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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 26.08.2021

CORAM:

THE HON'BLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.NO.18412 OF 2014

I.L. & F.S. Tamil Nadu Power Company Limited,
B4, Navin Presidium,
Nelson Manickam Road,
Aminjaikarai, Chennai 600 029.
Rep. by its Authorised Signatory, P.Sekar

...Petitioner

Vs.

- 1.Commissioner of Customs (Sea Imports - Import),
Customs House,
No.60, Rajaji Salai, Chennai 600 001.
- 2.The Deputy Commissioner of Customs,
Customs House, No.60, Rajaji Salai,
Chennai 600 001.
- 3.Deputy General Manager,
Indian Bank, New Delhi,
Main Branch, G-41, Connaught Circus,
New Delhi 110 001.
- 4.Deputy General Manager,
Andhra Bank, Ground Floor,
6-3-891 and 892, The Belvedere,
Raj Bhavan Road, Somajiguda,
Hyderabad 82.
- 5.Deputy General Manager,
Oriental Bank of Commerce,
Large Corporate Branch, Ground Floor,
Harsha Bhawan, E-Block, Connaught Place,
New Delhi 110 001.
- 6.The Branch Head,
The Jammu and Kashmir Bank Ltd.,
G-40 Connaught Place, New Delhi 110 001.
- 7.Deputy General Manager,
Punjab and Sind Bank,
Large Corporate Branch,
P-18/90, Connaught Circus,
New Delhi 110 001.



8. Deputy General Manager,
State Bank of India,
Commercial Branch,
The Great Eastern Centre
No.70, Ground Floor, Nehru Place,
New Delhi - 110 019.

9. IDBI Bank, IDBI Tower,
Bandra Kurla Complex Road,
Opposite NSE Building,
Bandra Kurla Complex, Bandra East,
Mumbai - 400 051.

10. Central Bank of India, Fort Branch,
No.346, Standard Building, 1st Floor,
D.N.Road, Fort Mumbai 400 023.

... Respondents

[R3 to R10 impleaded vide order dt.10.02.2021
in WMP.No.2022/2021]

Prayer : Petition filed under Article 226 of Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records of the 2nd respondent ending with the communication F.No.S37/20/2012 - Gr.6 dated 2.7.2014 and quash the same and consequently direct the respondents to grant clearance of the equipment for the Phase I of the Power Project mentioned in the following bills of entry (1) 6053094 dated 08.07.2014; (2) 6041512 dated 07.07.2014; (3) 6041666 dated 07.07.2014; (4) 6049530 dated 08.07.2014; (5) 6052620 dated 08.07.2014; (6) 6048644 dated 08.07.2014; (7) 6060489 dated 08.07.2014; (8) 6057960 dated 08.07.2014; (9) 6057034 dated 08.07.2014; (10) 6057405 dated 08.07.2014; (11) 6044125 dated 07.07.2014; (12) 6043344 dated 07.07.2014; (13) 6050933 dated 08.07.2014; (14) 6051116 dated 08.07.2014; (15) 6060482 dated 08.07.2014; (16) 6060701 dated 08.07.2014; (17) 6060627 dated 08.07.2014; (18) 6048609 dated 08.07.2014; (19) 6050568 dated 08.07.2014; (20) 6060530 dated 08.07.2014; (21) 6058675 dated 08.07.2014; (22) 6056026 dated 08.07.2014; (23) 6056187 dated 08.07.2014; (24) 6056377 dated 08.07.2014; (25) 6058648 dated 08.07.2014; (26) 6041523 dated 07.07.2014; (27) 6041659 dated 07.07.2014; (28) 6041650 dated 07.07.2014; (29) 6041511 dated 07.07.2014; (30) 6053083 dated 08.07.2014; (31) 6055023 dated 08.07.2014; (32) 6048142 dated 08.07.2014; (33) 6048316 dated 08.07.2014; (34) 6054626 dated 08.07.2014; (35) 6048998 dated 08.07.2014 already filed.

For Petitioner : Mr.C.Manishankar
Senior Counsel
For Mr.K.Krishnamoorthy



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For Respondents : Mr.K.Ravi, Senior Standing Counsel
For R1 and R2

For Respondents : Mr.C.Mohan
For M/s.King & Patridge for R8

For Respondents : No appearance for RR 3 to 7, 9 & 10

ORDER

The writ petition is filed questioning the legal validity of the Communication dated 02.07.2014 issued by the second respondent.

2. The petitioner is a Company registered under the Companies Act and is involved in the business of setting of a 3180 MW coal based Mega Thermal Power Project in Kothattai, Ariyagoshti and Villianallur Revenue Villages of Chidambaram Taluk, Cuddalore District, with a view to sell power to the Distribution Licensees in the State of Tamil Nadu and other regions.

3. The learned Senior Counsel appearing on behalf of the writ petitioner mainly contended that the Communication dated 02.07.2014 is directly in violation of the notification issued by the Government of India, Ministry of Finance on 17th March 2012 under Section 25(1) of the Customs Act, 1962. The Notification categorically states that 'In case of imports for a project for which certificate regarding Mega Power Project status issued by an officer not below the rank of Joint Secretary to the Government of India in the Ministry of Power is provisional, the importer furnishes a security in the form of a Fixed Deposit Receipt from any Scheduled Bank for a term of thirty six months or more in the name of the President of India for an amount equal to the duty of customs payable on such imports but for this exemption, to the Deputy Commissioner of Customs of Assistant Commissioner of Customs, as the case may be, at the time of importation and if the importer fails to furnish the final mega power status certificate within a period of thirty six months from the date of importation, the said security shall be appropriated towards duty of customs payable on such imports but for this exemption.' In view of the said Notification, the subsequent impugned Communication issued on 02.07.2014 during the subsistence of the Notification is invalid and cannot be enforced at all. Though the impugned Communication was issued pursuant to the Master Circular issued by the Reserve Bank of India on 01.07.2009, the said Master Circular are issued by the Reserve Bank of India would not have any implication with reference to the Government of India



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Notification issued governing the affairs of the petitioner company. It is further contended that any transactions of the petitioner company falls prior to the issuance of the impugned Communication and therefore, the said Communication is not enforceable in respect of the transactions of the petitioner with the Customs Department.

4. The learned Senior Panel Counsel appearing on behalf of the Customs Department made a submission that the Customs Department is bound by the Master Circular issued by the Reserve Bank of India regarding acceptance of Bank Guarantee in DBOD.No.Dir.BC.14/13.03.00/2009-10 dated 01.07.2009. The Communication dated 02.07.2014 was issued in consonance with the Master Circular issued by the Reserve Bank of India and therefore, even if the petitioner is of an opinion that it is aggrieved from and out of such Circular, they have to seek relief from the Reserve Bank of India and certainly not against the Customs Department.

5. The learned Senior Panel Counsel reiterated that the petitioners themselves in their letter has stated that they had accepted to get Auto Renewal clause duly included in the future Bank Guarantees. In another letter, the petitioners have stated that the Auto Renewal clause is acceptable, if the Banks accept the same. When the petitioners themselves accept the Auto Renewal facility provided by the Banks, pursuant to the Master Circular issued by the Reserve Bank of India, there is no reason to consider the relief as such sought for in the present writ petition.

6. The learned counsel appearing on behalf of the State Bank of India made it clear that Auto Renewal clause is available to all the customers and the same will be extended at the request of the customers concerned. If any option is provided to avail the benefit of Auto Renewal clause, then, the Banks are bound to give the facility of Auto Renewal clause and therefore, there is no impediment as such for the petitioner to provide an option for Auto Renewal clause.

7. Considering the arguments, the writ petition was filed in the year 2014 challenging the Communication issued by the Ministry of Finance Department of Revenue and the said Communication was issued relating to the Bank Guarantee for customers purposes. A provision for Auto Renewal was issued by the Reserve Bank of India in its Master Circular dated 01.07.2009. Similarly, the Central Board of Excise and Customs also issued a Circular dated 30.06.2010 based on the Reserve Bank of India Master Circular and the Circular issued by the Central Board of Excise and Customs, the respondents issued an impugned Communication dated 02.07.2014 directing the petitioners to opt for an Auto Renewal clause which became a



8. It is relevant to take note of the letter sent by the petitioner on 28.02.2014 to the Deputy Commissioner of Customs, wherein the petitioners have clearly stated as follows.

9. In another letter dated 18.6.2014, the petitioners have again stated that if the Banks accepted the Auto Renewal clause, they have no objection for the same and the said portion of the letter is extracted hereunder:

10. Beyond the above two letters sent by the petitioners, this Court is of an opinion that Auto Renewal clause is a facility provided by the Banks and the petitioner could not able to establish in the event of opting such Auto Renewal clause, their rights are affected, a writ petition may be entertained if the petitioner is able to establish a right and such a right is infringed. In the present case, undoubtedly at the initial stage, the Communication was not available and that was not taken note of, however, during the year 2014, the respondents issued a communication which is impugned in the writ petition.

<https://hcservices.ecourts.gov.in/hcservices/>



12. With these observations, the Writ Petition stands disposed of. No costs.

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Sd/-
Assistant Registrar (CS-VIII)

// True Copy //

Sub Assistant Registrar

Sgl

To

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+1cc to Mr.K.Krishnamoorthy, Advocate SR.No.43233

+1cc to M/s.King & Partridge, Advocate SR.No.43191

W.P.No.18412 of 2014

JPL(CO)
RVM(21/09/2021)