

## MOOWR APPLICATION REJECTIONS & LEGAL REMEDIES: UNRAVELING THE POWER OF WRIT JURISDICTION

That the present article discusses the remedies available in case of rejection of an application under MOOWR in view of Regulation 3(2) of the Private Warehouse Licensing Regulations, 2016.

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### *A. Understanding the MOOWR Scheme:*

That the Government of India *vide* Notification No. 69/2019-Cus (N.T.) dated 01.10.2019, has notified the Manufacture and Other Operations in Warehouse (no. 2) Regulations, 2019 [“**MOOWR**”], which enables the importers to procure capital goods and inputs without immediate payment of customs duties, provided these goods are utilized in manufacturing or other operations within a private bonded warehouse. These regulations substantially benefit the manufacturers, exporters, and infrastructure-intensive entities by allowing duty deferment and enhancing operational cash flow.

The MOOWR Scheme operates primarily under the patronage of two statutory provisions of the Customs Act, 1962 [“**Customs Act**”]:

- Section 58 which governs the licensing of private bonded warehouses.
- Section 65 which permits the conduct of manufacturing and other specified operations within these bonded warehouses.

That an application (along with the requisite documents) under Regulation 4(2) of MOOWR may be submitted before the jurisdictional Principal Commissioner or Commissioner of Customs, to seek permission to operate under the MOOWR scheme.

### *B. Eligibility criteria for applying under MOOWR:*

As per Regulation 4(1)(ii) of the MOOWR, the following persons are eligible to apply and operate under the MOOWR Regulations:

- (i) A person licensed under Section 58 of the Customs Act per the Private Warehouse Licensing Regulations, 2016 [“**Private Warehouse Regulations**”].
- (ii) A person applying for a warehouse license under Section 58 of the Customs Act along with permission for manufacturing or other operations under Section 65 of the Act.

In simple terms, eligibility under Regulation 4(1)(ii) of the MOOWR is confined to individuals or entities who are either already licensed under Section 58 of the Customs Act or are concurrently applying for such a license along with permission for manufacturing or other operations under Section 65. Further, it is relevant to mention here that the individuals or entities who are applying

for registration or already registered under Section 58 of the Customs Act should scrupulously adhere to the provisions of the Private Warehouse Regulations.

### **C. Private Warehouse Regulations:**

Regulation 3(2) of the Private Warehouse Regulations specifies categories of applicants who are ineligible for the grant of a license. Regulation 3(2) of the Private Warehouse Regulations is extracted below for ease of reference:

*“(2) The Principal Commissioner of Customs or the Commissioner of Customs, as the case may be, shall not issue a licence to an applicant if, -*

- (a) he has been declared an insolvent or bankrupt by a Court or Tribunal;*
- (b) he has been convicted for an offence under any law for the time being in force;*
- (c) he has been penalised for an offence under the Act, the Central Excise Act, 1944 (1 of 1944) or Chapter V of the Finance Act, 1994 (32 of 1994 );*
- (d) he is of unsound mind and stands so declared by a competent Court; or*
- (e) the Principal Commissioner of Customs or the Commissioner of Customs, as the case may be, is satisfied that-*

- (i) the site or building of the proposed private warehouse is not suitable for secure storage of dutiable goods;*
- (ii) the site or building of the proposed private warehouse is not suitable for general supervision by officers of customs;*
- (iii) bankruptcy proceedings are pending against the applicant; or*
- (iv) criminal proceedings are pending against the applicant and the offences involved are of such nature that he is not fit person for grant of licence.”*

That a Principal Commissioner or Commissioner of Customs may categorically reject the application of the applicant on any of the grounds aforementioned under Regulation 3(2) of the Private Warehouse Regulations.

### **D. Rejection of MOOWR Application(s):**

The authority empowered to grant or reject a license under MOOWR vests in the Principal Commissioner or Commissioner of Customs, who functions as an “adjudicating authority” under Section 2(1) of the Customs Act, as defined below:

*“Adjudicating authority means any authority competent to pass any order or decision under this Act, but excludes the Board, Commissioner (Appeals), or the Appellate Tribunal.”*

Therefore, a decision rejecting a MOOWR application is not merely an administrative decision, rather it carries the nature of an adjudicatory decision that conclusively affects the legal rights and obligations of the applicant.

***E. Remedies available against rejection of a MOOWR application:***

***Appeal before the Tribunal-***

That rejection of a MOOWR application by the Principal Commissioner or Commissioner of Customs (vide his or her order / decision) is appealable under the statutory mechanism provided under Section 129A(1)(a) of the Customs Act, which explicitly provides as under:

***“Section 129A: Appeals to the Appellate Tribunal-***

*(1) Any person aggrieved by any of the following orders may appeal to the Appellate Tribunal against such order -*

*(a) a decision or order passed by the Principal Commissioner of Customs or Commissioner of Customs as an adjudicating authority;...”*

From the above, it is unambiguously clear that any decision (including a letter of rejection) or order passed by the Principal Commissioner of Customs or Commissioner of Customs is an appealable order before the Tribunal.

That the above position is well-supported by the following judicial precedents:

- In the matter of ***Commissioner of Customs (Import-I) Vs. S.S. Offshore Pvt. Ltd. [2018 (361) ELT 51 (Bom)]***, the Bombay High Court has held that the communications rejecting provisional release of goods amount to appealable orders under Section 129A(1).
- In the matter of ***Commissioner of Customs, Chennai Vs. Freight Field (Madras) Pvt. Ltd. [2020 (373) ELT 78 (Mad)]***, the Madras High Court has clarified that orders passed under administrative regulations, specifically under the Customs House Agents Licensing Regulations, are adjudicatory and thus appealable under Section 129A.
- In the matter of ***Samrat Houseware Pvt. Ltd. Vs. Commissioner of Customs [2019 (368) ELT 1089 (Tri. -Mad)]***, the CESTAT, Chennai has held that a communication from the Assistant Commissioner that the Commissioner of Customs had rejected the assessee's request for amendment of shipping bills could be appealed before the Tribunal under Section 129A(1).

***Invoking writ jurisdiction inspite of the statutory Appeal-***

It is a settled jurisprudence that the existence of an alternate statutory remedy, such as an appeal, does not *ipso facto* in all situations preclude the jurisdiction of High Courts under Article 226 of the Constitution of India. Courts consistently exercise discretionary jurisdiction under Article 226 in certain exceptional circumstances involving:

- Violation of principles of natural justice
- Orders lacking inherent jurisdiction

- Exceptional urgency or threat of irreparable harm
- Absence of efficacious remedy

Specifically, in the context of the MOOWR Scheme, invocation of writ jurisdiction is justified in situations characterized by urgent commercial exigencies and irreversible operational prejudice. For example, consider an applicant who has already procured capital goods in a foreign country, which are presently lying at a foreign load port, awaiting importation into India, under the deferred duty mechanism. A wrongful rejection of the MOOWR application by the Department, based on a flawed interpretation or misapplication of regulations, could lead to substantial and irreparable business disruption, including production delays and significant financial losses. In these compelling circumstances:

- The appeal remedy before CESTAT, subject to potential delays, may not effectively mitigate the immediate harm and may not be efficacious.
- The operational viability and financial stability of the applicant may be jeopardised if immediate relief is not granted.
- Misinterpretation of regulatory provisions underpinning the rejection would render the order legally untenable.

In such exigencies, the High Court may entertain a writ petition and grant appropriate relief. Additionally, if the High Court decides not to directly interfere with the merits, it retains discretion to direct the CESTAT (i.e., Appellate Tribunal) for expedited and time-bound resolution of the appeal, ensuring that administrative delays do not impede the course of justice.

## **Epilogue:**

In conclusion, MOOWR applications rejected by the Principal Commissioner or Commissioner of Customs constitute adjudicatory decisions, statutorily appealable before the CESTAT under Section 129A(1) of the Customs Act. However, given the commercial urgency and irreparable harm potentially suffered by applicants, invoking writ jurisdiction under Article 226 of the Constitution remains a prudent and efficacious remedy, ensuring immediate judicial scrutiny and safeguarding businesses from administrative lapses.

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