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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 10537/2022**

ACME HEERGARH POWERTECH
PRIVATE LIMITED

..... Petitioner

Through: Mr Sujit Ghosh with Ms. Mannat
Waraich and Ms Shubh Dixit, Advs.

versus

CENTRAL BOARD OF INDIRECT TAXES AND
CUSTOMS & ANR.

..... Respondents

Through: Mr Satish Kumar, Adv.

CORAM:

HON'BLE MR JUSTICE RAJIV SHAKDHER

HON'BLE MS JUSTICE TARA VITASTA GANJU

ORDER

% **13.07.2022**

[Physical Hearing/Hybrid Hearing (as per request)]

CM Nos.30430-31/2022

1. Allowed, subject to the petitioner filing typed copies of the dim documents, at least three days before the next date of hearing.

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2. The grievance of the petitioner is that the circular dated 09.07.2022, in a sense, directs the concerned authority to revoke the two licenses issued by respondent no.2 under the Manufacture and Other Operations in Warehouse (no.2) Regulations, 2019 [hereafter referred to as "2019 Regulations"].

2.1. This circular appears to dialate on the manner in which section 65 of the Customs Act, 1962 [in short the "Act"] and 2019 Regulations are to be applied.

3. Mr Sujit Ghosh, who appears on behalf of the petitioner, assails the said circular, *inter alia*, on the following grounds:

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(i) The impugned circular dated 09.07.2022 issued by respondent no.1, in particular para 5, is in the teeth of proviso (a) to Section 151A of the Act. The said paragraph, *inter alia*, directs review of the decision taken to issue licenses to the petitioner under 2019 Regulations.

(ii) The petitioner had, while applying for licenses, clearly indicated to the respondents that it was in the business of generating electricity. The licenses were issued after the contents of the petitioner's application were fully processed.

(iii) That the petitioner has already availed of IGST deferral amounting to Rs.93,17,16,488/-.

(iv) The petitioner has, in consonance with the conditions contained in the licenses, executed bonds amounting to (approximately) Rs.500 crores, which is the cumulative sum of bonds executed for Rs.170,07,00,000/- in respect of Heergarh Plot-1 and for Rs.329,93,00,000 in respect of Heergarh Plot-2.

(v) Furthermore, it is Mr Ghosh's contention that if the circular is allowed to operate, its consignment for import of solar modules would be subjected to customs duty and IGST, contrary to the provisions of the 2019 Regulations. Mr Ghosh submits that the customs duty and IGST leviable on capital goods is deferred, till such time they are not removed for home consumption.

4. Besides this, Mr Ghosh says that insofar as electricity is concerned, it is neither subject to duty under the Customs Act or tax under the Central Goods and Services Tax Act, 2017, nor even tax under the State Goods and Services Tax Act, 2017.

5. To our minds, the petitioner has set up a *prima facie* case. The balance of convenience also appears to be in favour of the petitioner, since the petitioner

has operated under the scheme captured in the 2019 Regulations and up until now, has obtained deferral of customs duty and IGST to the extent indicated above.

6. We are presently of the view that coercive measures, if any, taken by the respondents, at this juncture, when the petitioner's import consignment is due to arrive in the country, will cause detriment to the petitioner's interest.

7. Issue notice.

7.1. Mr Satish Kumar accepts notice on behalf of the respondents.

8. Counter-affidavit will be filed within two weeks from today.

8.1. Rejoinder thereto, if any, will be filed before the next date of hearing.

9. In the meanwhile, the respondents are restrained from taking any coercive measures against the petitioner till the next date of hearing.

10. List the matter on 26.8.2022.

RAJIV SHAKDHER, J

TARA VITASTA GANJU, J

JULY 13, 2022/pmc

[Click here to check corrigendum, if any](#)