IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :20.01.2020

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THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN

W.P.No.32916 of 2019
and
W.M.P.33349 of 2019

M/s.Geo Foundations and
Structures Pvt. Ltd.,
Rep. by its Director
Sri.K.N.Madhusudanan Pillai
No.89, 1st Main Road, Gandhi Nagar
Adyar, Chennai-600 020. ...Petitioner

vs

1. The Director General of Foreign Trade
(PRC) Section,
Government of India
Ministry of Commerce and Industry
Udyog Bhavan H-Wing,
Madulana Azad Road,
New Delhi-110 011.

2. The Additional Director General of
Foreign Trade,
Government of India,
Ministry of Commerce and Industry
No.26, Haddows Road,
Shastri Bhavan Annexe
Chennai-600 006.

3. Joint Secretary
Department of Atomic Energy
Anushakthi Bhavan
Chatrapadi Shivaji Maharaj Marg
Mumbai-400 001. .. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandmus, to call for the records relating to the impugned order passed by the 1st respondent in PH Case No.23 in F.No.01/60/162/907/AM19/PRC-PRC Meeting No.14/AM/20 dated 6.8.2019 and quash the same as arbitrary, unsustainable in law and passed without proper reasons and further direct the 1st respondent to order the grant refund of TED (Terminal Excise Duty) claimed by the petitioner basing on the recommendation of Department of Atomic Energy dated 9.11.2015 on the goods supplied/ordered by M/s.Bharatiya Nabhikiya Vidyut Nigam Ltd., (BHAVINI) for construction of Tsunami Protection Bund & Retaining wall for setting up of 500 Mwe Prototype Fast Breeder Reactor (PFBR) at Kalpakkam, Tamil Nadu.

For Petitioner : Mr.K.Jeyachandran

For Respondents : Mr.V.Chandrasekaran, SPC

O R D E R

This Writ Petition has been filed in the nature of Certiorarified Mandamus questioning the order of the first respondent, namely, The Director General of Foreign Trade, PRC Section, Government of India, in PH Case No.23 in F.No.01/60/162/907/AM19/PRC-PRC Meeting No.14/AM/20 dated 6.8.2019 and seeking a direction against the first respondent to grant an order of refund of TED, namely Terminal Excise Duty as claimed by the petitioner.

2. Heard Mr.K.Jeyachandran, the learned counsel appearing for the petitioner and Mr.V.Chandrasekaran, SPC, appearing for the respondents, who has filed a counter affidavit.

3. The petitioner is a Private Limited Company engaged in the construction of Tsunami Protection Bund and Retaining Wall for 500 Mwe PFBR Project at Kalpakkam, to protect the Nuclear Power Plant from possible disasters from tsunami and coastal calamities. A tender was floated. Work order was given to the petitioner on 03.06.2014. Tsunami Protection Bund and Retaining Wall was constructed for protection of the Nuclear Power Plant at Kalpakkam. After completion of the work, the petitioner filed an application before the second respondent, namely, The Additional Director General of Foreign Trade, Government of India, Chennai, claiming refund of Terminal Excise Duty as prescribed under Chapter 7 of Foreign Trade Policy (FT) as applicable for 2015-20, since the petitioner claimed to be a "deemed exporter". The petitioner claims that they had enclosed all the relevant certificates. Since refund was not granted, repeated representations have been made by the petitioner. Finally, on 14.12.2017, the petitioner met the 2nd respondent and again, submitted the relevant documents. The petitioner, through their counsel, by a letter dated 24.10.2018 submitted a detailed representation which was also sent to the 2nd respondent. Thereafter, the Committee/first respondent had held a meeting on

11.06.2019. It is claimed in the affidavit that opportunity of personal hearing was not afforded. However, with respect to the grant of refund of Terminal Excise Duty, the following order was passed.

> " The Committee went through the submission made by the firm and found no case of genuine hardship in their case and accordingly decided to reject it ".

It is clear that the said order is a non-speaking order. The basis for concluding that the petitioner has no case of genuine hardship has not been stated. It has been very specifically stated in the affidavit that the petitioner has faced genuine hardship.

4. A further order was passed. The said order was also a cryptic order. It is extracted below.

> "The Committee heard the submission made by the firm and discussed the matter at length and found no merit in firm' contention and decided to maintain rejection of the request of the firm as in earlier PRC Meeting No.08/AM20 dated 11.06.2019".

5. In the counter affidavit filed by the respondents, it is stated that the Foreign Trade Policy - 7.08 had been relied on by both the petitioner and the respondent and that under the Foreign Trade Policy- 7.08, refund of Terminal Excise Duty does not arise.

6. The learned counsel for the respondents Mr.V.Chandrasekaran also made a specific point that when the petitioner themselves have invoked Foreign Trade Policy-7.08, it automatically follows that refund of Terminal Excise Duty which is not permissible under the said Policy cannot be granted. The learned counsel further stated that therefore expectation for passing of an order on merits would only be an empty formality.

7. However, when an administrative order is passed by an authority, it is incumbent on the authority to first afford personal hearing and follow the principles of natural justice. Thereafter, it must also be ensured that there is no personal bias on the authority. Even if the petitioner had relied on the Foreign Trade Policy 7.08, in the order, the respondent should have specifically mentioned the same and should have given reasons for not granting refund. They have not chosen to do so.

8. Therefore, a direction is issued to the Policy Relaxation Committee to re-examine the issue once again. While re-examining the said issue, the petitioner is granted liberty to approach the Policy Relaxation Committee with any further

documents including placing reliance on the aspects stated in the counter affidavit filed before this Court. The petitioner may seek personal hearing and the Policy Relaxation Committee may pass a detailed order, giving reasons to substantiate their conclusion.

9. Naturally in view of the conclusion now reached by this Court, the order of the respondent cannot be permitted to continue and therefore, the same is set aside with a further direction to the Policy Relaxation Committee to once again re-examine the entire issue in an appropriate manner.

10. The petitioner is directed to submit relevant documents to the Policy Relaxation Committee on or before 15.02.2020 and the said Policy Relaxation Committee may consider the same and pass final order on or before 31.03.2020 by following the established principles of natural justice and in accordance with law.

11. With the above direction, this Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

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To

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3. Joint Secretary
Department of Atomic Energy
Anushakthi Bhavan
Chatrapadi Shivaji Maharaj Marg
Mumbai-400 001.

+1cc to Mr.K.Jayachandran, Advocate, S.R.No. 3631
+1cc to Mr.V.Chandrasekaran, Advocate, S.R.No. 4181

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and
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NRL(CO)
GN(13/02/2020)