A.No.3114 of 2020
and
A.No.231 of 2020

P.T.ASHA, J.,

By order dated 04.03.2020, this Court had directed the Advocate Commissioner Mr.T.Gowthaman to sell 2,500 Metric Tonnes of coal from out of 5,000 Metric Tonnes of coal under the possession of the applicant at the Krishnapatnam Port, Nellore, Andhra Pradesh, which is the subject matter of the dispute between the parties. Pursuant to the above orders, the Advocate Commissioner had also undertaken the exercise of selling the said coal to public auction and the highest bidder in the auction was M/s.Asta Lingam Times Trading Company Ltd., who had submitted the highest bid of Rs.3,300/- per M.T. Plus Cess, G.S.T., and Transportation (Ex.Krishnapatnam Port). The said auction purchaser had also remitted the sum of Rs.96,62,500/- and two Demand Drafts both dated 03.11.2020 and 04.11.2020 drawn on the Axis Bank bearing D.D.Nos.017413 and 017415 respectively. In continuation of an early order dated 04.03.2020, the amount was directed to be deposited in a Nationalised Bank in an interest bearing fixed deposit initially for a period of two years, pending the arbitral proceedings, by an order dated 10.11.2020. By the order of the said date, the coal lying at the Cargo Storage area of Krishnapatnam Port measuring 2,500 M.Ts., was directed to be released to the representative of the auction purchaser. The Customs and Port Authorities was directed to release the same.

2. However, by a report dated 30.11.2020, the learned Advocate Commissioner had brought to the notice of this Court that despite the best efforts, the Port and Customs Officials were refusing to release the coal despite orders of this Court. Therefore, by an order dated 03.12.2020, the following direction was issued.

> *"A report has been filed by the Advocate Commissioner stating that despite orders of this Court dated 10.11.2020, and that being brought to their notice, the Customs Authorities at Krishnapatnam Port, Nellore, Andhra Pradesh, have refused to release the Coal to the successful bidder, M/s.Asta Lingam Times Trading Company.*

2. It is hereby directed that the Customs Authorities and the Port Authorities shall facilitate and ensure that the Coal is released to the successful bidder, M/s.Asta Lingam Times Trading Company, on or before 07.12.2020 to avoid further orders from this Court.

3. Post the matter on 08.12.2020 for reporting compliance."

3. When the matter was listed on 08.12.2020, Mr.A.P.Srinivas, learned Standing Counsel appearing for Customs and Excise would report to the Court that a sum of nearly Rs.40,00,000/- is due towards customs duty and without receiving the duty, the coal could not be released. Similarly, Mr.P.Giritharan, learned counsel, who entered appearance on behalf of the Krishnapatnam Port, Nellore, Andhra Pradesh, which is a private Port, would submit that he had taken out an application to implead the Krishnapatnam Port as a party to the proceedings. He would also submit that a huge amount was due towards the

demurrage charges and without payment of the demurrage charges, the coals cannot be released to the auction purchaser.

4. The Court had then posed a query to the counsel appearing for the respondent to get necessary instructions from his client as to whether he would pay the customs duty and demurrage charges so as to enable the auction purchaser to take release of the coal. It is also made clear that in the event of the respondent not coming forward to make the payment then the said amount would be adjusted from out of the amounts deposited by the auction purchaser. The matter was directed to be listed today.

5. Today, when the matter was listed, A.No.3114 of 2020 has been filed by the Krishnapatnam Port Company Ltd., to implead themselves as a party to the proceedings. Alongwith the said applications, a typedset of papers has been enclosed which contains an invoice dated 07.12.2020 raised by the Krishnapatnam Port Company Ltd., towards storage charges.

6. A perusal of the same would indicate that as on 07.12.2020, a sum of Rs.50,15,000/- was due towards storage charges. This amount is for the total quantity of 5,000 M.T., of coal. However, the subject matter of the sale is the only an extent of 2,500 M.T., and therefore, the amount payable for storage charges would be a sum of Rs.25,07,500/-. Likewise, Mr.A.P.Srinivas, learned Senior Standing Counsel has filed the documents to show that the Office of the Additional Commissioner of Customs, Krishnapatnam Port had addressed the letter dated 05.12.2020 to the auction purchaser stating that the auction purchaser could show Bill of Entry for the quantity contracted and pay the customs duty of Rs.20,23,356/- along with interest at Rs.5,68,757/- calculated till 07.12.2020. The letter would indicate that on payment of the aforesaid amount, the Customs Authorities had no objection to the coal being handed over to the auction purchaser.

7. Mr.Amitava Majumdar, learned counsel appearing on behalf of the applicant would draw the attention of this Court to a circular of the Customs Department, dated 28.11.2001, wherein a clarification has been offered with

respect to goods sold by auction. The circular would reads as follows:

> *"2. The matter has been examined. It is clarified that -*
>
> *(a) the Customs duty shall be determined by backward calculation considering the sale proceeds of unclaimed/uncleared goods as the cum-duty price. For calculation of duty, total sale proceeds without allowing any deduction towards sales expenses or any other charge is to be taken as cum duty price.*
>
> *(b) After determination of the Customs duty, sale proceeds of unclaimed/uncleared goods is to be appropriated in the manner as provided in section 150(2) of the Customs Act, 1962."*

8. He would also draw the attention of this Court to the judgment of the Hon'ble Supreme Court in a case of ***Union of India & Others v. Associated Container Terminal Limited*** reported in ***(2020) 3 SCC 756*** wherein the contents of the circular, the Hon'ble Supreme Court had held that in view of the

circular issued by the Central Board of Excise & Customs, the customs duty duty has to be calculated on the sale price and not on the duty as would be payable on the date of the deemed expiration of the permitted period of warehouse. He would therefore submit that the auction purchaser was only liable to pay Customs Duty on the price at which he has purchased the property in auction sale.

9. To this, a counter has been made by Mr.P.Giritharan, learned counsel appearing for Krishnapatnam Port stated that such a consession as contemplated is available only in the case of a sale conducted under Section 48 of the Customs Act, 1962. and only in such circumstances, Section 150 of the Act would come into play. However, Mr.A.P.Srinivas, learned standing counsel for Customs would submit that the auction purchaser could be directed to submit Bill of Entries on the sale price on which he had purchased the coal and the Authorities would then take a decision on the duty that would be payable. However, all the parties except the respondent concurred that coal has to be delivered to the auction purchaser and whatever amounts is payable towards

Customs Duty and demurrage could be paid from out of the amounts deposited in to the credit of the application.

10. Mr.Siva Mohan, learned counsel, who appears for the 2nd respondent would submit that the coal had been purchased for a sale to M/s.JSW Minerals Trading Pvt., Ltd., who had taken delivery of the coal covered under 31 Bill of Entries and it is only one Bill of Entry covering a total quantity of 5,000 M.T., of coal that was not cleared due to financial crisis. However, he would admit that M/s.JSW Minerals Trading Pvt., Ltd., who is aware about the auction purchase has not come forward to stake a claim of the remaining 5,000 M.T., of coals. In these circumstances, this Court is passing the following order:

11. As regards the demurrage charges, a sum of Rs.25,07,500/- which is due as on 07.12.2020 shall be paid to M/s.Krishnapatnam Port Company Ltd., Nellore, Andhra Pradesh. With regard to Customs Duty, the auction purchaser shall submit the Bill of Entries showing the actual price for which he has purchased the coals in question in the auction sale. Thereafter, the Customs

Authority shall take a call as to whether they would apply circular No.71/2001-CUS, dated 28.11.2001 to the said transaction. Once the amount is quantified, the same shall be intimated to the learned Advocate Commissioner and the auction purchaser. The learned Advocate Commissioner shall there upon address a letter to the Registrar General, High Court, Madras, to release the amount due under the head of Customs Duty and demurrage and on receipt of the same, the Registry shall take necessary steps to take a return of the Fixed Deposit and issue the cheques favouring the respective Authorities for the amount indicated in the letter of the learned Advocate Commissioner and re-invest the remaining amount into a fixed deposit. The Customs Authority shall positively take steps within a week of the submission of the Bill of Entries for quantifying the Customs Duty payable.

12. The Customs Authority shall take steps to auction the remaining 2,500 M.T., of coal preferably not later than a period of three months from the date of receipt of a copy of this order and after deducting the Customs Duty and the demurrage charges payable to the Port Authorities, deposit the balance

amount to the credit of the application. This amount shall also be deposited in a fixed deposit in a Nationalised Bank so as to earn interest till the disposal of the arbitral proceedings or until further orders.

13. Accordingly, the application in A.No.3114 of 2020 is disposed of.

14. In the light of the above order, no further order is required to be passed in the application in A.No.231 of 2020 and the same is closed.

16.12.2020

Index:Yes/No
Internet:Yes/No
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P.T.ASHA, J.,

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