IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.10926 of 2012

Tata Steel Limited and another .... ***Petitioner***
Mr. S.P. Misra, Senior Advocate

-versus-

Paradip Port Trust and another .... ***Opposite Party***
Mr. P. Acharya, Advocate

CORAM:
THE CHIEF JUSTICE
JUSTICE R. K. PATTANAIK

ORDER
29.06.2022

Order No.

05. 1. The prayer in the present petition is for quashing of office orders dated 3rd /4th April, 2012 and 21st May, 2012 issued by the Paradip Port Trust (PPT) raising a demand of Rs.1,00,23,527/- on Petitioner No.1 towards wharfage for the shortfall of Minimum Guaranteed Throughput (MGT) in terms of the Berth Reservation Scheme (BRS) after purported recalculation up to figures on pro-rata basis.

2. Petitioner No.1 is Tata Steel Limited and its Executive Officer is Petitioner No.2. Petitioner No.1 states that it has been using the services of the Paradip port since 1984 for import and export of raw materials. While unloading the raw materials at Paradip Port, Petitioner No.1 pays wharfage charges for use of the port facilities. On 13th May, 2011 PPT introduced the BRS which was valid up to 30th September, 2011. In terms of the BRS, an MGT provider has to furnish an irrevocable and encashable Bank Guarantee (BG) for an amount equivalent to the wharfage charges for the cargo to be imported as per the import schedule of the MGT provider for the MGT quantity of 0.50 MT for first six months of financial year 2011-12. Clause-4 of the BRS stated

that "the cargo handled during April and May, 2011 will be reckoned for the purpose of MGT".

3. On 27th May, 2011, the Board of Trustee of the PPT while ratifying the introduction of the BRS added a clause that if the MGT provider fails to fulfill the MGT, PPT would encash the BG for an equivalent value calculated at the highest rate in respect of the shortfall quantity of the MGT.

4. Petitioner No.1 to decide to avail of the benefit of the BRS and furnished a BG in favour of the PPT to tune of Rs.3.3 crores. For the period from 1st April, 30th September, 2011, Petitioner No.1 was able to handle 4,90,438 MT of cargo i.e. Coal, Lime Stone and Dolomite. The shortfall was 9,562 MT. On 15th December, 2011 PPT wrote to Petitioner No.1 asking it to deposit Rs.5,20,173/- towards wharfage for the shortfall quantity of MGT. Petitioner No.1 states that it deposited the said amount with the PTT on 30th December, 2011.

5. It is stated that on 4th October, 2011, Petitioner No.1 made a representation to PPT for recalculation of the MGT on pro-rata basis. On 3rd January, 2012 PPT issued an office order stating *inter alia* that since the BRS was introduced from 13th May, 2011 for a period of six months, the MGT quantity of 5 lakh MT vis-à-vis the Petitioner No.1 had to be revised on pro-rata basis from 15th May, 2011 to 30th September, 2011.

6. The Petitioner No.1 states that it had anticipated that with the recalculation on pro-rata basis of the MGT it would be entitled to refund and therefore, on 9th January, 2012 wrote to asking for the refund of the

deposited sum of Rs.5,20,173. However, on 3rd/4th April, 2012 PPT issued the impugned letter to the Petitioner calculating the shortfall of the MGT as 1,93,818 MT and calculating the shortfall amount Rs.1,05,43,700 and after adjusting the amount deposited raising a demand of Rs.1,00,23,527/-.

7. The Petitioner No.1 on 5th May, 2012 wrote to the PPT stating that the cargo handled during April and May, 2011 had to also the reckoned for the purpose of MGT and if so reckoned the pro rata quantity cleared for 4.5 months would be around 3.75 lakh MT. The resultant shortfall of 9562 MT had already been paid for. However, on 21st May, 2012 PPT rejected the request of the Petitioner No.1. Another request was made by Petitioner NO.1 to PPT on 4th June, 2012 to drop the demand.

8. Thereafter, the present petition was filed. While directing issue notice to the present petition on 29th June, 2012, the impugned demand was stayed by this Court.

9. In the counter affidavit filed in respond to the petition, it is *inter alia* stated by PPT that as per the revised calculation of MGT as far as the Petitioner No.1 is concerned, the quantity handed from 15th May, 2011 to 30th September, 2011 worked out to 185964 MT whereas the revised MGT was 3,79,782 MT thereby resulting in shortfall of 1,93,818 MT.

10. This Court heard submissions of Mr. S.P.Mishra, learned Senior counsel for the Petitioners and Mr. P. Acharya, learned counsel appearing for PPT.

11. While introducing the BRS on 13th May, 2011, it was made clear in Clause 4 thereof that "cargo handled during April and May, 2011 will

be reckoned for the purpose of MGT". However while calculating the revised MGT on pro-rata basis, PPT proceeded to also calculate the quantity handled on pro-rata basis and that is where the error crept in. The quantity handled for the moths of April and May, 2011 had to be included even in terms of Clause 4 of the scheme. It is because of this erroneous calculation that PPT arrived at a shortfall quantity for Petitioner No.1 of 1,93,818 MT whereas if the quantity cleared by the Petitioner No.1 for the months of April and May, 2011 were to be included in full, the figure worked out to 5,10,844 MT for the period from April to September, 2011. If the MGT was to be reduced as in terms of the pro-rata calculation, then the quantity cleared by Petitioner No.1 would exceed the MGT quantity and therefore, they would be no shortfall.

12. There is no answer by the PPT to the above submission of Petitioner No.1 as regards the correct method of calculating the revised MGT quantity on pro-rata basis and the actual quantity handled by Petitioner No.1 after including the quantity handled in the months of April and May, 2011. Consequently, the Court concludes that the demand raised by the PPT on Petitioner No.1 by the letter dated 3rd / 4th April, 2012 is unsustainable in law and is hereby set aside. The further letter dated 21st May, 2012 reiterating the demand is also hereby quashed.

13. The writ petition is allowed in the above terms. No costs.

(Dr. S. Muralidhar)
Chief Justice

(R. K. Pattanaik)
Judge

TUDU