THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE T. AMARNATH GOUD

WRIT PETITION No. 21510 of 2018

ORDER: *(per Hon'ble Sri Justice Sanjay Kumar)*

The grievance of the petitioner is with regard to the rejection of its application for a Duty Paid Procurement Certificate in terms of Notification No.9/16-Customs dated 16.02.2016 issued by the Department of Revenue, Ministry of Finance, Government of India. This notification postulates that a power producer is required to pay standard duty of Rs.0.24 paise per kilowatt hour in the event the power producer supplies electrical energy to the domestic tariff area from a power plant of less than 1000 MW and was granted formal approval for setting up in a Special Economic Zone prior to 27.02.2009 with imported coal as fuel. The notification however requires that the power producer shall produce a certificate from the jurisdictional Development Commissioner in the Department of Commerce, Ministry of Commerce and Industry, that no benefit of customs duty and excise duty as well as fuel-transportation related service tax has been availed by the said power producer towards raw materials and consumables used in operation and maintenance of the power plant. It is in relation to this requirement that the petitioner company applied to the Development Commissioner, Special Economic Zone, Visakhapatnam, for issuance of a certificate to the effect that it complied with the norms stipulated in the notification. Be it noted that unless this certificate is produced, the petitioner would not be entitled to the standard duty @ Rs.0.24 paise per kilowatt hour. However, by the impugned order dated 18.04.2018, the Assistant Development Commissioner, Office of the Development Commissioner, Special

Economic Zone, Visakhapatnam, rejected the request of the petitioner company for issuance of the certificate. This order reads as under:

> "Sir,
> I am directed to refer to your letter dated: 09.04.2018 on the subject cited above.
> Your request for issue of a certificate under Notification No.9/2016-Customs dated: 16.02.2016 has been examined and the same cannot be issued.
> This issues with the approval of the Development Commissioner."

When the denial of the certificate has adverse civil consequences upon the petitioner company and issuance of the certificate is regulated by the aforestated notification, it is not open to the Assistant Development Commissioner concerned to baldly reject an application for issuance of such a certificate without disclosing the reasons therefor.

Trite to state, the duty of rendering a reasoned order of decision is now read into the principles of natural justice and cannot be brushed aside lightly by administrative and quasi-judicial authorities also. The impugned order extracted supra falls woefully short of the required standard, being utterly terse and cryptic.

With the consent of the learned Assistant Solicitor General for India appearing for the Development Commissioner, Special Economic Zone, Visakhapatnam, and Sri B. Narasimha Sarma, learned senior standing counsel appearing for the customs authorities, the writ petition is allowed setting aside the impugned order dated 18.04.2018 passed by the Assistant Development Commissioner, Office of the Development Commissioner, Special Economic Zone, Visakhapatnam. The application of the petitioner under its letter dated 09.04.2018 for issuance of a Duty Paid Procurement Certificate shall be considered afresh on its own merits and in accordance with law and a reasoned decision shall be taken thereon. The same shall then be communicated to the petitioner company. This exercise shall be completed expeditiously and in any event, not later than four weeks from the date of receipt of a copy of this order. The petitioner company shall be afforded an opportunity of personal hearing in this exercise given the fact that the Assistant Development Commissioner already expressed an opinion once to the effect that the petitioner company is not entitled to the said certificate. This opportunity shall be extended to the petitioner company to enable it to clear any doubt that the Development Commissioner may entertain in relation to the subject.

As the customs authorities have already issued a show cause notice to the petitioner company in relation to the duty payable by it and as Sri Gandra Mohan Rao, learned counsel for the petitioner company, would state that the petitioner company has already paid duty @ Rs.0.24 paise per kilowatt hour, we are of the opinion that the customs authorities must necessarily await the decision of the Development Commissioner with regard to issuance of a Duty Paid Procurement Certificate. The said certificate, if issued, would settle the liability of the petitioner company to pay duty upon the electricity supplied. The customs authorities shall therefore await the decision of the Development Commissioner, Special Economic Zone, Visakhapatnam, before taking further proceedings pursuant to the show cause notice dated 14.02.2018.

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

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JUSTICE SANJAY KUMAR

Date: 27.06.2018

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JUSTICE T. AMARNATH GOUD

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