

2. As per Regulation 6, the net worth of the applicant at the time of filing of application should not be less than Rs. 20.00 crore in case of the applicant proposing to trade up to 1000 Million Units or more of electricity in a year. Based on the details furnished by the applicant, it was established that the applicant had the required net worth at the time of making of the application. Accordingly, the applicant *prima facie* qualified for grant of licence for inter-State trading in electricity as a category `F` electricity trader.

3. On the above considerations, the Commission by order dated 26.10.2006 proposed to grant licence to the applicant as category `F` electricity trader subject to satisfactory outcome of the examination of details of cases directed to be filed the applicant in terms of para 8 of the said order dated 26.10.2006. A notice under clause (a) of sub-section (5) of Section 15 of the Act was published inviting suggestions or objections to the above proposal. No suggestions or objections have been received in response to the notice.

4. The applicant has filed the details of cases involving Commissioner of Central Excise, Chennai, Labour Enforcement Officer, Rajamundry and the Secretary to the State of Tamil Nadu & CTO. The details of these cases are discussed as under:

(A) Commissioner of Central Excise, Chennai - II Vs GEA Energy System (India) Limited: According to the applicant, the Joint Commissioner of Central Excise pursuant to scrutiny of company's records raised charges to clearing goods without payment of duty in guise of replacement and removal of MODVAT inputs without payment of duty, issued an order dated 19.9.2001 against the applicant GEA and demanded:-

(i) the duty of Rs. 69141/- and adjusted the said amount of Rs. 69141/- already paid; (ii) Ordered recovery of MODAVAT Credit to the extent of Rs. 165891-/-; (iii) Imposed penalty of Rs. 69141/- under section 11AC/Rule 173Q and penalty of Rs. 165891/- under section 57 1(4); and (iv) Demanded interest for the above under section 11AB and Rule 57 1(5). The applicant has informed that it filed an appeal against the said order before the Commissioner, Central Excise (Appeals). The Commissioner (Appeals) in his order dated 6.6.2002 confirmed the order of the Joint Commissioner and imposed the penalty of Rs. 69141 against the applicant. Against the said order dated 6.6.2002, the applicant further filed an appeal before the Customs, Excise and Gold (Control) Appellate Tribunal and vide order dated 9.1.2003, the Tribunal has set aside the penalty and has held that the order of the Commissioner (Appeals) was not legally correct. The Commissioner, Central Excise is stated to have referred the order of the Tribunal dated 9.1.2003 to the High Court of Madras for clarification and the matter is still pending before the High Court.

(B) GEA Energy System (India) Limited Vs State of Tamil Nadu and Commercial Tax Officer, Ponneri: The applicant, GEA Energy System (India) Limited has filed writ petition No. 10587 of 2006 before the High Court of Madras under Section 226 of the Constitution of India to issue an interim injunction restraining the Govt. of Tamil Nadu from levying or recovering entry tax on the goods under the provisions of Section 2 (c) , Section 2 (g) and Section 3 of the Tamil Nadu Tax on Entry of Goods into Local Areas Act, 2001. On 18.4.2006, High Court of Madras is said to have passed the following interim order:

“Until further orders, the petitioner is directed to pay the entry tax to the respondents, but the respondents will keep it in a separate interest bearing account till further order of the court Notice.”

(C) Labour Enforcement Officer Vs GEA Energy System (India)

Limited : Labour Enforcement Officer (Central) is said to have filed a complaint under Section 22A of the Minimum Wages Act, 1948 for violation of Rules 22, 26(5), 26(1), 25 (2), 21 (4) and 26(2) of Minimum Wages (Central) Rules, 1950 before the Additional Judicial Magistrate Court. These complaints relates to non-display of notices showing minimum rates of wages, non-maintenance of register of muster roll, register of wages, register of overtime, etc. The said case is said to be pending.

5. On examination of the details submitted by the applicant, it is found that so far as the first case is concerned, the present judicial findings of CEGAT are in favour of the applicant, even though the matter is pending before the High Court at the instance of the Revenue. In the second case the applicant is contesting collection of entry tax by the concerned authorities. These cases should not normally come in the way of the applicant getting licence for trading. In the third case, it appears that the applicant has been found to be guilty of procedural violations by the Labour Commissioner who has taken the matter before the Magistrate. No findings have been recorded by the Magistrate since the matter is pending. Thus, at this stage it is considered that the case should not come in the way of the applicant.

6. In view of the above, we direct that the applicant be issued the licence for inter-state trading in electricity as Category `F` electricity trader for trading in whole of India. We make it clear that the applicant shall inform the

Commission of out come of all pending cases and comply with all the conditions for grant of licence specified by the Commission from time to time.

Sd-/
(A.H.JUNG)
MEMBER

sd-/
(BHANU BHUSHAN)
MEMBER

sd-/
(ASHOK BASU)
CHAIRPERSON

New Delhi, dated the 7th December, 2006