IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.1174 of 2013

Steel Authority of India Limited, Jagatsinghpur .... ***Petitioner***

Mr. A. Pattnaik, Advocate

-versus-

Paradeep Port Trust .... ***Opp. Party***

Mr. M. Kanungo, Sr. Advocate

CORAM:
THE CHIEF JUSTICE
JUSTICE R.K.PATTANAIK

Order No.

ORDER
05.07.2022

11. 1. Steel Authority of India Limited (SAIL) has filed this petition challenging a letter dated 7th January, 2013 issued to by the Paradeep Port Trust (PPT) rejecting the Petitioner's request for waiver of Minimum Guarantee Throughput (MGT) against the mechanical iron ore plots allotted in favour of SAIL. While directing notice to issue in the present petition, on 29th January, 2013 this Court did not grant stay of the impugned demand of MGT. Learned counsel for the Petitioner informs the Court that the said MGT amount has been paid under protest.

2. The background facts are that the aforementioned mechanized iron ore plot measuring 9700 sq.mtrs at the Paradeep Port for stacking and shipment of iron ore fines was allotted by the PPT in favour of SAIL by a letter dated 7th December, 2011. The said allotment was for the period up to 31st January, 2012. On 1st February, 2012 SAIL wrote to PPT stating that the allotment should be extended for a further period of 11 months and "the

MGT for the mechanized plots may be waived in favour of SAIL". While renewing the allotment for a period of 11 months from 1st December, 2012 to 31st December, 2012, by a letter dated 4th February, 2012 PPT did not state anything about waiving the MGT.

3. On 26th July, 2012 a general letter was issued by PPT to all "iron ore exporters" *inter alia* stating that three conditions were to be imposed for extension of licence period for the 32 manual and 8 mechanical plot holders, one of which was the basis for calculation of MGT.

4. SAIL again wrote to PPT on 31st July, 2012 stating that since "SAIL is not exporter of iron ore" and that the coastal shipment of iron ore fines of KIOCL Limited at Mangalore was an additional activity of SAIL being undertaken for trial basis. SAIL is not in a position to pay MGT for iron ore fines.

5. On 21st August, 2012 the allotment of all the plots were cancelled pursuant to order of this Court on 2nd August, 2012 in a Misc. Case No.11005 of 2012 arising out of W.P.(C) No.11785 of 2012. SAIL kept writing to PPT for reconsidering the decision to cancel the allotment and also for waiving the MGT for the period during which the plot was being utilized by SAIL. There was no reply from PPT to these requests agreeing to waiver of MGT.

6. On 2nd January, 2013 PPT called upon SAIL to pay Rs.25,68,620/- being "wharfage charges for the shortfall quantity in MGT" for the period 1st February, 2012 to 21st August, 2012 and a separate letter of the same date raising a demand of

Rs.13,92,157/- for the shortfall in MGT for the period 7th December, 2011 to 31st January, 2012.

7. Learned counsel for the Petitioner SAIL submitted that the MGT was required to be paid only by iron ore exporters and not an entity like SAIL which was not operating the allotted plot for export purposes. Mr. Kanungo, learned Senior counsel appearing for the PPT, on the other hand, submitted that right from the beginning the stand of PPT was that all plot holders are required to pay MGT irrespective of whether they undertake overseas or coastal exports or consume captively and whether the entity is a public sector undertaking or merchant exporter.

8. It is seen that at no point in time was any assurance held out by PPT to SAIL that it would not be required to pay MGT. On the contrary, the specific request by SAIL to PPT for waiver of MGT was met with refusal of such request in writing. After such refusals, SAIL could have been under no presumption that PPT was going to waive the MGT. There is nothing on record to indicate that at any point in time PPT informed SAIL that the MGT was required to be paid only by exporters of iron ore.

9. It may be true that there was a general correspondence addressed to all exporters of iron ore regarding calculation of MGT. However, there was nothing to indicate that as far as SAIL was concerned, PPT had agreed to its request for waiver of MGT at any point in time. If SAIL found it difficult to meet the condition regarding MGT it always open to SAIL to write to PPT declining the allotment made in its favour and returning the

allotted plot to PPT. Having accepted the allotment on the terms and conditions stipulated by PPT, it was not open to SAIL to decline to comply with one of those conditions. In fact, the request by SAIL to PPT for waiver implies that SAIL was aware it was required to pay MGT. If not there was no purpose in making such request.

10. Viewed from any angle, therefore, SAIL cannot avoid making payment of MGT in terms of the impugned letter issued to it by PPT on 2nd January, 2013. The Court accordingly finds no merit in this writ petition and it is dismissed as such.

(Dr. S. Muralidhar)
Chief Justice

(R.K. Pattanaik)
Judge

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