to proceed further in accordance with law.

34) It is the contention of Mr. Sujith Ghose, learned Senior Counsel for the petitioner that the respondents conveniently placed reliance only on the

concluding paragraph of the Judgment without considering the entire rationale and reasoning as elucidated by the Delhi High Court to arrive at the said conclusion. He would contend that such stand of the respondents in selectively relying upon the concluding paragraphs of the Judgment without examining the entire judgment as a whole is in complete conflict with the well settled judicial principles.

35) To support of his contention, he relied on the judgment of the Apex Court in the case of **Islamic Academy of Education & Anr. v. State of Karnataka and Ors.,**[2], wherein the Apex Court has particularly emphasized that the judgment of a Court must be read along with appropriate reasoning and the mere conclusion ought not to be relied upon. The relevant paragraphs of the said judgment are extracted hereinunder:

> "143. It will not, therefore, be correct to contend, as has been contended by Mr Nariman, that answers to the questions would be the ratio to a judgment. The answers to the questions are merely conclusions. They have to be interpreted, in a case of doubt or dispute with the reasons assigned in support thereof in the body of the judgment, wherefor, it would be essential to read the other paragraphs of the judgment also. It is also permissible for this purpose (albeit only in certain cases and if there exist strong and cogent reasons) to look to the pleadings of the parties.
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> 144. In **Keshav Chandra Joshi v. Union of** India [1992 Supp (1) SCC 272 : 1993 SCC (L&S) 694 : (1993) 24 ATC 545] this Court when faced with difficulties where specific guidelines had been laid down for determination of seniority in **Direct Recruit Class II Engg. Officer's Assn. v. State of Maharashtra** [(1990) 2 SCC 715 : 1990 SCC (L&S) 339 : (1990) 13 ATC 348] held that the conclusions have to be read along with the discussions and the reasons given in the body of the judgment."

[2] (2003) 6 SCC 697

36) He also relied on the judgment of the Apex Court in the case of **Commr. of C. Ex., Delhi v. Allied Air-Conditioning Corpn.,**[3] wherein it is held that the Courts must carefully try to ascertain the true principle laid down by the decision of the Court and observations must be considered in the light of the questions raised before the Court. The relevant findings of the said judgment have been reproduced hereinunder:

> "10. ..... A judgment should be understood in the light of the facts of the case and no more should be read into it than what it actually says. It is neither desirable nor permissible to pick out a word or sentence from the judgment divorced from the context of the question under consideration and treat it to be complete law decided by this Court. The judgment must be read as a whole and the observations from the judgment have to be considered in the light of the questions which were before this Court."

37) Accordingly, the learned Senior Counsel for the petitioner contends that the concluding part of the judgment, dated 06.05.2024 of the Delhi High Court in *ACME Heergarh Powertech Private Limited's case* (supra) rises a term "insofar as, even then it is clear that the Instructions, dated 09.07.2022 has been quashed in its entirety". Accordingly, he would submit that relying on the Instructions, dated 09.07.2022 which was quashed by the High Court of Delhi to issue the impugned rejection letter, dated 12.12.2024 is wholly illegal, contrary to law and thereby liable to be set aside.

38) Contrary, the learned Senior Standing Counsel for CBIC appearing for the respondents stressed on her contention that the Instructions,

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[3] (2006) 7 SCC 735

dated 09.07.2022 have not been quashed entirely and it applies to only existing licenses and not for granting new licenses.

39) We gave serious consideration to the following views, observations and findings of the Delhi High Court in *ACME Heergarh Powertech Private Limited's case* (supra):

(i) At para No.117 of the judgment of the Delhi High Court in *ACME Heergarh Powertech Private Limited's case* (supra) categorically held that the impugned Instructions clearly has the effect of deterring the licensing authorities from either independently examining or considering any contention that may be addressed or for that matter any stand that may be taken by the petitioners with respect to the generation of solar electricity under the MOOWR Regulations. Viewed in that light, it is manifest that the impugned Instructions would not sustain.

(ii) At para No.118 it is held that we find ourselves unable to uphold the validity of the impugned Instructions bearing in mind the well settled precepts of administrative law and which abhor abdication of an independent decision making power as well as a quasi-judicial authority being compelled to act under the dictates of a superior authority.

(iii) At para No.120, it is observed that when the Board has already come to the definitive conclusion that solar power generation is an activity which would fall outside the ambit of Section 65 of the Act as well as the MOOWR Regulations. The Instructions thus clearly amounts to a dictate

binding the licensing authority to cancel all subsisting licenses and thus falling foul of the principles noticed above.

(iv) It is further to be considered that in the said judgment, the Delhi High Court on consideration of overall conspectus of the case declared that they are unable to accept the submissions addressed by the learned ASG.

40) Having looking into the judgment of the Delhi High Court in *ACME Heergarh Powertech Private Limited's case* (supra), the clear finding is that the impugned instruction therein would not sustain. As such, the judgment of the Delhi High Court wherein the impugned instruction of the Board, dated 09.07.2022 is quashed insofar as it mandates review of existing licenses and taking of follow up action is squarely applicable to the actions against the pending applications seeking for license also. Under these circumstances, we are unable to accept the contention of the learned Senior Standing Counsel for CBIC.

41) For the aforesaid reasons, in our considered view, since the Instructions, dated 09.07.2022 of the CBIC wherein it is mandated a uniform nationwide review and cancellation of MOOWR scheme licenses and mandating no further permissions should be granted for solar power units, has been quashed by the Delhi High Court, it wipes the instruction off the books entirely because a Coordinate High Court has already quashed this specific Central instruction, as such, it no longer legally exists to be enforced or sustained anywhere in India. Unless, the CBIC obtains a specific stay order

from the Supreme Court of India, Instruction No.13/2022-Customs, dated 09.07.2022 is legally non-existent. In the light of the judgment of the Delhi High Court, the CBIC Instruction No.13/2022, dated 09.07.2022 is no longer exists in the eyes of law. If the Department attempts to enforce the said instructions against the solar manufacturer in another State against to the judgment of the Delhi High Court relying on the said instruction, such action is legally invalid. Accordingly, the rejection order issued on the strength of quashed execution instruction is void *ab initio*. The CBIC Instruction No.13/2022, dated 09.07.2022 is a Central executive instruction with pan-India applicability, the Delhi High Court judgment quashing the same operates in nationwide. A regional Customs Officer located in another state cannot revive or act upon an instruction that has been erased from the statue books.

42) Our view stated above, is supported by the land mark ruling of the Supreme Court (1) in **Kusum Ingots & Alloys Ltd. v. Union of India**[4] wherein it is held as extracted hereinunder:

> A parliamentary legislation when receives the assent of the President of India and published in an Official Gazette, unless specifically excluded, will apply to the entire territory of India. If passing of a legislation gives rise to a cause of action, a writ petition questioning the constitutionality thereof can be filed in any High Court of the country. It is not so done because a cause of action will arise only when the provisions of the Act or some of them which were implemented shall give rise to civil or evil consequences to the petitioner. A writ court, it is well settled would not determine a constitutional question in vacuum. The court must have the requisite territorial jurisdiction. An order passed on writ petition questioning the constitutionality of a

[4] (2004) 6 SCC 254

> Parliamentary Act whether interim or final keeping in view the provisions contained in Clause (2) of Article 226 of the Constitution of India, will have effect throughout the territory of India subject of course to the applicability of the Act."

(2) In **Union of India vs. Textile Technical Association**[5], a Division Bench of Madras High Court held as extracted hereinunder:

> "If any of the High Court declares a provision of the Parliamentary Legislation as unconstitutional, the said decision is applicable throughout the territory of India/wherever the enactment was held applicable."

(3) In **Shiv Kumar v. Union of India**[6]**,** wherein it was held as extracted hereinunder:

> "pronouncement on the constitutionality of a provision of a Central Act by a High Court would be applicable throughout India."

(4) In **Telugunadu Workcharged Employees State Federation, Nalgonda District Unit President vs. the Government of India**[7], the High Court of Andhra Pradesh held as extracted hereinunder:

> **"The proviso under Section 17A(1)(b) of the Industrial Disputes Act, 1947 had already been declared unconstitutional."**

(5) In **Dr. T. Rajakumari vs. the Government of Tamil Nadu**[8], wherein a Division Bench of Madras High Court held as extracted hereinunder:

> "It is trite to say that once a High Court has struck down the provisions of the Central Act, it cannot be said that it would be selectively applied in other States. Thus, there is no question of applicability of provisions struck down

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[5] (2014) 4 LLJ 683
[6] AIR 2014 Karnataka 73
[7] (1997) 3 ALT 492
[8] AIR 2016 MAD 177

by the High Court as of now until and unless the Hon'ble Supreme Court upsets the Judgment or stays the operation of the Judgment.

43) It is also an admitted fact that against the judgment of the Delhi High Court in *ACME Heergarh Powertech Private Limited's case* (supra), the CBIC approached the Hon'ble Supreme Court and a batch of SLPs filed challenging the same have merely been admitted vide Order, dated 17.12.2024, but no stay has been granted. As such, the judgment of the Delhi High Court remains in intact and it is applicable to the present writ petition. Accordingly, we hold that as the CBIC Instruction No.13/2022-Customs, dated 09.07.2022 has already quashed by the High Court of Delhi, the said Instruction is non-existent in law and as such, rejecting the application of the petitioner by the 2nd respondent on 29.06.2024 relying on the non-existent instruction is declared as illegal, arbitrary, unjust and against to the settled law.

44) Accordingly, issues framed hereinabove in W.P.No.28047 of 2024 are answered in favour of the writ petitioner and against to the respondents.

Issues in W.P.No.2 of 2025:

45) The contention of the learned Senior Counsel for the petitioner is that the application submitted by the petitioner on 12.12.2024 referring to their earlier application, dated 24.05.2024 for grant of MOOWR licence under Sections 58 and 65 of the Act by enclosing the request letter, certified copy of the interim direction passed by this Court in W.P.No.28047 of 2024, site layout map for each property and copy of the original application cannot be treated

as a fresh application and it is continuation to the original application of the petitioner, dated 24.05.2024 which was rejected by the 2nd respondent vide letter, dated 24.06.2024. Accordingly, he would submit that rejecting the said application, dated 12.12.2024 applying the subsequent amendment of law which was came into force w.e.f. 17.12.2024 is impermissible in law and amounts to an attempt to nullify the judicial directions. He further contends that the 2nd respondent committed a grave error in applying notification No.86/2024-Customs (NT), dated 16.12.2024 which came into force only on 17.12.2024 to the proceedings that were already pending. He further submits that unless expressly provided a subsequent notification cannot operate retrospectively to alter rights crystallized under judicial orders prior to its enforcement.

46) On the other hand, the learned Senior Standing Counsel for CBIC, contends that the applications made under Section 58 and 65 of the Act on 12.12.2024 shall be treated as separate applications and merely because the permission was granted under Section 58 of the Act, it does not *ipso fact* extend to the application under Section 65 of the Act. She contends that the applications, dated 24.05.2024 and 12.12.2024 are to be treated for different purposes and accordingly, the authorities concerned rightly not accepted the applications of the petitioner, dated 12.12.2024 in view of the amendment to the proviso of Section 65(1) of the Act which came into force w.e.f. 17.12.2024. She further submits that in the application of the petitioner, dated 12.12.2024, he sought the licence and permission for the total extent of

2010.88 acres for solar power generation project, when it was originally granted vide licence No.10/2024, dated 28.06.2024 for an area of 20.67 acres only. As such, she contends that the letter, dated 12.12.2024 of the petitioner cannot be accepted as it is continuation of the earlier proceedings and it should be considered as afresh. Thus, to consider the application, dated 12.12.2024, the amendment of provision of law will apply. Accordingly, she submits that the rejection order, dated 17.12.2024 is in accordance with the amended law and there is no illegality or infirmity in rejecting the application, dated 12.12.2024 of the petitioner by letter, dated 17.12.2024 by the 2nd respondent.

47) It is an admitted fact that the application, dated 24.05.2024 submitted by the petitioner, seeking to grant licence for Customs Private Bonded Warehousing along with the permission for manufacturing and other operations under Sections 58 and 65 of the Act were rejected by the 2nd respondent vide letter, dated 24.06.2024. By order, dated 09.12.2024 passed by a Division Bench of this Court in I.A.No.2 of 2024 stayed the rejection orders of the 2nd respondent, dared 24.06.2024. Thereafter, the petitioner submitted a letter to the 3rd respondent, dated 12.12.2024 referring to their earlier application, dated 24.05.2024 along with certified copy of the interim direction of this Court, dated 09.12.2024, site layout map for each property and copy of the original application and requested to consider their applications in the light of the interim direction passed by this Court on 09.12.2024 in I.A.No.2 of 2024 in W.P.No.28047 of 2024.

48) Admittedly, as on that date i.e., 12.12.2024, Section 65 of the Act is not amended and the notification No.86/2024-Customs (NT), New Delhi, dated 16.12.2024 is not issued by the 4th respondent. The said notification has come into force w.e.f. 17.12.2024. As such, admittedly, as on the date of the submission of the letter to the 3rd respondent by the petitioner on 12.12.2024, the notification issued by the 4th respondent, dated 16.12.2024 is not in operation and as such rejecting the application of the petitioner in the light of the notification, dated 16.12.2024 issued by the 4th respondent which came into force w.e.f. 17.12.2024 is illegal, arbitrary and contrary to the settled proposition of law and against to the interim orders passed by this Court on 09.12.2024 in W.P.No.28047 of 2024.

49) At this juncture, it is very apt to refer the facts recorded by a Coordinate Bench of this Court while granting interim order on 31.01.2025 in W.P.No.2 of 2025 (in the present case):

> By way of further submissions, he also refers to the License No.10/2024 and License No.9/2024 granted under section 58 of the Customs Act, 1962 to 3 (1994) 4 SCC 602 6 the petitioner by the respondent Nos.2 and 3, dated 28.06.2024. The necessary bonds were also executed in favour of the respondent department for Rs.2070.00 Crs. and Rs.885.00 Crs. respectively dated 10.06.2024. The petitioner also submitted the insurance policies vide Policy No.5005002624P103805581 and Policy No.5005002624P103837710 for the period from 13.06.2024 to 12.06.2025 for the sum insured Rs.688,00,00,000/- and Rs.295,00,00,000/- respectively.
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> Thus the petitioner has invested huge amounts in the above said projects for the generation and supply of renewable energy by entering into the power project agreements dated 02.02.2022 and 07.07.2022 with Solar Energy Corporation of India for supply of 900 MW AC aggregated power as stated

supra and the petitioner also obtained necessary permissions under section 58 of the Customs Act, 1962.

50) In view of the above stated facts, we have no other option except to opine that the 3rd respondent erroneously has considered the application submitted by the petitioner, dated 12.12.2024 as fresh application and rejected the same by applying the notification issued by the 4th respondent on 16.12.2024 which came into force w.e.f. 17.12.2024. In our considered view, the 3rd respondent misconceived in considering the application of the petitioner, dated 12.12.2024 as fresh application. The petitioner application, dated 24.05.2024, was rejected by the 3rd respondent on 24.06.2024 and the said order has been stayed by this Court on 09.12.2024 in W.P.No.28047 of 2024. Accordingly, we hold that the order, dated 17.12.2024 issued by the 3rd respondent is illegal, unjust and misinterpretation of application of law and against to the orders passed by this Court, dated 09.12.2024 in I.A.No.2 of 2024 in W.P.No.28047 of 2024.

51) Accordingly, issues framed hereinabove in W.P.No.2 of 2025 are answered in favour of the writ petitioner and against to the respondents.

52) For the aforesaid reasons and by following law laid down by the Apex Court and various High Courts as stated supra, the W.P.No.28047 of 2024 and W.P.No.2 of 2025 are allowed with the following directions:

W.P.No.28047/2024:

The rejection letter, dated 24.06.2024 issued by the 2nd respondent is hereby set aside.

W.P.No.2 of 2025:

(1) The rejection letter vide DIN-20241255MK0000922839, dated 17.12.2024 issued by the 2nd respondent is hereby set aside.

(2) The respondent Nos.2 and 3 are directed to issue licence/ permission to the petitioner under un-amended Section 65 of the Customs Act to enable the petitioner to carry out its operation of solar power generation under MOOWR regulations as was prevalent on the date of rejection letter, dated 24.06.2024.

53) There shall be no order as to costs.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.

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JUSTICE BATTU DEVANAND

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JUSTICE TUHIN KUMAR GEDELA

Dated: 20.11.2026
PGR

LR copy be marked.

THE HON'BLE SRI JUSTICE BATTU DEVANAND
&
THE HONOURABLE SRI JUSTICE TUHIN KUMAR GEDELA

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W.P.Nos.28047 of 2024 & 2 of 2025

Dt. 20.11.2026

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