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

\+ **W.P.(C) 3093/2018 & CM Nos. 12325/2018 & 24847/2019**

NTPC LIMITED ..... Petitioner

Through: Mr Tarkeshwar Nath and Mr B.K. Pandey, Advocates.

versus

COMMISSIONER OF CUSTOMS AND ORS. ..... Respondents

Through: Mr Harpreet Singh, Senior Standing Counsel for R-1.
Ms Ananya Bhattarcharya and Mr Shurya Garg, Advocates for R-2.
Mr Bhagwan Swarup Shukla, CGSC

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

O R D E R

% **24.05.2019**

1. The petitioner has filed the present petition, *inter alia*, praying as under:-

> "(1) Pass an appropriate Writ, Order or Direction to the respondent no. 1 Commissioner of Customs-Mumbai restraining him from encashing the bank Guarantee furnished by the petitioner as replacement in terms of order dated 15.01.2018 passed by this Hon'ble Court in W.P(C) No. 11305 of 2017."

2. The controversy in the present petition arises out of an agreement dated 30.11.2006 entered into between the petitioner (NTPC) and Patel Engineering Ltd. (PEL) for the execution of Pen Stock and Power House Package for Lohari Nag Pala Hydro Electric Power (HEPP) in the State of Uttarakhand. The said project is a large project and several benefits were available to the

same under the Mega Power Project Policy of the Government of India. It is not disputed that certain goods supplied to the said project were eligible for being considered as deemed exports.

3. In view of the above, the goods imported by PEL (steel plates) for supply to NTPC were also eligible for being considered as deemed exports. In this regard, on 19.06.2008, NTPC had also issued a Project Authority Certificate (PAC).

4. On the basis of the PAC, PEL imported Special Steel Line Plates for supply to the said project. The said plates were imported against an Advance Authorisation with attendant export obligations. The said obligations were, obviously, to be discharged by supply of the said goods to NTPC. In order to secure the interest of the revenue, PEL submitted a bank guarantee in the sum of ₹8.15 crores.

5. The Lohari Nag Pala Hydro Electric Power was scrapped on account of various protests at the material time. Since the said project was scrapped, the goods in question (steel plates) could not be used for the said project. PEL claims that NTPC is liable to pay the duties for the same, since the said goods were imported at the instance of NTPC and on the premise that their supply to NTPC would be considered as a deemed export.

6. In the given circumstances and pursuant to certain negotiation (which are not relevant for the purposes of this petition) NTPC replaced the bank guarantee submitted by PEL. It is stated that initially, NTPC decided to utilise the said goods in another project, which did not fructify. It is also stated that there was also a proposal to revive the Lohari Nag Pala Hydro Electric Power

Project but that too has also not fructified as yet.

7. Finally, NTPC agreed to pay the duties leviable on the said imports. The said duties were, admittedly, quantified at a sum of ₹19,91,83,067/-. The said sum includes an element of interest as well. NTPC has since paid the said amount and now seeks that the bank guarantee be released.

8. The learned counsel appearing for the respondents states that the said amount was paid by NTPC under protest and since the Export Obligation Discharge Certificate has not been provided, the bank guarantee ought not to be released. This Court finds the aforesaid contention unmerited. Concededly, the bank guarantee was submitted by PEL to secure the revenue to the extent of ₹8,15,00,000/-. As against the said bank guarantee, NTPC has paid a sum of ₹19,91,83,067/-, as quantified by the concerned authority.

9. In view of the above, there is no justification for respondent no.1 now to continue to withhold the bank guarantee. The respondents cannot continue to withhold the bank guarantee after accepting the said amount of ₹19,91,83,067/-.

10. Accordingly, respondent no.1 is directed to forthwith return the bank guarantee to NTPC.

11. It is clarified that this said order is without prejudice to the rights of all parties, including PEL. It is also further clarified that nothing stated in the present order should be construed as limiting the rights of NTPC or PEL to contest the liability as claimed by the Custom Department or for the said parties to seek exemption from duties, if otherwise entitled to, from the

concerned authorities.

12. The petition is disposed of. The pending applications are also disposed of.

13. The hearing scheduled on 19.08.2019 stands cancelled.

14. Order *dasti*.

VIBHU BAKHRU, J

MAY 24, 2019
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